

To: Members of the Cabinet

Date: 20 April 2016

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Dear Councillor

You are invited to attend a meeting of the **CABINET** to be held at **10.00 am** on **TUESDAY, 26 APRIL 2016** in **CONFERENCE ROOM 1A, COUNTY HALL, RUTHIN.**

Yours sincerely

G Williams
Head of Legal, HR and Democratic Services

AGENDA

PART 1 - THE PRESS AND PUBLIC ARE INVITED TO ATTEND THIS PART OF THE MEETING

1 APOLOGIES

2 DECLARATION OF INTERESTS

Members to declare any personal or prejudicial interests in any business identified to be considered at this meeting.

3 URGENT MATTERS

Notice of items which, in the opinion of the Chair, should be considered at the meeting as a matter of urgency pursuant to Section 100B(4) of the Local Government Act 1972.

4 MINUTES (Pages 7 - 14)

To receive the minutes of the Cabinet meeting held on 29 March 2016 (copy enclosed).

5 FINANCIAL ASSESSMENT AND CHARGING UNDER THE SOCIAL SERVICES AND WELL-BEING (WALES) ACT 2014 (Pages 15 - 104)

To consider a report by Councillor Bobby Feeley, Lead Member for Social Care, Adult and Children's Services (copy enclosed) detailing the mandatory and discretionary changes regarding Financial Assessment and Charging as per the requirements of the Social Services and Well-being (Wales) Act 2014.

6 MEMBERS INVOLVEMENT IN EMPLOYMENT APPEALS (Pages 105 - 112)

To consider a report by Councillor Barbara Smith, Lead Member for Modernisation and Housing (copy enclosed) regarding proposed changes relating to the involvement of members in some employment processes.

7 OFFICER SCHEME OF DELEGATION (Pages 113 - 172)

To consider a report by Councillor Barbara Smith, Lead Member for Modernisation and Housing (copy enclosed) seeking Cabinet approval of the Officer Scheme of Delegation in respect of any executive functions contained within it.

8 FINANCE REPORT (Pages 173 - 240)

To consider a report by Councillor Julian Thompson-Hill, Lead Member for Finance, Corporate Plan and Performance (copy enclosed) detailing the latest financial position and progress against the agreed budget strategy.

9 CABINET FORWARD WORK PROGRAMME (Pages 241 - 244)

To receive the enclosed Cabinet Forward Work Programme and note the contents.

PART 2 - CONFIDENTIAL ITEMS

No Items.

MEMBERSHIP

Councillors

Hugh Evans
Julian Thompson-Hill
Eryl Williams
Bobby Feeley

Hugh Irving
Huw Jones
Barbara Smith
David Smith

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All Councillors for information
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Town and Community Councils

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LOCAL GOVERNMENT ACT 2000

Code of Conduct for Members

DISCLOSURE AND REGISTRATION OF INTERESTS

I, *(name)*

a *member/co-opted member of
*(*please delete as appropriate)*

Denbighshire County Council

CONFIRM that I have declared a ***personal / personal and prejudicial** interest not previously declared in accordance with the provisions of Part III of the Council's Code of Conduct for Members, in respect of the following:-
*(*please delete as appropriate)*

Date of Disclosure:

Committee *(please specify)*:

Agenda Item No.

Subject Matter:

Nature of Interest:

*(See the note below)**

Signed

Date

*Note: Please provide sufficient detail e.g. 'I am the owner of land adjacent to the application for planning permission made by Mr Jones', or 'My husband / wife is an employee of the company which has made an application for financial assistance'.

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CABINET

Minutes of a meeting of the Cabinet held in Conference Room 1a, County Hall, Ruthin on Tuesday, 29 March 2016 at 10.00 am.

PRESENT

Councillors Hugh Evans, Leader and Lead Member for the Economy; Bobby Feeley, Lead Member for Social Care, Adult and Children's Services; Hugh Irving, Lead Member for Customers and Libraries; Huw Jones, Lead Member for Community Development; Barbara Smith, Lead Member for Modernisation and Housing; David Smith, Lead Member for Public Realm; Julian Thompson-Hill, Lead Member for Finance, Corporate Plan and Performance and Eryl Williams, Deputy Leader and Lead Member for Education

Observers: Councillors Ray Bartley, Joan Butterfield, Jeanette Chamberlain-Jones, Jason McLellan, Barry Mellor and Paul Penlington

ALSO PRESENT

Corporate Directors: Economy and Public Realm (RM) and Communities (NS); Heads of Service: Legal, HR and Democratic Services (GW), Highways and Environmental Services (SP), Finance, Assets and Housing (JG), and Business Improvement and Modernisation; Recruitment Specialist (AM); Chief Finance Officer (RW), and Committee Administrator (KEJ)

COUNCILLOR TRIBUTES

The Leader referred to the recent sad loss of two valued and respected members in Councillors Peter Owen (Dyserth) and Richard Davies (Denbigh Lower). Both councillors would be sadly missed and the Leader conveyed Cabinet's condolences to their families at this difficult time. Members and officers stood in silent tribute.

1 APOLOGIES

Mohammed Mehmet – Chief Executive

2 DECLARATION OF INTERESTS

Councillor Bobby Feeley – Personal – Agenda Item 6 – Independent Board Member of Betsi Cadwaladr University Health Board

3 URGENT MATTERS

No urgent matters had been raised.

4 MINUTES

The minutes of the Cabinet meeting held on 16 February 2016 were submitted.

RESOLVED that the minutes of the meeting held on 16 February 2016 be approved as a correct record and signed by the Leader.

5 WINDING UP OF TAITH JOINT COMMITTEE

Councillor David Smith presented the report seeking Cabinet's endorsement to terminate the Taith Joint Committee and consider successor arrangements.

The Taith Joint Committee was established by North Wales Authorities in 2007 to further regional transport co-operation. In 2014 the Minister removed the co-ordinating, regional planning and capital monitoring responsibilities from regional transport consortia which represented most of Taith's work. Consequently the Taith Board had agreed that the Joint Committee be wound up. In terms of future arrangements it was recommended that a Transport Advisory Forum under the North Wales Economic Ambition Board be established to deal with transport interventions using transport portfolio holders' knowledge and experience. A similar report would be considered by each Cabinet in the other local authorities involved.

Cabinet acknowledged that Taith had worked extremely well for the region providing an equitable way of prioritising infrastructure projects in North Wales and there was some disappointment regarding the requirement for change. In terms of successor arrangements members were pleased to note the retention of transport portfolio holders' involvement and expertise, providing valuable input into regional transport issues. The Leader referred to the gap in infrastructure between North and South Wales and the importance of the new Forum in delivering improvements to benefit the economy, particularly highlighting the need for investment in the A55.

RESOLVED that Cabinet –

- (a) *endorses the decision of the Taith Joint Committee to terminate its role, with effect from 29 September 2015, and*
- (b) *supports the establishment of a Transport Advisory Forum under the North Wales Economic Ambition Board to include the Lead Member Public Realm as Denbighshire's representative.*

6 PROPOSED GRANT OF LEASE TO BETSI CADWALADR UNIVERSITY HEALTH BOARD FOR TY NANT, NANT HALL ROAD, PRESTATYN

Councillor Julian Thompson-Hill presented the report seeking Cabinet approval to grant a Lease to Betsi Cadwaladr University Health Board (BCUHB) on terms reflecting an open market letting of the property as recommended by the Council's Commercial Development Manager and the Council's external agents.

Ty Nant was vacated in 2014 to enable it to be let/sold as part of a wider regeneration scheme but there had been little interest in the property since then. BCUHB had identified a need for new premises to run its primary care service following a decision by two medical practices to end their contracts with the Board. BCUHB wished to lease the property in order to provide an integrated primary care centre and deliver services from one central building within the town centre.

Councillor Hugh Irving supported granting a lease to BCUHB which would provide a solution to the primary care needs of the area and benefit local residents whilst also freeing up other buildings. In terms of financial implications Cabinet was advised that any internal configuration to the building would be paid for by BCUHB. The current savings target for the building had already been taken as part of previous efficiencies and would result in that existing pressure being met. Given the wording in the report regarding assumed planning permission it was clarified that change of use was subject to the formal planning process but informed discussions with planning colleagues indicated that a refusal recommendation was unlikely.

RESOLVED that a Lease on terms reflecting an open market letting of the property as recommended by the Council's Commercial Development Manager and the Council's external agents be granted.

7 RHYL GOING FORWARD - REVIEW AND NEXT STEPS

Councillor Hugh Evans presented the report setting out a review of progress with the Rhyl Going Forward Regeneration Programme and proposals for future regeneration activity. Rhyl had been a regeneration priority for over ten years.

Councillor Evans summarised the report which provided some historic context to the demise of seaside resorts and assessment of previous regeneration activity in Rhyl. A collaborative approach to future regeneration activity was required with particular support welcomed from the Welsh Government on a number of initiatives, most recently the Waterfront project, together with private sector partnerships and investment. The aim was to recreate Rhyl as a desirable place to live, work and visit and although it was a huge challenge, Councillor Evans felt there was now a coherent plan in place and progress could be made through the regeneration strategies and proposals for the next phase as detailed within the report.

The Corporate Director: Economy and Public Realm highlighted a number of successes and referred to those areas where further work was required and outcomes had not been as expected. She advised that the focus should be on activities that improved footfall to the town, attracted more economically active residents to live in Rhyl, addressed negative perceptions, and nurture business confidence and growth. Consequently three work streams had been proposed containing projects focusing on Tourism & Visitors, Town Centre and Living & Working in Rhyl. It was recommended that Cabinet approve those proposals together with programme management and governance arrangements.

Cabinet welcomed the plan to tackle regeneration in Rhyl and the proposals to draw people back into the town across the three work streams. It was hoped that the original success of the Sun Centre could be emulated with a series of attractions as any improvements in the retail offer alone would not be enough to entice people back into Rhyl. The need for sustainable income generation was also highlighted together with continual investment in facilities to keep the leisure offer fresh and exciting. The Corporate Director agreed that a retail offer alone would not sustain the town and elaborated upon the Waterfront project to provide activities, events and facilities and increase footfall within the town impacting positively on its

regeneration. She also apologised that reference to progress on entering Rhyl beach for a seaside award had been omitted and agreed to circulate that information to members.

Councillor Joan Butterfield reported that Rhyl Members fully supported Rhyl as a regeneration priority but expressed a number of concerns as follows –

- the lack of input from Rhyl Members when formulating the regeneration plan and their lack of involvement in the project boards overseeing particular initiatives
- the lack of investment in maintaining Rhyl facilities such as the Skytower and Sun Centre but investment being made to facilities in other areas of the county
- concerns regarding the delay on the part of Pennaf Housing Group (including Clwyd Alyn Housing Association) in delivering the housing development aspect of the West Rhyl Housing Improvement Project (WRHIP)
- highlighted the significant investment made in Rhyl West which had resulted in little or no impact on outcomes and lack of investment in other areas
- welcomed the investment in the Rhyl New School but noted no further progress with the new Faith School.

The Lead Members and Corporate Director responded to issues raised as follows –

- the report had been shared with Rhyl Members prior to submission to Cabinet and any new regeneration proposals would be welcomed and considered
- the governance structure highlighted the involvement of Rhyl Members in the Rhyl Reference Group and Scrutiny Committees and they would also be involved in various dedicated project boards – membership of the Coastal Facilities Board and WRHIP Board also included Rhyl Members
- advised of the significant investment in Rhyl over recent years including the Foryd Harbour, Apollo, Honey Club, Rhyl New School, Flood Defences and Housing and the recently announced Waterfront Development
- it was accepted that the impact of particular investments and their outcomes was not always clear or easy to quantify
- Pennaf Housing Group was being called into scrutiny to discuss why the WRHIP was taking longer than expected with a view to accelerating delivery of the housing development; Pennaf was aware of the Council's view that the houses built should be marketed for sale and not for rent
- education was also crucial to regeneration and the Rhyl New School would act as a catalyst to bring people into the town.

Councillor Jeanette Chamberlain-Jones voiced concerns regarding the impact on town centre businesses and asked for more to be done in terms of reducing business rates and car parking fees to try and increase footfall in the town. Councillor Barry Mellor welcomed much within the report but highlighted the need for appropriate timescales for particular developments and maintenance programmes for facilities. He also advocated the Council building houses for its own housing stock which would have a positive impact on economic regeneration.

The following responses were provided –

- there was currently a temporary reduction of business rates in Rhyl High Street due to slow trading conditions and the signs were that a forthcoming revaluation of rateable values would likely lead to a reduction to reflect lower rental values resulting in lower business rates for town centres businesses, hopefully from 2017
- car park charges had been subsidised previously by the Town Council in Ruthin but there was no evidence that it had increased footfall within the town. It remained open, however, for Rhyl Town Council to subsidise parking charges if they wished as was currently happening in Prestatyn through its Town Council. The County Council needed to be able to balance its parking budget, hence the recent increase in charges across the county
- reported upon the potential acquisition of property and land for redevelopment for social housing in areas of Rhyl to add to the Council's housing stock, and
- referred to the inherited problems from Clwyd Leisure Limited and assurances regarding ongoing assessment of the Council's coastal leisure facilities.

The Leader emphasised the Council's commitment to Rhyl's regeneration adding that the regeneration proposals provided huge opportunities for Rhyl.

RESOLVED that Cabinet –

- (a) *note the progress made with regeneration projects in Rhyl;*
- (b) *approve the proposals for the next phase of regeneration activity in Rhyl set out within the report and illustrated in Appendix 2 to the report and agree that they should be used to inform priorities for any regeneration funding that may become available, and*
- (c) *approve the programme management and governance arrangements set out within the report and illustrated in Appendix 3 to the report.*

At this juncture (11.20 a.m.) the meeting adjourned for a refreshment break.

8 CORPORATE PLAN PERFORMANCE REPORT QUARTER 3 - 2015/16

Councillor Julian Thompson-Hill presented the report providing an update on the delivery of the Corporate Plan 2012 – 17 as at the end of quarter 3 of 2015/16.

The performance report provided a summary position for each outcome together with an analysis of key exceptions. All outcomes had been evaluated as acceptable or better and an explanation behind the status of each indicator had been included with key issues elaborated upon further at the meeting together with achievements in quarter 3. Performance Scrutiny Committee had considered the report and had called in issues relating to education and housing indicators for further scrutiny. A Corporate Plan Improvement Board had been established to monitor delivery of the Plan over the last eighteen months of the administration.

During consideration of the report members discussed the following –

- Indicator JHLAS03i – It was noted that this indicator was green when measuring the years of supply of housing land which was at odds with the red rating in the LDP Annual Report submitted to Welsh Government using their calculation method. Officers suspected the contrary findings had been due to a different measure being used but agreed to look into the matter further and report back
- CES111a – reducing the reliance on mobile accommodation had been rated blue (completed) because there was a policy in place to address that issue; it was noted that the number of school places provided through mobile classrooms had been rated yellow for primary and amber for secondary
- performance against the indicator for pupils achieving the level 2 threshold including Welsh/English and Maths had increased from 55% in 2013-14 to 56% in 2014-15. However, improvement elsewhere in Wales meant Denbighshire's performance had fallen below the median and was considered a priority for improvement. Councillor Eryl Williams advised that the indicator was unfair given the huge disparity between Welsh Government funding allocated across the region to spend on school improvement and raising standards
- THS012: % of principle (A) and non-principal (B) and (C) roads that were in overall poor condition – it was recognised that the green indicator could be misleading but it was in fact a positive outcome with the level of poor condition having reduced overall, it was not possible to amend the wording for clarity as the indicator was set nationally. Councillor David Smith reported upon the latest figures available which showed an improvement in road conditions for both principle and non-principal roads since 2012. The challenge of continually maintaining the county's roads was acknowledged
- the red indicator for broadband availability was a serious concern which had been called into scrutiny and the delay would be discussed directly with BT
- Residents' Survey 2015 – the latest responses had been used to inform the plan outcomes and it was disappointing, if not unsurprising, to note that customer satisfaction levels were still red and that the largely positive report had not been reflected in residents' responses
- Vibrant Towns and Communities – activities relating to the Honey Club and Queen Street, Rhyl had been classified green because the Council's work in that regard was on target – Cabinet asked for greater clarity in future reports regarding which performance element of the project was being measured
- the rate of fly-tipping incidents was high due to the way incidents in the county were recorded and figures had not increased as a result of the introduction of green waste charges
- the number of additional affording housing units was largely dependent on the size and viability of housing developments.

Cabinet was pleased to note that the report was largely positive and that scrutiny had called in a number of issues for further examination.

RESOLVED that Cabinet receives the report and notes the progress in delivering the Corporate Plan 2012 – 17 as at the end of quarter 3 of 2015/16.

9 EMPLOYMENT POLICIES

Councillor Barbara Smith presented the report recommending approval of eight employment policies which had been developed/revised. The report detailed four

new policies and highlighted proposed changes within the existing policies and the reasons therefore. Reference was made to the consultation process and although the Local Joint Consultative Committee had been inquired when considering the policies, both unions and members were happy to recommend their adoption.

During consideration of the Equal Opportunities in Employment Policy Councillor Huw Jones queried the impact of the new Welsh Language Standards. Officers confirmed that the Welsh Language was not a protected characteristic as set out in the equalities legislation and there were other policies relating to language, including the Council's own Welsh Language scheme. Assurances were also sought regarding consistent application of the policies across the authority and officers reported upon the active promotion of the policies at various management meetings and their promotion and availability on the intranet. The documents had been reformatted for ease of use and templates had been included for consistency.

RESOLVED that Cabinet adopt the employment policies as detailed within the report.

10 FINANCE REPORT

Councillor Julian Thompson-Hill presented the report detailing the latest financial position and progress against the agreed budget strategy. He provided a summary of the Council's financial position as follows –

- a net under spend of £0.585m was forecast for service and corporate budgets
- 91% of agreed savings had been achieved to date (target £7.3m) and the majority of the remaining savings were projected to be achieved by 2016/17 at the latest – it was clarified that the remaining 9% savings for 2015/16 would be delivered in cash terms but the actual saving may not be delivered until 2016/17
- highlighted key variances from budgets or savings targets relating to individual service areas, and
- a general update on the Housing Revenue Account, Housing Capital Plan and the Capital Plan (including the Corporate Plan element).

Cabinet was also asked to approve the £677k underspend within the PFI and Capital Financing Budgets to set up a reserve to help mitigate the effects of future reductions in funding. It was clarified that this element would be considered during members' budget workshops. As the Final Settlement had resulted in an additional £6k funding it was recommended that this sum be added to the £480k Corporate Contingency for 2016/17 to help offset any delays in achievement of efficiencies.

During debate assurances were provided that decisions regarding high cost placements in Children's Services were based on need and not financial grounds and a specialist placement reserve had been created in order to meet those costs. With regard to the Rhos Street School and Ysgol Pen Barras project, Councillor Bobby Feeley asked that future reports be reworded to further clarify that there would be two schools on the Glasdir site.

RESOLVED that Cabinet –

- (a) *notes the budgets set for 2015/16 and progress against the agreed budget strategy;*
- (b) *approve the use of the underspend within the PFI and Capital Financing Budgets of £677k to set up a reserve to help mitigate the effects of future reductions in funding received from Welsh Government as part of the budget strategy for 2017/18, and*
- (c) *note the update on the Final Settlement and approve the recommended use of the additional £6k in Welsh Government funding.*

11 CABINET FORWARD WORK PROGRAMME

The Cabinet Forward Work Programme was presented for consideration and members noted the following –

- the Adult Social Care Charging Policy would be considered in April
- reference to the Adult Social Care Charging Policy in May should be removed and replaced with the Future of Adult Provider Services, and
- the former North Wales Hospital, Denbigh item scheduled for May could be delayed as it was subject to a District Valuer report.

RESOLVED that Cabinet's Forward Work Programme be noted.

The meeting concluded at 12.30 p.m.

Report To: **Cabinet**

Date of Meeting: **26 April 2016**

Lead Member / Officer: **Councillor Bobby Feeley / Phil Gilroy**

Report Author: **Siobhan Cuddeford**

Title: **Financial Assessment and Charging under the Social Services and Well-being (Wales) Act 2014**

1. What is the report about?

To advise Members of mandatory and discretionary changes regarding Financial Assessment and Charging as per the requirements of the Social Services and Well-being (Wales) Act 2014

2. What is the reason for making this report?

To provide information to Members changes regarding financial assessment and charging under the Social Services and Well-being (Wales) Act 2014 and to request a decision to introduce the discretionary change to an Income Disregard for non-residential financial assessments in July 2016, after a period of pre-communication with current recipients.

3. What are the Recommendations?

- 3.1 That Cabinet notes the mandatory changes in the Act of a non-residential financial assessment and capped contribution of £60.00 per week for person's receiving short term/respite care of less than 8 weeks.
- 3.2 That Cabinet approves the proposal to introduce the discretionary change to the Income Disregard for non-residential financial assessments in July 2016, after a period of pre-communication with current recipients.

4. Report details

- 4.1 The Social Services and Well-being (Wales) Act came into force on 6th April 2016. The Act brings together local authorities' duties and functions in relation to improving the well-being of people who need care and support, and carers who need support, into a single piece of legislation. New Regulations and a Code of Practice in relation to financial assessment and charging come into force, replacing the existing statutory frame work which will cease to have effect. This requires a change to our policies and procedures in line with the Act to ensure that our staff within Community Support Services and partner agencies are aware of the implications the new legislation brings.
- 4.2 Work has been undertaken to identify areas of significant change and also areas which will allow the Authority to apply additional charges to help alleviate the budget pressures facing Community Support Services.

4.3 This report draws attention to the two areas of significant impact to the Authority contained within the Legislation, the capping of fees for Short Term/Respite Care and changes in Disability Living Allowance (DLA) (Care) and Attendance Allowance (AA) income disregard.

4.4 Section 9.3 of the Code of Practice

Where a person is a short-term resident (ie a stay not exceeding eight weeks) in a care home and a local authority uses its discretion to charge for this, it **must** undertake any financial assessment of a person's means to do this as if the person were receiving non-residential care and support (domiciliary care), or receiving direct payments for non-residential care and support. Non-residential care and support fees are capped at £60.00 per week which is significantly less than the authority's short-term residential fees and it has been calculated that **this will result in a loss of income of £120K per annum.**

4.5 Section 11 of the Code of Practice

This section relates to 'Charging for care and support in the community including a person's own home'. It brings in a significant change which sees the removal of the income disregard of £27.20 between the higher and middle rate of DLA or AA. This means that people in receipt of higher DLA or AA benefit could be charged or asked to contribute up to an additional £27.20 per week towards their care and support costs. However, after charging local authorities **must** leave a person who is being charged with a minimum income amount (MIA).

4.6 The potential income generation opportunity for the Authority will not be fully known until all recipients have been financially reassessed, but it is anticipated that this will compensate for the loss of income due to the changes for charging for short term/respice care.

5. How does the decision contribute to the Corporate Priorities?

5.1 The priority for Community Support Services is that vulnerable people are protected and are able to live as independently as possible with the overarching priority of modernising the council to deliver efficiencies and improve services for our customers.

5.2 If the loss of £120k income from the mandatory change to charging for short-term care is not recovered then both of these priorities would be compromised.

6. What will it cost and how will it affect other services?

6.1 The capping of short term/respice care fees at £60 per week will result in an estimated income reduction of £120K per annum unless this is offset by implementing the disregard for DLA and AA.

6.2 A financial reassessment of all service users affected would need to be undertaken but it is felt that this work could be accommodated within the existing resources allocated to the Finance, Income and Assessment Team.

6.3 It is estimated that 95 Individuals who previously were financially assessed to make no contribution currently towards their care and support will be asked to contribute from

£1.00 up to a maximum of £27.20 per week. All Individuals currently receiving this income disregard will be provided with information on how they will be affected and also how to apply for a Waiver if they feel that this increase to their contribution will cause them hardship. This resultant added workload can be managed within Community Support Services.

7. What are the main conclusions of the Equality Impact Assessment (EqIA) undertaken on the decision? The completed EqIA template should be attached as an appendix to the report

The changes are a result of new national legislation, for which the Equality Impact Assessment is the responsibility of Welsh Government.

8. What consultations have been carried out with Scrutiny and others?

Welsh Government have confirmed that implementing changes in line with the Act, Regulations and Code of Practice do not require separate consultation with citizens, as a full consultation process was undertaken by Welsh Government whilst implementing the Act.

9. Chief Finance Officer Statement

The cost implications are potentially significant if not offset by compensating discretionary changes. The implications should be contained within existing service resources in the current financial year and reviewed as part of the budget process going forward.

10. What risks are there and is there anything we can do to reduce them?

10.1 If the discretionary changes are not agreed, there will be a loss of £120k income to the Council. This could result in a reduction of services available to vulnerable people

10.2 Individuals may not understand or agree with the changes to their contributions towards the cost of the care and support. However, implementation of the changes to the Income Disregard is planned for July 2016 and this will allow time for the Finance, Income & Assessment Team to publicise the changes and assess the impact on individuals and notify them of this. It will also provide an opportunity for care and support recipients to raise questions and concerns ahead of the implementation.

10.3 Whilst the changes are a result of new national legislation, the implementation is being undertaken locally by each authority. Bringing this change in from July will also align Denbighshire regionally with other authorities' implementation of changes under the Act.

11. Power to make the Decision

The Social Services & Well-being (Wales) Act 2014 gives Local Authorities discretionary powers to charge for care and support services.

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Removal of AA and DLA(Care) Higher
Income Disregard
23 March 2016

Equality Impact Assessment

Removal of AA and DLA(Care) Higher Income Disregard

Contact: Siobhan Cuddeford, Team Manager, Client Services

Updated: 23/03/2016

1. What type of proposal / decision is being assessed?

A new or revised policy

2. What is the purpose of this proposal / decision, and what change (to staff or the community) will occur as a result of its implementation?

To bring financial assessment for non residential care in line with the Social Services & Well-being (Wales) Act 2014.

3. Does this proposal / decision require an equality impact assessment? If no, please explain why.

*Please note: if the proposal will have an impact on people (staff or the community) then an equality impact assessment **must** be undertaken*

Yes

<If no, briefly summarise the reasons for this decision here, and skip ahead to the declaration at the end>

4. Please provide a summary of the steps taken, and the information used, to carry out this assessment, including any engagement undertaken

(Please refer to section 1 in the toolkit for guidance)

The Social Services and Well-being (Wales) Act 2014 comes into force on the 6th April 2016. The existing financial assessment and charging statutory framework stems from separate pieces of legislation, mainly the National Assistance Act 1948 as regards charging for residential care, and the Social Care Charges (Wales) Measure 2010 in respect of charging for non-residential care. As such the framework is made up of a number of separate regulations and guidance, some of which are now fragmented and out of date. From April this legislation will be replaced by the Act, and regulations and a code of practice made under the Act. Consequently, the existing regulations and guidance in relation to financial assessment and charging is also being replaced.

The aim of the new framework is to provide a more streamline and less inconsistent system than is currently in place whilst also bringing in changes. Local Authorities when exercising their social services functions, MUST act in accordance with the requirements contained in the new legislation.

One of these is the removal of the Income Disregard, we estimate that 390 care and support recipients currently have this disregard, 130 will not be affected, 260 will be affected by the loss of its application.

The Finance, Income & Assessment Team as part of the annual reassessment process identify all those in receipt of the disregard and write to them to inform them individually what the effect of removal of the disregard will have on them.

They will be given information on why it is being implemented and given the opportunity to contact us to be given options available to them. This will all be done prior to the change being implemented in July 2016.

- 5. Will this proposal / decision have a positive impact on any of the protected characteristics (age; disability; gender-reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation)?**
(Please refer to section 1 in the toolkit for a description of the protected characteristics)

Additional Charging Policy income will be generated by implementing this change which will mitigate the loss of income from other changes to charging arrangements, allowing the Authority to meet its Priorities, Vulnerable people are protected and are able to live as independently as possible. The Authority will be acting in accordance with the Social Services & Well-being (Wales) Act 2014 and will mean that Denbighshire is working with Regional Authorities to align Charging Policies.

- 6. Will this proposal / decision have a disproportionate negative impact on any of the protected characteristics (age; disability; gender-reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation)?**

This will not have a disproportionate negative impact on any one of the protected characteristics, but will affect a number of vulnerable Denbighshire residents who receive care and support from the Authority. Linked to this change is the risk of negative public opinion and whilst this change is to be undertaken as a result of new national legislation, it is being implemented at a local level by each Authority. As the Authority is not required to carry out a separate consultation, it is felt that a 3 month period of preparation would ensure care and support recipients and their families receive timely communications relating to the changes and an opportunity to raise questions and concerns ahead of the implementation.

7. Has the proposal / decision been amended to eliminate or reduce any potential disproportionate negative impact? If no, please explain why.

No	Not applicable
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8. Have you identified any further actions to address and / or monitor any potential negative impact(s)?

Yes	<If yes please complete the table below. If no, please explain here>
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Action(s)	Owner	By when?
Reassessment and identification of individuals who may be affected by the change	Finance, Income & Assessment Team	28 April 2016
Individual notification letter to those affected to inform them of the impact and afford them the opportunity to raise questions and concerns ahead of the implementation	Finance, Income & Assessment Team	13 May 2016
Monitoring and recording of those affected and questions and concerns raised	Finance, Income & Assessment Team	Throughout the period prior to implementation
Ensure supporting guidance and contact information available via the Council's website	Finance, Income & Assessment Team	13 May 2016
Provide guidance to colleagues both within and outside the Authority.	Finance, Income & Assessment Team	During the preparation period.

9. Declaration

Every reasonable effort has been made to eliminate or reduce any potential disproportionate impact on people sharing protected characteristics. The actual impact of the proposal / decision will be reviewed at the appropriate stage.

Review Date:	01/04/2019
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Name of Lead Officer for Equality Impact Assessment	Date
Siobhan Cuddeford	23/03/2016

Please note you will be required to publish the outcome of the equality impact assessment if you identify a substantial likely impact.



Social Services and Well-being (Wales) Act 2014

Part 4 and 5 Code of Practice (Charging and Financial Assessment)



Part 4 and 5

Code of practice on the exercise of social services functions in relation to Part 4 (direct payments and choice of accommodation) and Part 5 (charging and financial assessment) of the Social Services and Well-being (Wales) Act 2014.

This code of practice is issued under section 145 of the Social Services and Well-being (Wales) Act 2014 (the "Act").

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1. Introduction

Introduction

- 1.1 This code of practice is issued under section 145 of the Social Services and Well-being (Wales) Act 2014 (the “Act”).
- 1.2. The Social Services and Well-being (Wales) Act 2014 is available at:

<http://www.legislation.gov.uk/anaw/2014/4/enacted>
- 1.3. Local authorities, when exercising their social services functions, **must** act in accordance with the requirements contained in this code. Section 147 (departure from requirements in codes) **does not** apply to any requirements contained in this code.
- 1.4. In this code a **requirement** is expressed as “must” or “must not”. **Guidance**, where local authorities have discretion, is expressed as “may” or “should/should not”.
- 1.5. This code should be read in conjunction with all relevant codes of practice issued under the Act. In particular those relating to care and support provision under Part 3 (Assessing the needs of individuals) and Part 4 (Meeting needs). It must also be read in conjunction with the relevant regulations made under Part 4 (Meeting needs) and Part 5 (Charging and financial assessment) of the Act which are referred within it.

Advocacy

- 1.6 The dedicated code of practice on advocacy under Part 10 of the Act sets out the functions when a local authority, in partnership with the individual, must reach a judgement on how advocacy could support the determination and delivery of an individual's personal outcomes; together with the circumstances when a local authority must arrange an independent professional advocate. Professionals and individuals must ensure that judgements about the needs for advocacy are integral to the relevant duties under this code.
- 1.7 An individual must feel that they are an equal partner in their relationship with professionals. It is open to any individual to invite someone of their choice to support them to participate fully and express their views, wishes and feelings. This support can be provided by someone's friends, family or wider support network

2. Purpose

2.1 This code, and the regulations to which it refers, set out the requirements for local authorities in relation to:

- setting a contribution or reimbursement in connection with direct payments under sections 50-53 of the Act (Direct payments);
- the choice of accommodation for those in a care home, including payment of additional costs in certain circumstances, under section 57 of the Act (Cases where a person expresses preference for particular accommodation);
- charging and financial assessment under section 59 of the Act (Power to impose charges) on those who are to receive care and support, or in the case of carers support;
- the deferment of payments for those in a care home under section 68 of the Act (Deferred payment agreements);
- charging under 69 of the Act (Charging for preventative services and assistance) for the provision or arrangement of preventative services and assistance;
- the recovery of debts under section 70 of the Act (Recovery of charges, interest, etc) and the transfer of assets to avoid charges under section 72 of the Act (Transfer of assets to avoid charges); and;
- reviews relating to charging determinations or charges under section 73 of the Act (Reviews relating to charges).

2.2 This code covers:

- designing a charging policy;
- common issues in relation to charging;
- charging for care and support in a care home;
- choice of accommodation when arranging care in a care home;
- making payments for additional costs for preferred accommodation;
- charging for care and support in the community;
- charging for support to carers.

2.3 This code must be read in conjunction with annexes A to F which provide further information and set out the detailed requirements in particular instances.

3. General

- 3.1 The Act provides for a single legal framework for charging for care and support, or in the case of a carer, charging for support. It provides a local authority with the discretion to charge in either case. It also provides authorities with the discretion to require payment of a contribution, or a reimbursement, towards the cost of securing care and support (or support to a carer) where a person receives direct payments to enable them to obtain this. Local authorities can exercise this discretion to charge, or to require a contribution or reimbursement, where they feel it is appropriate to do so and where they have established that the person required to pay any charge, contribution or reimbursement, has sufficient financial means to do so.
- 3.2 References in this code and its annexes to “care and support” should be construed to include reference to “support to carers”. References to “charging” should be construed to include reference to requiring payment of “contributions” or “reimbursements” in relation to the provision of direct payments.
- 3.3 Where a local authority provides or arranges care and support to meet a person’s needs, or support to meet a carer’s needs, under sections 35 to 45 of the Act (Meeting Needs) it has the discretion to charge for this, except where it is required by regulations not to charge a particular person or not to charge for a particular type of care and support. In addition, where a local authority provides direct payments to enable a person to obtain care and support, or a carer to obtain support, under sections 50 to 53 of the Act (Direct Payments) it has the discretion to require payment of a contribution or a reimbursement in respect of such direct payments.
- 3.4 The charging and financial assessment framework introduced by the Act, the regulations and this code are intended to make charging, where it occurs, consistent, fair and clearly understood. The overarching principle is that people who are asked to pay a charge **must** only be required to pay what they can afford. People who require care and support will be entitled to financial support from their local authority in certain circumstances based on their financial means and some will be entitled to care and support at no charge. Local authorities **must** take into account, when deciding whether to charge and in setting the level of any charge, contribution or reimbursement they require to be paid or made, the principles upon which this framework is based. Local authorities **must**:
- ensure that people **are not** charged more than it is reasonably practicable for them to pay and **must not** be charged more than the cost to the authority of providing or arranging the care and support they are receiving or which they are to obtain themselves through direct payments;
 - be consistent, to remove variation in the way people are financially assessed and charged;
 - be clear and transparent, so people know what they will be charged;
 - promote well-being outcomes, social inclusion and support the vision of independence, voice and control;
 - support carers to look after their own health and well-being, and to care effectively and safely;
 - be person-focused, reflecting the variety of care and caring situations and the variety of options available to help meet people’s needs and well-being outcomes;

- apply charging equally so those with similar needs for care and support are treated the same and minimise anomalies between charging for different types of care and support;
- encourage and enable those who wish to stay in or take up employment, education or training, or plan for the future costs of meeting their needs, to do so;
- be sustainable for local authorities in the long-term.

3.5 Alongside this local authorities **must** ensure there is information and advice about their charging and charging policies available in appropriate formats, which take account of people's communication needs (in particular for those with a sensory impairment, learning disability or for whom English is not their first language). This is to ensure that individuals are able to understand why they are being charged and how such charges have been calculated. Local authorities **should** also make the person aware of the availability of independent financial information and advice.

3.6 Where people obtain care and support in addition to that provided by or arranged by a local authority exercising its duties or powers under the Act, then the financial assessment and charging requirements of the Act, this code and the Regulations to which it refers do not apply. In such circumstances it is a matter for the person concerned as to what other care and support, if any, they wish to receive and what arrangements there are in place for paying for this. Nothing in the Act, this code or those Regulations precludes a person from entering into such private arrangements should they choose to do so.

4. Designing a charging policy

- 4.1 Save for the requirements of the Act, the Regulations and this code, where a local authority decides to use its discretion to charge for care and support it provides or arranges the design and content of its policy for that charging is a matter for that authority. In line with the requirements of the Act, the Regulations and this code, authorities need to decide which care and support, if any, they will make a charge for, the nature and level of any charges to be made and how these charges will be applied to particular care and support recipients. Within this framework authorities will also need to determine how their processes for undertaking the various stages of their charging procedure would operate and ensure that these are compliant with the requirements of the Act, the regulations and this code. In particular, authorities will need to decide what allowances, disregards or other aspects they wish to incorporate within the financial assessments they undertake beyond those required by legislation. It should be stressed that the Act, Regulations and this code do not make any presumption that local authorities will charge for care and support but enables them to exercise their discretion to impose a charge, and imposes requirements which local authorities **must** follow, should they wish to exercise this discretion.
- 4.2 The care and support policies of the Welsh Government aim to promote the independence and social inclusion of individuals. Authorities may wish to take a similar approach in designing any charging policy, taking into account the principles of the Social Model of Disability and the UN Convention on the Rights of Persons with Disabilities. Where authorities decide to charge, charging policies **should** be seen within this context and **should** equally seek to promote the independence and social inclusion of care and support recipients. Charging policies therefore **must** be fair and reasonable, taking due account of the costs to authorities of providing or arranging care and support, the impact of this on the provision of care and support overall, the financial means of recipients and the financial and other impacts on those having to pay charges. Policies therefore **must** strike an appropriate balance between ensuring that any contributions sought from individuals who are to receive care and support towards the cost of its provision are reasonable, while securing sufficient funds to help assist in the provision of such care and support. Where authorities design new policies, or significantly amend existing policies, they **must** consult those affected locally and take their views into account before deciding upon what policy, or what amendments to their policy, they should operate.
- 4.3 Where local authorities are designing policies for charging, they should consider whether to do this in conjunction with other local authorities. This would be particularly relevant for authorities within the same Local Health Board area, so as to create a consistency of practice across that region.

5. Common issues for charging

- 5.1 Local authorities have a duty to arrange care and support for those with eligible needs, and a power to meet non-eligible needs should it wish to do so. In all cases a local authority has the discretion under the Act to choose whether or not to charge for this under sections 50-53 (direct payments) in relation to direct payments, under section 59 (Power to impose charges) in relation to care and support it provides or arranges, or under section 69 (Charging for preventative services and assistance) in relation to preventative services or assistance. Where a local authority decides to charge it **must** follow the requirements set out in the Care and Support (Charging) (Wales) Regulations 2015 (the “Charging Regulations”) and the Care and Support (Financial Assessment) (Wales) Regulations 2015 (the “Financial Assessment Regulations”) and this code. These Regulations set out the details of a local authority’s obligations when undertaking financial assessments and the requirements local authorities must follow in determining charges based upon such assessments.
- 5.2 The detail of how the charging regime operates depends on whether someone is receiving care in a care home, or in their own home or in the community. However, they share common elements, which are set out in the following sections.
- Needs assessments / individual financial assessments
- 5.3 This code and its supporting annexes assume that the appropriate assessment of needs has been carried out and the local authority has chosen to charge in a particular case. It therefore provides detail on how to conduct the financial assessment of that person, where this is required, and what to take account of in setting that charge. In undertaking charging only the financial means of the person being assessed can be taken into account in the financial assessment of what they can afford to pay. Where this person holds income or capital as one of a couple, the starting presumption is that each person has an equal share of each. However, a local authority can assess the income or capital of a couple but only where this is financially more advantageous to the person being assessed. A local authority **must** only assess the financial means of couples in these circumstances.
- 5.4 For further advice on assessment of needs see the code on parts 3 and 4 of the Act on assessment and meeting needs.
- People who lack capacity
- 5.5 Where a person lacks capacity they may still be assessed as being able to contribute towards the cost of their care and support. However, a local authority **must** put in place policies regarding how they communicate, how they carry out financial assessments and how they collect any charges from that person that take into consideration the capacity of the person as well as any medical condition or impairment they might have. Local authorities **must** use their social work skills both to communicate with people and also to design a system that works with, and for, very vulnerable people. In such circumstances local authorities **must** consult with and engage with family members where this is required. Where possible, local authorities should work with someone who has the legal authority to make financial decisions on behalf of a person who lacks capacity. If there is no such person, then an approach to the Court of Protection may be required.

- Children

5.6 The Act prevents local authorities from charging a child for the care and support they receive, or for support provided to a child who is a carer. While the Act allows authorities to charge a parent or guardian for this, the Regulations and code preclude this. This is on the grounds that this provision was included in the Act to “future proof” it and not by a desire to introduce such charging at this time. Local authorities **must not** therefore charge for care and support to a child, or for support to a child who is a carer, provided under Part 4 of the Act (Meeting needs), nor must authorities seek payment of a contribution or a reimbursement towards such costs when direct payments are being made to secure such care and support.

- Prisoners

5.7 The charging framework also applies to people who are detained in the secure estate. Whilst detainees have restricted access to paid employment and welfare benefits (and earnings are disregarded for the purposes of financial assessments), any capital assets, savings, income and pensions will need to be considered when undertaking a financial assessment as with any other person in receipt of care and support.

- Welfare Benefits Advice

5.8 Authorities **should** provide appropriate welfare benefits advice to those to receive care and support to aid them in their understanding as to the benefits to which they may be entitled. This **should** normally be provided by means of a personal discussion with the person in their own home by appropriately skilled staff with, if the person requests one, their representative. This assistance **should** include advice about entitlement to benefits, help with completion of benefit claims and follow-up action, if the person wishes. In many cases it may be both convenient for individuals and cost-effective to provide combined financial assessments and benefits advice discussions. However, people may prefer to obtain assistance from an independent source and should be offered this choice, where possible.

- Capital limit

5.9 The financial limit, known as the “capital limit”, exists for the purposes of the financial assessment and sets out at what point a person is entitled to access local authority financial support to meet their eligible needs. Full details of it are set out in Annex A on the treatment of capital, and a local authority **must** follow that Annex in undertaking a financial assessment and applying the capital limit.

5.10 The level of the capital limit is set in the Charging Regulations and this level may change from time to time. Those with capital assets at or below this limit can seek means-tested financial support from their local authority. This means that the local authority will undertake a financial assessment of the person’s means and may make a charge for the care and support they are or will be receiving based on what the person can afford to pay towards the cost of providing or arranging this. When undertaking the financial assessment capital at or below the capital limit **must** be disregarded in the assessment of what a person can afford to pay. Where a person’s capital is at or below the capital limit they **must not** be required to contribute to the cost of their care and support from their capital.

5.11 A person with more in capital than the capital limit can ask their local authority to arrange their care and support for them if they choose under section 35(4)(b)(ii) (Duty to meet care and support needs of an adult) of the Act. However, people in this position will be required to pay the full cost of their care and support in residential care, or the full cost up to the weekly maximum charge in relation to non-residential care and support, until such time as the value of their capital is at or below the level of the capital limit.

- Care and support for which a charge cannot be made

5.12 A local authority **must not** charge for certain types of care and support which must be arranged free of charge. These are:

- care and support provided as reablement arranged under Part 2 (General functions) or Part 4 (Meeting needs) of the Act, or reablement arranged as direct payments under sections 50 or 52 (Direct payments) of the Act, to a person for up to 6 weeks to enable them to maintain or regain their ability to live independently at home. (In providing reablement or direct payments to secure such provision local authorities **should** have regard as to whether to extend this period in individual cases where a person's needs are such that their outcomes would benefit from a longer period of free reablement support, such as those who may require rehabilitation for a longer period for a visual impairment);
- care and support provided to those with Creutzfeldt-Jacob Disease;
- after-care services/support provided under section 117 of the Mental Health Act 1983;
- assessment of needs, care planning, care plans, provision of statements of a charge and undertaking a review of a determination of a charge or a charge itself, **must not** be charged for since these processes do not constitute the provision of care and support. This includes the provision of information and advice;
- transport to a day service where the transport is provided as part of meeting a person's needs.
- independent professional advocacy where a local authority has arranged for the provision of this in accordance with the code of practice on advocacy under Part 10 (Complaints, Representatives and Advocacy Services) of the Act where a person can only overcome the barrier(s) to participate fully in the assessment, care and support planning, review and safeguarding processes with assistance from an appropriate individual and no such individual was available. Such processes, as set out in the code relating to Part 10, encompass the full range of relevant functions under the Act.
- Carrying out a financial assessment

5.13. Where a local authority has decided to charge for the provision or arrangement of care and support under Part 5 (Charging and Financial Assessment) of the Act, or requires payment of a contribution or reimbursement for care and support which a person is to obtain through direct payments under Part 4 (Meeting needs) of the Act, except where a flat rate charge is to be applied (see later in this chapter) it **must** carry out a financial assessment and determine what the person can afford to reasonably pay. Once complete, it **must** provide a written statement of the charge, contribution or reimbursement it is to set to the person. This could be provided alongside a person's care and support plan or separately.

5.14 The Financial Assessment Regulations set out the requirements of a financial assessment, determining a charge and providing a statement of this charge. Regulation 3 (Information to be provided by a local authority) set outs the information that **must** be provided to the person to be assessed and includes:

- information upon the care and support which is the subject of the assessment;
- details of its charging policy for care and support or for the provision of direct payments, as appropriate;
- details of its financial assessment process;
- details of any information or documentation it requires in order to complete the assessment and the time scale to provide this with details of any home visiting facility the authority provides in order to provide this;
- information about the right of the person to appoint a third party to act on their behalf for all or part of the assessment with details of organisations within its area that provide this type of support;
- the fact that it will provide the person with a statement of any charge, contribution or reimbursement on completion of the assessment; and
- the contact details of those in an authority who can be contacted if the person requires more information.

5.15 In carrying out the financial assessment the local authority **must** follow the requirements within the Financial Assessment Regulations and this code. A local authority **must** reassess a person's ability to meet the cost of any charges, contribution or reimbursement should their financial circumstances change. This is likely to occur at least on an annual basis as a result of revisions to levels of welfare benefits and state pensions, but may occur more frequently according to individual circumstances. However, this **must** take place if there is a change in circumstance or at the request of the person.

5.16. Requirements about the treatment of capital in a financial assessment are set out in detail in Part 4 (Treatment and calculation of capital) of the Financial Assessment Regulations and Annex A of this code (Treatment of Capital). The person's capital is taken into account in the assessment unless it is subject to one of the disregards set out in the Regulations and described in Annex A. The main examples of capital considered are the value of property and savings a person holds.

5.17 Requirements about the treatment of income in a financial assessment are set out in detail in Part 3 (Treatment and calculation of income) of the Financial Assessment Regulations and Annex B of this code (Treatment of Income). In assessing what a person can afford to pay, a local authority **must** take into account their income. However, to help encourage people to remain in or take up employment, with the benefits this has for a person's well-being, earnings from employment **must** be disregarded when working out how much the person can pay. While in the main income is treated the same whether a person is in a care home or in receipt of care and support in the community (whether receiving this arranged or provided by a local authority or via direct payments), there are some differences between the two as to how income is treated. Full details of this are set out in Part 3 of the Regulations and Annex B of this code.

- No requirement for a financial assessment

5.18. In some circumstances a local authority is **not** required to undertake a financial assessment. The circumstances where this applies are included in regulation 7 (Circumstances in which there is no duty to carry out a financial assessment) of the Financial Assessment Regulations. They include situations where:

- (a) the local authority charges a flat rate charge for particular care and support (including for preventative services and assistance) and as such, carrying out a financial assessment would be disproportionate to the charge levied;
- (b) the person declines to provide information and/or documentation reasonably required to undertake the assessment, or only provides partial information. In that case the authority can determine whether to charge, and the level of that charge, on the basis of available information / documentation if it considers that it has sufficient information to do so;
- (c) the person is receiving care and support for which no charge can be made.

5.19 Ways a local authority may be satisfied that a person is able to afford any charges due where no or partial information is provided include:

- (a) property clearly worth more than the capital limit, where it can be established they are the sole owner or it is clear what their share of the property is; or
- (b) savings, where they can be established, are clearly worth more than the capital limit.

- Determination of a charge

5.20 In determining the amount of a charge, contribution or reimbursement, a local authority **must** following the requirements of the Charging Regulations. These set out:

- the persons who may not be charged;
- services for which a charge may not be made;
- the maximum weekly charge for non-residential care and support (see later in this chapter);
- the capital limit (referred to at paragraph 5.9 to 5.11); and
- the minimum income amount for a person provided with non-residential care and support and for a person in receipt of care and support in a care home.

5.21 A local authority **must** make a determination as soon as it has sufficient information and documentation to do so. Once a determination has been made under regulation 14 (Statement of determination) of the Charging Regulations a local authority **must** provide a statement to the person who has been financially assessed setting out the charge, contribution or reimbursement to be made. This statement **must** explain how the assessment has been carried out, what the charge, contribution or reimbursement will be and how often it will be made, and if there is any fluctuation in these amounts, the reason for this. The local authority **must** ensure that this is provided in a format to meet the communication needs of the person.

5.22 Once a statement has been issued a local authority may then require the person to pay a charge, contribution or reimbursement for the care and support which is the subject of this from the date that care and support was first provided. A local authority **must** provide a statement as soon as a determination is made. Authorities **must not** delay either undertaking a determination, or issuing a statement, where they are in a position to do so.

6. Flat rate charges

- 6.1 Local authorities can make a flat rate charge for low level, low cost care and support, or set a flat rate contribution or reimbursement for direct payments for such care and support. Flat rate charges would typically be for that care and support that substitutes for ordinary living, such as meals or laundry. While potentially being care and support provided regularly, in some cases it might be the only care and support a person receives. Local authorities can also charge flat rate charges under section 69 (Charging for preventative services and assistance) of the Act for preventative services or assistance it provides or arranges. Flat rate charges made **must not** exceed the cost incurred in arranging or providing for the care and support, preventative service or assistance to which they relate.
- 6.2 Where it does make a flat rate charge in these circumstances, or sets a flat rate contribution or reimbursement, a local authority is **not** under a duty to undertake a financial assessment in relation to the care and support, or the preventative services or assistance, to which this relates. This is to prevent a disproportionate situation where a person is required to provide financial information on their means, or an authority is required to undertake a financial assessment, for what would be a relatively low level charge. As a result, a local authority **must** consider both the level of the flat rate amount it proposes to charge, and its potential financial effect on the person required to pay this.
- 6.3 However, it is **not** acceptable for local authorities to set flat rate charges for all care and support as a way of potentially avoiding the duties placed upon them by the Act and the Regulations. This is on the basis that a flat rate charge for such other forms of care and support would not adequately take account of the cost of this being provided, the financial means of a care and support recipient to meet such a charge and the principle that a person should not ordinarily pay more than the maximum weekly charge prescribed by the Charging Regulations for all of the care and support they receive (see later in this chapter).
- 6.4 Particular care needs to be taken to avoid an adverse impact on a person's income where they are receiving a number of flat rate charges. In such circumstances local authorities **must** take account of these flat rate charges to avoid a situation where the accumulative effect of these, and charges or payments made under Parts 4 or 5 of the Act for care and support, makes these unaffordable for the individual. While the Regulations remove the obligation to carry out a financial assessment, where concerns arise authorities **must** offer the person the opportunity to have a financial assessment undertaken should they have any reason to believe that the accumulative effect of flat rate charges is or may be unaffordable.
- 6.5 In deciding whether to levy flat rate charges in accordance with section 69 of the Act for preventative services or assistance, local authorities **must** consider the balance between collecting income to help provide such care and support on a sustainable basis, and the effect making such charges may have on the take up of them. Local authorities should avoid a situation where the flat rate charges they set, and the level of these, result in a low take up of preventative services and assistance which results in more people than might otherwise be the case developing care and support needs, either at an earlier point or at a higher level of need, so as to prevent local authorities from adequately discharging their well-being duties under Part 2 (General Functions) of the Act.

- 6.6 Where local authorities choose to use their discretion to levy a flat rate charge for preventative services or assistance which are provided by the third sector on their behalf, they will need to agree with those providers how such charges are to be collected.

7. Maximum weekly charge

- 7.1 In determining the amount of a charge under section 59 of the Act, or of a contribution or reimbursement under sections 50-53 of the Act in connection with direct payments, local authorities **must not** charge a person in receipt of non-residential care and support more than a weekly maximum charge for all of the non-residential care and support they receive.
- 7.2 This requirement was introduced in 2011 by Ministers to bring about more consistency across Wales in respect of such charges. Hence the Charging Regulations maintain this requirement and set the level of the maximum charge to which authorities **must** adhere. Local authorities **are not** at liberty to charge a non-residential care and support recipient more than this maximum charge in a week irrespective of the size and cost of the non-residential care package they have. This applies equally where a person receives dual services; ie care and support provided or arranged by their local authority and care and support provided through direct payments. The total of any charge made, or amount required, for the both of these must not exceed the weekly maximum charge or weekly maximum amount in connection with direct payments. However, the maximum weekly charge and maximum weekly amount do not include the level of any flat rate charges which a person is liable to as outlined at paragraphs 6.1 to 6.6 above.
- 7.3 It is open to authorities to operate a lower maximum weekly charge than set in the Charging Regulations if they wish. The maximum weekly charge set in the Regulations will be kept under review and may, from time to time, be revised.

8. Deprivation of assets and debts

- 8.1 People with care and support needs are generally free to spend their income and use their capital assets as they see fit, including making gifts to friends and family. This is important for promoting their well-being and enabling them to live independent lives. However, while this is the case it should not be done deliberately to avoid charges all together or to reduce their liability for charges due to reduced financial means.
- 8.2 There are cases where a person may have tried to deliberately avoid paying for care and support through depriving themselves of assets – either capital or income. Where a local authority believes it has evidence to support this it can, if it deems appropriate, seek to recover costs under section 72 (Transfer of assets to avoid charges) of the Act. In such cases the local authority may either charge the person as if they were still in possession of the asset, or if the asset has been transferred to someone else, seek to recover the lost income from charges or from lost contributions or reimbursements where direct payments have been made from that person.
- 8.3 However, the local authority **cannot** recover more than the person gained from the transfer and **must** apply the Financial Assessment and Charging Regulations in calculating the charge which would have been levied. In addition, local authorities **must not** automatically assume that deprivation of an asset has occurred in a particular case and **must** treat each case where they have concerns on its merits.
- 8.4 Where a person has accrued a debt, the local authority may use its powers under section 70 (Recovery of charges, interest, etc) of the Act to recover that debt. In deciding how to proceed the local authority **must** consider the circumstances of the case before deciding a course of action. For example, a local authority should consider whether this was a deliberate avoidance of payment or due to circumstances beyond the person's control.
- 8.5 Ultimately, the local authority may institute court proceedings to recover the debt. However, they **must** only use this power after other reasonable alternatives for recovering the debt have been exhausted with the person owing the debt.
- 8.6 More information on deprivation of assets and upon debts is in Annex F of this code.

9. Charging for care and support in a care home

- 9.1 This part of the code must be read in conjunction with the Financial Assessment and Charging Regulations and Annexes A and B on the treatment of capital and income respectively in relation to care homes.
- 9.2 Where a local authority has decided to charge for the provision or arrangement of accommodation in a care home and is undertaking a financial assessment, it **must** support the person to identify options of how best to pay any charge. This may include offering the person a deferred payment agreement against the value of a property taken into account in the financial assessment. Such cases are described in more detail in Annex D on deferred payments agreements.
- 9.3 Where a person is a short-term resident (ie a stay not exceeding eight weeks) in a care home and a local authority uses its discretion to charge for this, it **must** undertake any financial assessment of a person's means to do this as if the person were receiving non-residential care and support, or receiving direct payments for non-residential care and support. For example, such a person could be receiving respite care on a short term basis. Should a stay be longer than eight weeks but not a permanent stay (such as where a person is awaiting a permanent stay in another care home), a local authority will need to consider whether to continue to charge on this basis or whether to commence charging as if the person were receiving residential care.
- 9.4 People in a care home with capital at or below the capital limit will contribute most of their income, excluding their earnings, towards the cost of their care and support. However, a local authority **must** leave the person with a specified amount of their own income so that the person has money to spend on personal items such as clothes and other items that are not part of their care and support. This is known as the minimum income amount (MIA). This is in addition to any income the person receives from earnings. Local authorities have discretion to apply a higher MIA in individual cases, for example where the person needs to contribute towards the cost of maintaining their former home. The Charging Regulations set the level of the MIA which authorities **must** allow residents to retain. This level may change from time to time.

10. Choice of accommodation

- 10.1 Where a person's needs are to be met by provision of accommodation in a care home, the local authority **must** provide for the person's preferred choice of accommodation, subject to certain conditions. Determining the appropriate type of accommodation should be made with the person as part of the care and support planning process, therefore this choice only applies between providers of the same type.
- 10.2 The local authority **must** ensure that the person has a genuine choice and **must** ensure that more than one option is available within its usual commissioning rate for a care home of the type a person has been assessed as requiring. However, a person must also be able to choose alternative options, including a more expensive home. Where a home costs a local authority more than it would usually pay, a person **must** be able to be placed there if certain conditions are met and where a third party (or in certain circumstances the resident) is willing and able to pay the additional cost. However, an additional cost payment **must** always be optional and never as a result of a shortfall in the funding a local authority is providing to a care home to meet a person's assessed care needs. Local authorities **must** follow the Care and Support (Choice of Accommodation) (Wales) Regulations 2015 in connection with this type of arrangement and Annex C on choice of accommodation and additional cost payments.

11. Charging for care and support in the community including a person's own home

- 11.1 This part of the code must be read in conjunction with the Financial Assessment and Charging Regulations and Annexes A and B on the treatment of capital and income respectively in relation to non-residential care and support.
- 11.2 These charging arrangements cover meeting care and support needs outside of a care home, either in a person's own home or in the community. The intention of the Regulations and this code is to support local authorities, where they have decided to charge for the care and support a person is to receive, to assess what that person can afford to contribute towards the cost of this provision.
- 11.3 Because a person who receives care and support outside a care home will need to pay their daily living costs such as rent, food and utilities, the charging framework seeks to ensure they have enough money to meet these costs. As a result after charging local authorities **must** leave a person who is being charged with a minimum income amount (MIA), equivalent to a "basic entitlement" plus a buffer of 35% of that amount. Regulation 12 and 27 (Minimum income amount for a person being provided with non-residential care and support) of the Charging Regulations define "basic entitlement", set out the application of this and what to take into account in each person's case. In addition, to assist with disability-related expenditure, those being charged **must** also be left with an additional 10% of their "basic entitlement" towards the cost of this. The level of these allowances may change from time to time.
- 11.4 Additionally, the financial assessment of their capital **must** exclude the value of the property which they occupy as their main or only home. Beyond this, how capital is treated in a financial assessment is the same as for residential care. However, local authorities have flexibility within this framework to take account of local circumstances and promote independence and integration. For example, they may choose to disregard additional sources of income, set a lower weekly maximum charge than that required, or charge a person a percentage of their disposable income. That said, this **should not** lead to two people with similar needs, and receiving similar types of non-residential care and support, being charged differently.

12. Charging for support to adult carers

- 12.1 Where an adult carer has eligible support needs of their own, the local authority has a duty, or in some cases a power, to arrange support to meet their needs. Where a local authority is meeting the needs of an adult carer by arranging or providing support directly to them, or providing direct payments to enable them to obtain this support, it has the discretion to charge the adult carer for these.
- 12.2 However, a local authority **must not** charge an adult carer for care and support provided directly to the person for whom they care. In addition, local authorities **are not** required to charge an adult carer for support and indeed in many cases it would be a false economy to do so. When deciding whether to charge, and in determining what an appropriate charge is, a local authority **must** consider how it wishes to express the way it values carers within its local community as partners in care, and recognise the significant contribution carers make. Carers help to maintain the health and well-being of the person for whom they care, support this person's independence and enable them to stay in their own homes for longer. In many cases, carers voluntarily meet eligible needs that the local authority would otherwise be required to meet.
- 12.3 Local authorities **must** consider carefully the likely impact of any charges on adult carers, particularly in terms of their willingness and ability to continue their caring responsibilities. It may be that there are circumstances where a nominal charge may be appropriate, for example to provide support which is subsidised but for which the carer may still pay a small charge. Ultimately, a local authority **must** ensure that any charges do not negatively impact on a carer's ability to look after their own health and well-being and to care effectively and safely for the cared for person.
- 12.4 Where a local authority takes the decision to charge an adult carer it **must** assess such charges in accordance with the requirements for charging for care and support, or where an adult carer receives direct payments, in accordance with the requirements for considering a contribution or reimbursement for such payments. In doing so, it is required to carry out a financial assessment to ensure that any charges, contributions or reimbursements are affordable. However, it may be more likely in the case of an adult carer where low level support tends to be required, that the local authority will agree to charge a flat rate charge where a financial assessment would not be required and would in any event, be disproportionate as against the level of the charge made.
- 12.5 In considering whether to charge or to seek a contribution or reimbursement from adult carers, local authorities **must** consider both the level of the charge, contribution or reimbursement it proposes to require and the impact this will have on the carer's ability to undertake their caring role.

Annex A – Treatment of Capital

This annex covers:

- The treatment of capital when conducting a financial assessment

General

- 1.1 This annex of the code applies where a local authority has decided to use its discretion under section 59 (Power to impose a charge) of the Social Services and Well-being (Wales) Act 2014 (“the Act”) to charge a person for the care and support it is providing or arranging, or under section 50 (Direct payments to meet an adult’s needs) or section 52 (Direct payments to meet a carer’s needs) of the Act when setting a contribution or reimbursement in connection with direct payments. As a result it has a duty under sections 50, 52 and 63 (Duty to carry out a financial assessment) of the Act to undertake a financial assessment of the person’s means. It **must** therefore undertake such an assessment and in doing so, it **must** assess the income and capital of the person.
- 1.2 This annex covers the treatment of capital and should be read in conjunction with Annex B on the treatment of income. The detail of the forms of capital which local authorities **must** take account of in the financial assessment, and how these should be treated in the assessment, are set out in the Care and Support (Financial Assessment) (Wales) Regulations 2015 (the “Regulations”). Local authorities must follow the requirements of the Regulations and this annex with regard to capital when undertaking a financial assessment. They apply equally to where an assessment is being made to consider a charge for care and support provided by, or arranged by, a local authority and where a contribution or reimbursement is being considered in relation to the making of direct payments to enable a person to secure the provision of such care and support.
- 1.3 The treatment of capital is broadly the same when undertaking a financial assessment involving all types of care and support. However, there are some differences in how capital is treated when undertaking a financial assessment for those in a care home and those in receipt of other forms of care and support. The following sections set out the common issues applicable to both and then any particular issues unique to each.

Common issues

- 2.1. The following section sets out the issues common in the treatment of capital in a financial assessment.
- 2.2. Only the capital of the person being assessed can be taken into account in the financial assessment of what they can afford to pay. Where this person holds capital as one of a couple, the starting presumption is that each person has an equal share of that capital. However, a local authority can assess the capital of a couple but only where this is financially more advantageous to the person being assessed. A local authority **must** only assess the capital of couples in these circumstances.
 - Defining capital

- 2.3. Capital in general refers to financial resources held by a person which are available for use and tend to be from sources that are considered more durable than income in the sense that they can generate a return. In most cases capital will involve financial resources held by a person in the form of savings, investments and property.
- 2.4 It is not possible to provide a definitive list of all forms of capital but the following list gives examples of capital. This list is intended as a guide and is not exhaustive:
- (a) Buildings;
 - (b) Land;
 - (c) National Savings Certificates and Ulster Savings Certificates;
 - (d) Premium Bonds;
 - (e) Stocks and shares;
 - (f) Capital held by the Court of Protection or a Deputy appointed by that Court;
 - (g) Any savings held in:
 - (i) Building society accounts;
 - (ii) Bank current accounts, deposit accounts or special investment accounts. This includes savings held in the National Savings Bank and Trustee Savings Bank;
 - (iii) SAYE schemes;
 - (iv) Unit Trusts;
 - (v) Co-operatives share accounts;
 - (vi) Cash;
 - (h) Trust funds.
- 2.5 A person **must not** be charged twice on the same resources. Resources should only be treated as income or capital but not both. If a person has saved money from their income, such savings should normally be treated as capital and not assessed as both income and capital in the same period. Therefore in the period when such resources are received as income, they should be disregarded as capital.
- Cases where it is not clear whether a payment is capital or income
- 2.6 In assessing a person's financial means it may not be immediately clear whether a resource is capital or income, particularly where a person is due to receive planned payments. In order to guide a local authority's decision, in general a planned payment of capital is one which is:
- (a) not in respect of a specified period; and
 - (b) not intended to form part of a series of payments.
- Who owns the capital
- 2.7 A capital asset is normally defined as belonging to the person in whose name it is held, the legal owner. However in some cases this may be disputed and/or beneficial ownership argued. Beneficial ownership is where a person enjoys the benefits of ownership, even though the title of the asset is held by someone else, or where they directly or indirectly have the power to vote or influence a transaction regarding a particular asset. In most cases the person will be both the legal and beneficial owner.

- 2.8 Where ownership is disputed, a local authority **must** seek written evidence to prove where the ownership lies where it is being taken into account in a financial assessment. If a person states they are holding capital for someone else, the local authority **must** obtain evidence of the arrangement, the origin of the capital and intentions for its future use.
- 2.9 Where a person has joint beneficial ownership of capital, except where there is evidence that the person owns an unequal share, the total value should be divided equally between the joint owners and the person should be treated as owning an equal share. Once the person is in sole possession of their actual share, they can be treated as owning that actual amount.
- 2.10 In some cases a person may be the legal owner of a property but not the beneficial owner of a property. In other words, they have no rights to the proceeds of any sale. In such circumstances the property **should** not be taken into account.
- Calculating the value of capital
- 2.11 A local authority **must** work out what value a capital asset has in order to take account of it in the financial assessment. Other than National Savings Certificates, valuation **must** be the current market or surrender value of the capital asset, e.g. with property whichever is higher of market or surrender value minus:
- (a) 10% of the value if there will be any actual expenses involved in selling the asset. This must be expenses connected with the actual sale and not simply the realisation of the asset. For example the costs to withdraw funds from a bank account are not expenses of sale, but legal fees to sell a property would be; and
 - (b) any outstanding debts secured on the asset, for example a mortgage.
- 2.12. A capital asset may have a current market value, for example stocks or shares, or a surrender value, for example premium bonds. The current market value will be the price a willing buyer would pay to a willing seller. The way the market value is obtained will depend on the type of asset held.
- 2.13 If the person and the officer undertaking the financial assessment both agree that, after deducting any debts or expenses connected to a person's capital that the total estimated value of this is more than the capital limit (see paragraph 2.21) so that they are liable for the full cost of their care and support, then it is not necessary to obtain a precise valuation of this. If there are any disputes, however, as to whether this occurs a precise valuation should be obtained. In following this a local authority should bear in mind how close the total value of a person's capital is to the capital limit when deciding whether or not to obtain a precise valuation.
- 2.14 Where a precise valuation is required, a professional valuer **must** be asked to provide a current market valuation. If an asset is subsequently sold, the capital value to be taken into account in a financial assessment is the actual amount realised from the sale, minus any actual expenses of the sale, not any previous valuation.

- 2.15 Where a property is being taken into account in a financial assessment and the value of this is disputed, the aim should be to resolve this as quickly as possible. Local authorities should try to obtain an independent valuation of the person's beneficial share of the property within the 12-week disregard period (see paragraphs 3.10 to 3.11) where a person has entered a care home on a permanent basis. This will enable local authorities to work out what charges a person should pay, or determine whether they are liable to meet the full costs of their care, before this disregard ends.
- 2.16 The value of National Savings Certificates, Ulster Savings Certificates and Premium Bonds are assessed in the same way as other capital assets. A valuation for savings certificates can be obtained by contacting the NS&I helpline. An alternative method of obtaining the value of National Savings Certificates is to use the NS&I online calculator. To enable an accurate value for the savings certificates the person must provide details of the:
- certificate issue number(s);
 - purchase price; and
 - date of purchase.
- Assets held abroad
- 2.17 Where capital is held abroad, and all of it can be transferred to the UK, its value in the other country **must** be obtained and taken into account less any appropriate deductions for debts or expenses connected to it. Where capital is held jointly, it should be treated the same as if it were held jointly within the UK.
- 2.18 Where the capital cannot be wholly transferred to the UK due to the rules of that country, for example currency restrictions, the local authority **must** require evidence confirming this fact. Examples of acceptable evidence could include documentation from a bank, government official or solicitor in either this country or the country where the capital is held.
- 2.19 Where some restriction is in place, a local authority **must** seek evidence showing what the asset is, what its value is and to understand the nature and terms of the restriction so that should this change, the amount can be taken into account. It should also take into account the value that a willing buyer would pay in the UK for those assets, but be aware that it may be less than the market or surrender value in the foreign country.
- Capital which cannot be immediately realised
- 2.20 Capital which cannot be immediately realised due to notice periods, for example National Savings Bank investment accounts or Premium Bonds, **must** be taken into account in the normal way at its face value. This will be the value at the time of the financial assessment. It may need to be confirmed and adjusted when the capital is realised. If the person chooses not to release the capital, the value at the time of assessment should be used and it should be reassessed at intervals in the normal way.
- Capital limit

2.21 The capital limit sets the total value of a person's capital which determines whether they are:

- liable to meet the full cost of their care and support in a care home;
- required to pay the weekly maximum charge, contribution or reimbursement (see the main body of the code for a definition of this) applicable if they receive care and support in their own home or in the community, subject to the weekly cost of their care and support being at or above the level of the weekly maximum charge.

2.22 Where capital is taken into account in a financial assessment, a local authority **must** apply the capital limit. The capital limit is set in regulations 11 and 26 (Capital limit and Capital Limit – direct payments) of the Care and Support (Charging) (Wales) Regulations 2015.

2.23 Where capital is taken into account in a financial assessment, any capital which a person holds at or below the capital limit **must** be disregarded in the assessment. Any capital a person holds at or below the capital limit cannot be used to pay for their assessed care and support, and should be retained by the person to use as they wish.

- Notional capital

2.24 In some circumstances a person may be treated as possessing capital even where they do not actually possess it. This is called notional capital.

2.25 Notional capital may be capital which:

- (a) would be available to the person if they applied for it;
- (b) is paid to a third party in respect of the person;
- (c) the person has deprived themselves of in order to reduce the amount of a charge, contribution or reimbursement, or remove the need for this, that they have to pay for their care and support.

2.26 A person's capital should therefore be the total of both actual and notional capital. However, if a person has actual capital above the capital limit, it may not be necessary to consider notional capital.

2.27 Where a person has been assessed as having notional capital, the value of this **must** be reduced over time. The rule is that the value of notional capital **should** be reduced weekly by the difference between the weekly rate the person is paying for their care and support and the weekly rate they would have paid if notional capital did not apply.

- Capital disregarded

2.28 The treatment of capital that **should** it be taken into account in a financial assessment is set out in Part 4 (Treatment and calculation of capital) and Schedule 2 (Capital to be disregarded) of the Regulations. The Regulations set out the following capital that **should** be disregarded where capital is taken into account:

- (a) Property in specified circumstances (see paragraph 3.1);
- (b) The surrender value of any:
 - (i) Life insurance policy;
 - (ii) Annuity.
- (c) Payments of training bonuses of up to £200;
- (d) Payments in kind from a charity;
- (e) Any personal possessions such as paintings or antiques, unless they were purchased with the intention of reducing capital in order to avoid charges for care and support;
- (f) Any capital which is to be treated as income or student loans;
- (g) Any payment that may be derived from:
 - (i) The Macfarlane Trust;
 - (ii) The Macfarlane (Special Payments) Trust;
 - (iii) The Macfarlane (Special Payment) (No 2) Trust;
 - (iv) The Caxton Foundation;
 - (v) The Fund (payments to non-haemophiliacs infected with HIV);
 - (vi) The Eileen Trust;
 - (vii) The MFET Trust;
 - (viii) The Independent Living Fund (2006);
 - (ix) Any amount paid under of by the Welsh Independent Living Scheme;
 - (x) The Skipton Fund;
 - (xi) The London Bombings Relief Charitable Fund.
- (h) The value of funds held in trust or administered by a court which derive from a payment for personal injury to the person. For example, the vaccine damage and criminal injuries compensation funds;
- (i) The value of a right to receive:
 - (i) Income under an annuity;
 - (ii) Outstanding instalments under an agreement to repay a capital sum;
 - (iii) Payment under a trust where the funds derive from a personal injury;
 - (iv) Income under a life interest or a life-rent;
 - (v) Income (including earnings) payable in a country outside the UK which cannot be transferred to the UK;
 - (vi) An occupational pension;
 - (vii) Any rent (however that this does not necessarily mean the income is disregarded. See Annex B on the treatment of income).
- (j) Capital derived from an award of damages for personal injury which is administered by a court or which can only be disposed of by a court order or direction;
- (k) The value of the right to receive any income under an annuity purchased pursuant to any agreement or court order to make payments in consequence of personal injury or from funds derived from a payment in consequence of a personal injury and any surrender value of such an annuity;
- (l) Periodic payments in consequence of personal injury pursuant to a court order or agreement to the extent that they are not a payment of income and are treated as income (and disregarded in the calculation of income);
- (m) Any Social Fund payment;
- (n) Refund of tax on interest on a loan which was obtained to acquire an interest in a home or for repairs or improvements to the home;
- (o) Any capital resources which the person has no rights to as yet, but which will come into his possession at a later date, for example on reaching a certain age;
- (p) Payments from the Department for Work and Pensions to compensate for the loss of entitlement to Housing Benefit or Housing Benefit Supplement;
- (q) The amount of any bank charges or commission paid to convert capital from foreign currency to sterling;

- (r) Payments to jurors or witnesses for court attendance (but not compensation for loss of earnings or benefit);
 - (s) Community charge rebate/council tax reduction scheme payments;
 - (t) Money deposited with a Housing Association as a condition of occupying a dwelling;
 - (u) Any Child Support Maintenance Payment;
 - (v) The value of any ex-gratia payments made on or after 1st February 2001 by the Secretary of State in consequence of a person's, or person's spouse or civil partner's, imprisonment or internment by the Japanese during the Second World War;
 - (w) Any payment made by a local authority under the Adoption and Children Act 2002 (under section 2(b)(b) or 3 of this act);
 - (x) The value of any ex-gratia payments from the Skipton Fund made by the Secretary of State for Health to people infected with Hepatitis C as a result of NHS treatment with blood or blood products;
 - (y) Payments made under a trust established out of funds provided by the Secretary of State for Health in respect of persons suffering from variant Creutzfeldt-Jakob disease to the victim or their partner (at the time of death of the victim);
 - (z) Any payments under Section 2, 3 or 7 of the Age-Related Payments Act 2004 or Age Related Payments Regulations 2005 (SI No 1983);
 - (aa) Any payments made under section 63(6)(b) of the Health Services and Public Health Act 1968 to a person to meet childcare costs where he or she is undertaking instruction connected with the health service by virtue of arrangements made under that section;
 - (ab) Any payment made in accordance with regulations under Section 14F of the Children Act 1989 to a resident who is a prospective special guardian or special guardian, whether income or capital.
- Treatment of investment bonds

2.29 The treatment of investment bonds in a financial assessment is complex due to the differing products available and their differing arrangements and purposes. For this reason local authorities **should** seek their own advice on the appropriateness of taking the capital into account from a particular product in an assessment.

2.30 In general, capital involving investment bonds could be taken into account in a financial assessment. Actual payments of capital by periodic instalments, with or without insurance, should be treated as income (see Annex B on treatment of income). This is provided that any payments are outstanding on the first day a person becomes liable to pay for their care and support and the aggregate of the outstanding instalment, and any other capital sum not disregarded in the financial assessment, does not exceed the capital limit (see paragraphs 2.21 to 2.23).

2.31 Where an investment bond includes one or more elements of life insurance that contain cashing-in rights by way of options for total or partial surrender, then the value of those rights should be disregarded as a capital asset where investment bonds are taken into account in the financial assessment.

- Capital treated as income

2.32 If a person is entitled to capital which is payable by instalments the following capital payments should be treated as income in a financial assessment (see Annex B on treatment of income):

- (a) Any payment made under an annuity;
 - (b) Capital paid by instalment where the total of:
 - (i) the instalments outstanding at the time the person first becomes liable to pay for their care and support; and
 - (ii) the amount of other capital held by the person is over the capital limit (see paragraphs 2.21 to 2.23). If it is at or under the capital limit, each instalment should be treated as capital.
- Income treated as capital

2.33 The following types of income should be treated as capital when taken into account in a financial assessment:

- (a) Any refund of income tax charged on profits of a business or earnings of an employed earner;
 - (b) Any holiday pay payable by an employer more than 4 weeks after the termination or interruption of employment;
 - (c) Income derived from a capital asset. For example, building society interest or dividends from shares. This should be treated as capital from the date it is normally due to be paid to the person;
 - (d) Any advance of earnings or loan made to an employed earner by the employer if the person is still in work. This is as the payment does not form part of the employee's regular income and could have to be repaid;
 - (e) Any bounty payment paid at intervals of at least one year from employment as:
 - (i) A part time firefighter;
 - (ii) An auxiliary coastguard;
 - (iii) A part time lifeboat crew member;
 - (iv) A member of the territorial or reserve forces.
 - (f) Charitable and voluntary payments which are not made regularly, nor due to be made regularly, apart from payments from AIDS trusts. Payments will include those made by a third party to the person to help them meet arrears of charges for residential accommodation;
 - (g) Any payment of arrears of contributions by a local authority to a custodian towards the cost of accommodation and maintenance of a child.
- Capital available on application

2.34 In some instances a person may need to apply for access to capital assets but has not yet done so. In such circumstances this capital should be treated as already belonging to the person (see paragraph 2.24 to 2.27 on notional capital) except in the following instances:

- (a) Capital held in a discretionary trust;
- (b) Capital held in a trust derived from a payment in consequence of a personal injury;
- (c) Capital derived from an award of damages for personal injury which is administered by a court;
- (d) Any loan which could be raised against a capital asset which is disregarded; for example their home.

2.35 In terms of determining whether capital assets already belong to a person a local authority should distinguish between:

- (a) Capital already owned by the person but which in order to access they must make an application. For example:
 - (i) Money held by the person's solicitor;
 - (ii) Premium Bonds;
 - (iii) National Savings Certificates;
 - (iv) Money held by the Registrar of a County Court which will be released on application; and
- (b) Capital not owned by the person that will become theirs on application; for example an unclaimed Premium Bond win. This should be treated as notional capital.

2.36 Where a local authority treats capital available on application as notional capital they should do so only from the date at which it could be acquired by the person.

Property disregards

3.1 In the following circumstances the value of the person's main or only home **must** be disregarded where capital is taken account of in a financial assessment:

- (a) Where the person is receiving non-residential care and support at home or in the community;
- (b) Where the person is temporarily receiving care and support in a care home and they:
 - (i) intend to return to that property and that property is still available to them; or
 - (ii) are taking reasonable steps to dispose of the property in order to acquire another more suitable property to which to return.
- (c) Where the person is receiving care and support in a care home and no longer occupies their main and only home, but it is occupied in part or whole as their main or only home by any of the people listed below, its value **must** be disregarded in a financial assessment where capital is taken into account. This only applies where that property has been continuously occupied since before the person went into a care home:
 - (i) the person's partner, former partner or civil partner, except where they are estranged or divorced;
 - (ii) a lone parent with a dependent child who is the person's estranged or divorced partner;
 - (iii) a relative (as defined in paragraph 3.2 below) of the person or member of the person's family (as defined in paragraph 3.3) who is:
 - (1) Aged 60 or over, or
 - (2) Is a child of the resident aged under 18, or
 - (3) Is incapacitated.

3.2 For the purposes of this disregard a relative is defined as including any of the following:

- (a) Parent (including an adoptive parent);
- (b) Parent-in-law;
- (c) Son (including an adoptive son);
- (d) Son-in-law;
- (e) Daughter (including an adoptive daughter);
- (f) Daughter-in-law;
- (g) Step-parent;
- (h) Step-son;
- (i) Step-daughter;

- (j) Brother;
- (k) Sister;
- (l) Grandparent;
- (m) Grandchild;
- (n) Uncle;
- (o) Aunt;
- (p) Nephew;
- (q) Niece;
- (r) The spouse, civil partner or unmarried partner of (a) to (k) inclusive.

3.3 A member of the person's "family" is defined as someone who is living with the qualifying relative as part of an unmarried couple, married to or in a civil partnership.

3.4 For the purposes of this disregard the meaning of "incapacitated" is not closely defined. However, it will be reasonable to conclude that a relative is incapacitated if either of the following conditions apply:

- (a) the relative is receiving one (or more) of the following welfare benefits: incapacity benefit, severe disablement allowance, disability living allowance, personal independence payments, armed forces independence payments, attendance allowance, constant attendance allowance, or a similar benefit; or
- (b) the relative does not receive any disability related benefit but their degree of incapacity is equivalent to that required to qualify for such a benefit. Medical or other evidence may be needed on this before a decision is reached on whether to apply this.

3.5 For the purpose of this property disregard, the meaning of "occupy" is not closely defined. In most cases it will be obvious whether or not the property is occupied by a qualifying relative as their main or only home. However, there will be some cases where this may not be clear and the local authority should undertake a factual inquiry weighing up all relevant factors in order to reach a decision. An emotional attachment to the property alone is not sufficient for the disregard to apply.

3.6 Circumstances where it may be unclear might include where a qualifying relative has to live elsewhere for a particular reason; for example for the purposes of their employment or due to them serving a prison sentence. Whilst they live elsewhere in order to undertake their employment, or serve their sentence, the property remains their main or only home. It would not be reasonable to regard their temporary accommodation as the person's main or only home as they may well intend to return to the property in question in the future. Essentially in such circumstances the qualifying relative is occupying the property but is not physically present.

- Discretionary disregard

3.7 A local authority may also use its discretion to apply a property disregard in relation to those in residential care in other circumstances. However, the local authority will need to balance this discretion with ensuring a person's assets are not maintained at public expense. An example where it may be appropriate to apply a discretionary disregard is where it is the sole residence of someone who has given up their own home in order to become a carer for the person who is now in a care home, or who is perhaps a companion of the person.

- 3.8 A property may be disregarded when a qualifying relative moves into the property after the resident enters a care home. Where this happens the local authority will need to consider all the relevant factors in deciding whether the property should be disregarded. Factors such as the timing and purpose of the move may be relevant to establishing if the property is the relative's main or only home. The purpose of the disregard in these circumstances is to safeguard certain categories of people from the risk of homelessness.
- 3.9 The local authority should consider if the principle reason for the move is that it is necessary to ensure the relative has somewhere to live as their main or only home. A disregard would not be appropriate, for example, where a person moves into a property solely to protect the family inheritance. Local authorities need to ensure that people are not financially supported at public expense inappropriately.
- 12-week property disregard
- 3.10 A key principle of the charging framework is not to require people to have to sell their home immediately upon entering a care home where the vast majority of their capital assets are tied up in their property. This is in order to allow them time to make decisions as to how to meet their care home costs. The Regulations, therefore, require that if property is taken into account in a financial assessment, the value of a person's main or only home **must** be disregarded for the first 12 weeks where the value of any of their other capital is below the capital limit. This disregard **must** be applied:
- (a) when they first enter a care home as a permanent resident (or subsequently enter after a stay of less than 12 weeks so that they would receive the balance of the 12 weeks as a further disregard);
 - (b) when a property disregard based on a qualifying relative unexpectedly ends because the qualifying relative has died or moved into a care home.
- 3.11 In addition, a local authority has discretion to choose to apply the 12-week disregard when there is a sudden and unexpected change in the person's financial circumstances. In deciding whether to do so, the local authority will want to consider the individual circumstances of the case. Such circumstances might include a fall in share prices or an unanticipated debt.
- 26-week disregard
- 3.12 Where capital is taken into account in a financial assessment the following capital assets **must** be disregarded for at least 26 weeks. However, a local authority may choose to apply the disregard for longer where it considers this appropriate. For example, where a person is taking legal steps to occupy premises as their home, but the legal processes take more than 26 weeks to complete.
- (a) Assets of any business owned or part-owned by the person in which they were a self-employed worker and has stopped work due to some medical condition or impairment but intends to take up work again when they are fit to do so. Where the person is in a care home, this should apply from the date they first took up residence;
 - (b) Money acquired specifically for repairs to, or replacement of, the person's home or personal possessions provided it is used for that purpose. This should apply from the date the funds were received;

- (c) Premises which the person intends to occupy as their home where they have started legal proceedings to obtain possession. This should be from the date legal advice was first sought or proceedings first commenced;
 - (d) Premises which the person intends to occupy as their home where essential repairs or alterations are required. This should apply from the date the person takes action to effect the repairs;
 - (e) Capital received from the sale of a former home where the capital is to be used by the person to buy another home. This should apply from the date of completion of the sale;
 - (f) Money deposited with a Housing Association which is to be used by the person to purchase another home. This should apply from the date on which the money was deposited;
 - (g) Grant made under a Housing Act which is to be used by the person to purchase a home or pay for repairs to make the home habitable. This should apply from the date the grant is received.
- 52-week disregard

3.13 The following payments of capital **must** be disregarded for a maximum of 52 weeks from the date they are received where capital is taken into account in a financial assessment:

- (a) The balance of any arrears of, or any compensation due, to non-payment of:
 - (i) Mobility supplement;
 - (ii) Attendance Allowance;
 - (iii) Constant Attendance Allowance;
 - (iv) Disability Living Allowance / Personal Independence Payment;
 - (v) Exceptionally Severe Disablement Allowance;
 - (vi) Severe Disablement Occupational Allowance;
 - (vii) Armed forces service pension based on need for attendance;
 - (viii) Pension under the Personal Injuries (Civilians) Scheme 1983, based on the need for attendance;
 - (ix) Income Support/Pension Credit;
 - (x) Minimum Income Guarantee;
 - (xi) Working Tax Credit;
 - (xii) Child Tax Credit;
 - (xiii) Housing Benefit;
 - (xiv) Universal Credit;
 - (xv) Special payments to pre-1973 war widows.
- (b) Payments or refunds for:
 - (i) NHS glasses, dental treatment or patient's travelling expenses;
 - (ii) Cash equivalent of free milk and vitamins;
 - (iii) Expenses in connection with prison visits.
- (c) Personal Injury Payments.

3.14. Local authorities **must** also disregard payments made under a trust established out of funds by the Secretary of State for Health in respect of vCJD to:

- (a) A member of the victim's family for two years from the date of death of the victim (or from the date of payment from the trust if later); or
- (b) A dependent child or young person until they turn 18.

Annex B – Treatment of Income

This annex covers:

- The treatment of income when conducting a financial assessment. This is divided into:
- Care homes;
- All other care and support;

General

- 1.1. This annex of the code applies where a local authority has decided to use its discretion under section 59 (Power to impose a charge) of the Social Services and Well-being (Wales) Act 2014 (the “Act”) to charge a person for the care and support it is providing or arranging, or under section 50 (Direct payments to meet an adult’s needs) or section 52 (Direct payments to meet a carer’s needs) of the Act when setting a contribution or reimbursement in connection with direct payments. As a result it has a duty under sections 50, 52 and 63 (Duty to carry out a financial assessment) of the Act to undertake a financial assessment of the person’s means. It **must** therefore undertake such an assessment and in doing so, it **must** assess the income and capital of the person.
- 1.2 This annex covers the treatment of income and should be read in conjunction with the Annex A on the treatment of capital. The detail of the forms of income which local authorities **must** take account of in a financial assessment, and how these should be treated in the assessment, are set out in the Care and Support (Financial Assessment) (Wales) Regulations 2015 (the “Regulations”). Local authorities **must** follow the requirements of the Regulations and this annex in respect of a person’s income when undertaking a financial assessment. They apply equally to where an assessment is being undertaken to consider a charge for care and support provided by, or arranged by, a local authority and where a contribution or reimbursement is being considered for the provision of direct payments to enable the recipient to secure their own care and support.
- 1.2. There are differences in the way in which income is treated when undertaking a financial assessment for those in a care home and those in receipt of other forms of care and support. The following sections set out the common issues applicable to both and then any particular issues unique to each.

Common issues

- 2.1. The following section sets out the issues common in the treatment of income in a financial assessment.
- 2.2. Only the income of the person being assessed can be taken into account in the financial assessment of what they can afford to pay. Where this person receives income as one of a couple, the starting presumption is that each person has an equal share of that income. However, a local authority can assess the income of a couple but only where this is financially more advantageous to the person being assessed. A local authority **must** only assess the income of couples in these circumstances.

- 2.3. Income taken account of **must** be net of any tax or National Insurance contributions.
- 2.4. Where local authorities decide to exercise their discretion to charge, income **should** always be taken into account unless it is disregarded under the Regulations. Income that is disregarded will either be:
- (a) Partially disregarded; or
 - (b) Fully disregarded.
- Earnings
- 2.5 In all cases earnings as an employed earner or self-employed earner, as defined in regulation 14 (Earnings to be disregarded) of the Regulations, **must** be fully disregarded where income is taken into account.
- 2.6 Earnings in relation to an employed earner consist of any remuneration or profit from employment. This will include:
- (a) any bonus or commission;
 - (b) any payment in lieu of remuneration except any periodic sum paid to the person on account of the termination of their employment by reason of redundancy;
 - (c) any payments in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only in so far as it represents loss of income;
 - (d) any holiday pay except any payable more than four weeks after the termination or interruption of employment;
 - (e) any payment by way of a retainer;
 - (f) any payment made by the person's employer in respect of any expenses not wholly, exclusively and necessarily incurred in the performance of the duties of employment. This includes any payment made by the person's employer in respect of travelling expenses incurred by the person between their home and the place of employment and expenses incurred by the person under arrangements made for the care of a member of the person's family owing to the person's absence from home;
 - (g) any award of compensation made under section 112(4) or 117(3)(a) of the Employment Rights Act 1996 (remedies and compensation for unfair dismissal);
 - (h) any such sum as is referred to in section 112 of the Social Security Contributions and Benefits Act 1992 (certain sums to be earnings for social security purposes);
 - (i) any statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay, or a corresponding payment under any enactment having effect in Northern Ireland;
 - (j) any remuneration paid by or on behalf of an employer to the person who for the time being is on maternity leave, paternity leave or adoption leave or is absent from work because of illness;
 - (k) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001.

2.7 Earnings in relation to an employed earner do not include:

- (a) any payment in kind, with the exception of any non-cash voucher which has been taken into account in the calculation of the person's earnings (as referred to above);
- (b) any payment made by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
- (c) any occupational/personal pension.

2.8. Earnings in the case of employment as a self-employed earner mean the gross receipts of the employment. This includes any allowance paid under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990 to the person for the purpose of assisting the person in carrying on his business.

2.9 Earnings in the case of employment as a self-employed earner do not include:

- (a) any payment to the person by way of a charge for board and lodging accommodation provided by the person;
- (b) any sports award.

2.10 Earnings also include any payment provided to people in the secure estate to encourage and reward their constructive participation in the regime of the establishment in which they are detained. This may include payment for working, education or participation in other related activities.

- Welfare benefits

2.11 Local authorities are able to take most welfare benefits people receive into account in a financial assessment. Those they **must** disregard are detailed in the Regulations but are highlighted below for ease of reference. However, local authorities **must** ensure that in addition to the minimum guaranteed income (details of which are set out later in this annex) people retain enough of their benefits to pay for things to meet their needs which are not being met by the local authority.

2.12 Any income from the following welfare benefits and sources **must** be fully disregarded:

- (a) Direct Payments;
- (b) Guaranteed Income Payments made to Veterans under the Armed Forces Compensation Scheme;
- (c) The mobility component of Disability Living Allowance;
- (d) The mobility component of Personal Independence Payments;
- (e) Working Tax Credit.

2.13 Any income from the following benefits **should** be taken fully or partially into account when considering what a person can afford to pay towards the cost of their care and support:

- (a) Attendance Allowance, including Constant Attendance Allowance and Exceptionally Severe Disablement Allowance;
- (b) Bereavement Allowance;
- (c) Carers Allowance;
- (d) Disability Living Allowance (Care component);

- (e) Employment and Support Allowance or the benefits this replaces such as Severe Disablement Allowance and Incapacity Benefit;
- (f) Income Support;
- (g) Industrial Injuries Disablement Benefit or equivalent benefits;
- (h) Jobseeker's Allowance;
- (i) Maternity Allowance;
- (j) Pension Credit;
- (k) Personal Independence Payment (Daily Living component);
- (l) State Pension;
- (m) Universal Credit.

2.14 Where any welfare benefit payment has been reduced (other than a reduction because of voluntary unemployment), for example because of an earlier overpayment, any amount taken into account should be the gross amount of the benefit before reduction.

- Annuity, pension and investment bonds income

2.15 An annuity is a type of pension product that provides a regular income for a number of years in return for an investment. Such products are usually purchased at retirement in order to provide a regular income. While the capital is disregarded, any income from an annuity **may** be taken fully into account except where it is:

- (a) purchased with a loan secured on the person's main or only home; or
- (b) a gallantry award such as the Victoria Cross Annuity or George Cross Annuity.

2.16 For those who have purchased an annuity with a loan secured on their main or only home, this is known as a 'home income plan'. Under these schemes, a person has purchased the annuity against the value of their home, similar to a Deferred Payment Agreement.

2.17 Where a person is in a care home and paying half of the value of their occupational pension, personal pension or retirement annuity to their spouse or civil partner the local authority **must** disregard 50% of its value where it takes an annuity into account.

2.18 In order to qualify for the disregard, one of the annuitants must still be occupying the property as their main or only home. This may happen where a couple has jointly purchased an annuity and only one of them has moved into a care home. If this is not the case, the disregard need not be applied.

2.19 Where the disregard is applied, only the following aspects may be disregarded:

- (a) the net weekly interest on the loan where income tax is deductible from the interest; or
- (b) the gross weekly interest on the loan in any other case.

2.20 Before applying the disregard, the following conditions **must** be met:

- (a) The loan must have been made as part of a scheme that required that at least 90% of that loan be used to purchase the annuity;
- (b) The annuity ends with the life of the person who obtained the loan, or where there are two or more annuitants (including the person who obtained the loan), with the life of the last surviving annuitant;

- (c) The person who obtained the loan or one of the other annuitants is liable to pay the interest on the loan;
- (d) The person who obtained the loan (or each of the annuitant where there are more than one) must have reached the age of 65 at the time the loan was made;
- (e) The loan was secured on a property in Great Britain and the person who obtained the loan (or one of the other annuitants) owns an estate or interest in that property; and
- (f) The person who obtained the loan or one of the other annuitant occupies the property as their main or only home at the time the interest is paid.

2.21 Where the person is using part of the income to repay the loan, the amount paid as interest **must** be disregarded. If the payments the person makes on the loan are interest only and the person qualifies for tax relief on the interest they pay, disregard the net interest. Otherwise, disregard the gross interest.

2.22 Reforms to defined contribution pensions came into effect from April 2015. The aim of the reforms was to provide people with much greater flexibility in how they fund later life. This has led to changes in how people use the money in their pension fund. The rules for how to assess pension income for the purposes of charging are:

- (a) If a person has removed the funds and placed them in another product or savings account, they should be treated according to the rules for that product;
- (b) If a person is only drawing a minimal income, then a local authority can apply notional income rather than drawn income, according to the maximum income that could be drawn under an annuity product. If applying maximum notional income, the actual income **must** be disregarded to avoid double counting;
- (c) If a person is drawing down an income that is higher than the maximum available under an annuity product, the actual income that is being drawn down **should** be taken into account.

2.23 Treatment of investment bonds in a financial assessment is complex due to the differing products available and their differing arrangements and purposes. For this reason local authorities should seek their own advice on the appropriateness of taking the income into account from a particular product in an assessment.

2.24 In general, income from investment bonds (with or without life assurance) could be taken into account in a financial assessment. Actual payments of capital by periodic instalments, with or without insurance, are treated as income and taken into account. This is provided that any payments are outstanding on the first day a person becomes liable to pay for their care and support and the aggregate of the outstanding instalment, and any other capital sum not disregarded in the financial assessment, does not exceed the financial limit (see Annex A on treatment of capital).

- Mortgage protection insurance policies

2.25 Any income from an insurance policy can be taken into account. However, this does not apply in the case of mortgage protection policies. This is where a policy is taken out to insure against the risk of not being able to make repayments on a loan or to protect the premiums payable on an endowment policy where the policy is held as a security for a loan. The income from these policies **must** be disregarded where the loan is specifically intended to support the person to acquire or retain an interest in their main or only home, or to support them to make repairs or improvements to their main or only home, and the income is being used to meet the repayments on the loan.

2.26 The amount of income from a mortgage protection insurance policy that **must** be disregarded in these circumstances is the weekly sum of:

- (a) The amount which covers the interest on the loan; plus
- (b) The amount of the repayment which reduced the capital outstanding; plus
- (c) The amount of the premium due on the policy.

2.27 It should be remembered that any Income Support or Pension Credit payments a person receives may have been adjusted to take account of the income from such a policy so that where these are taken account of, this **should** include any such adjustment.

- Other income that must be fully disregarded

2.28 Any income from the following sources **must** be fully disregarded in a financial assessment:

- (a) Armed Forces Independence Payments and Mobility Supplement;
- (b) Child Support Maintenance Payments and Child Benefit;
- (c) Child Tax Credit;
- (d) Council Tax Reduction Schemes where this involves a payment to the person;
- (e) Disability Living Allowance (Mobility Component) and Mobility Supplement;
- (f) Christmas bonus;
- (g) Dependency increases paid with certain benefits;
- (h) Discretionary Trust;
- (i) Gallantry Awards;
- (j) Guardian's Allowance;
- (k) Guaranteed Income Payments made to Veterans under the Armed Forces Compensation Scheme;
- (l) Income frozen abroad;
- (m) Income in kind;
- (n) Pensioners' Christmas payments;
- (o) Personal Independence Payment (Mobility Component) and Mobility Supplement;
- (p) Personal injury trust, including those administered by a Court;
- (q) Resettlement benefit;
- (r) Savings credit disregard;
- (s) Social Fund payments (including winter fuel payments);
- (t) War widows and widowers special payments;
- (u) Any payments received as a holder of the Victoria Cross, George Cross or equivalent;
- (v) Any grants or loans paid for the purposes of education;
- (w) Payments made in relation to training for employment;
- (x) Any payment from the:

- (i) Macfarlane Trust;
- (ii) Macfarlane (Special Payments) Trust;
- (iii) Macfarlane (Special Payment) (No 2) Trust;
- (iv) Caxton Foundation;
- (v) The Fund (payments to non-haemophiliacs infected with HIV);
- (vi) Eileen Trust;
- (vii) MFET Limited;
- (viii) Independent Living Fund (2006);
- (ix) Any amount paid under or by the Welsh Independent Living Scheme;
- (x) Skipton Fund;
- (xi) London Bombings Relief Charitable Fund.

- Charitable and voluntary payments

2.29 Charitable payments are not necessarily made by a recognised charity, but could come from charitable motives. The individual circumstances of the payment will need to be taken into account before making a decision on whether to disregard such payments. In general a charitable or voluntary payment which is not made regularly is treated as capital.

2.30 Charitable and voluntary payments that are made regularly **must** be fully disregarded.

- Partially disregard income

2.31 The following income **must** be partially disregarded:

- (a) The first £10 per week of War Widows and War Widowers pension, survivors Guaranteed Income Payments from the Armed Forces Compensation Scheme, Civilian War Injury pension and payments to victims of National Socialist persecution (paid under German or Austrian law); and the first £25 per week of War Disablement Pension:
- (b) A savings disregard based on qualifying income. Where a person is in receipt of qualifying income of less than a set amount per week there will be no savings disregard but where a person is in receipt of qualifying income between particular levels a set saving disregard **must** apply. The levels of the qualifying income and of the saving disregard are set out in Part 1 of Schedule 1 (Sums to be disregarded in the calculation of income) of the Regulations.

- Notional income

2.32 In some circumstances a person may be treated as having income that they do not actually have. This is known as notional income. This might include, for example, income that would be available on application but has not been applied for, income that is due but has not been received, or income that the person has deliberately deprived themselves of for the purpose of reducing the amount they are liable to pay for their care and support. In all cases where a local authority plans to take notional income into account it **must** satisfy itself that the income would or should have been available to the person.

- 2.33 Notional income should also be applied where a person who has reached retirement age and has a personal pension plan but has not purchased an annuity or arranged to draw down the equivalent maximum annuity income that would be available from the plan. In this circumstance notional income **should** be applied. Estimates of the notional income in this case can be received from the pension provider or from estimates provided by the UK Government Actuary's Department.
- 2.34 Where notional income is included in a financial assessment, it **must** be treated the same way as actual income. Therefore any income that would usually be disregarded should continue to be so.
- 2.35 Notional income should be calculated from the date it could be expected to be acquired if an application had been made. In doing so, a local authority **must** assume the application was made when it first became aware of the possibility and take account of any time limits which may limit the period of arrears.
- 2.36 However, there are some exemptions and the following sources of income **must not** be treated as notional income:
- (a) Income payable under a discretionary trust;
 - (b) Income payable under a trust derived from a payment made as a result of a personal injury where the income would be available but has not yet been applied for;
 - (c) Income from capital resulting from an award of damages for personal injury that is administered by a court;
 - (d) Occupational pension which is not being paid because:
 - (i) The trustees or managers of the scheme have suspended or ceased payments due to an insufficiency of resources; or
 - (ii) The trustees or managers of the scheme have insufficient resources available to them to meet the scheme's liabilities in full.
 - (e) Working Tax Credit.
- Disability-related expenditure
- 2.37 Where disability-related benefits are taken into account, the local authority **should** make an assessment and allow the person to keep enough benefit to pay for necessary disability-related expenditure to meet any needs which are not being met by the local authority.
- 2.38 In relation to charging for non-residential care and support local authorities **must** include in their minimum income amount for the person being charged (see paragraph 4.2 and 4.3) at least 10% of their "basic entitlement" to a relevant welfare benefit as an allowance for disability related expenditure. Exact details of this are set out in regulations 12 and 27 (Minimum income amount for a person with needs for non-residential care and support) of the Care and Support (Charging) (Wales) Regulations 2015 (the "Charging Regulations"). Local authorities have the discretion to provide for more than this level should they choose, such as operating a higher disability expenditure disregard based on particular items of expenditure a person may have or based on particular expenditure required to meet their needs as identified in a person's care and support plan.

2.39 When considering what disability-related expenditure to include in any higher disregard that local authorities may operate, authorities may wish to consider the following list of examples. This list is not intended to be exhaustive but to illustrate the types of expenditure that authorities may wish to include. In addition, local authorities have the discretion to provide for a disability related expenditure disregard when undertaking a financial assessment in relation to charging for residential care and support. In considering this list, therefore, authorities may also wish to consider whether to operate any of these in relation to charging for residential care, particularly where such items are not covered within a person's agreed package of residential care:

- (a) Payment for any community alarm system;
- (b) Costs of any privately arranged care services required, including respite care;
- (c) Costs of any specialist items needed to meet the person's medical condition or disability needs, for example:
 - i. Privately arranged day or night care;
 - ii. specialist washing powders or laundry requirements;
 - iii. additional costs of special dietary needs due to a medical condition or disability (the person may be asked for permission to approach their GP in cases of doubt);
 - iv. special clothing or footwear, for example, where this needs to be specially made; or additional wear and tear to clothing and footwear caused by a medical condition or disability;
 - v. additional costs of bedding, for example, because of incontinence;
 - vi. any additional heating costs, or metered costs of water, due to a medical condition or disability;
 - vii. reasonable costs of any privately arranged basic garden maintenance, cleaning, or domestic help, if necessitated by the individual's medical condition or disability;
 - viii. purchase, maintenance, and repair of disability-related equipment, including equipment or transport needed to enter or remain in work, where necessitated by the person's medical condition or disability. This may include IT costs and reasonable hire costs of equipment if due to waiting for supply of replacement equipment;
 - ix. personal assistance costs, including any household or other necessary costs associated with their employment;
 - x. internet access, for example those with a visual impairment to aid their communication;
 - xi. transport costs necessitated by a medical condition or disability over and above the mobility component of Disability Related Allowance or Personal Independent Payments, where these are received and available for these costs. In some cases it may be reasonable for an authority not to take account of claimed transport costs if, for example, a suitable, cheaper form of transport is available, such as authority provided transport to a day centre but has not been used.

2.40 In considering the above, it may be reasonable for a local authority not to allow for items where a reasonable alternative is available at a lesser cost. For example, an authority might adopt a policy not to allow for the private purchase cost of continence pads, where these are available from the NHS at no charge.

Care homes

- 3.1 The following sections only apply to financial assessments in relation to those who are receiving care and support in a care home.
- Minimum income amount (MIA)
- 3.2 When undertaking a financial assessment a local authority **must** leave the person with a minimum amount of income (MIA). The amount of this is set out in regulations 13 and 28 (Minimum income amount where a person is provided with accommodation in a care home) of the Charging Regulations. Anything above this may be taken into account in determining charges in accordance with the requirements of those Regulations and this code of practice.
- 3.3 The MIA is not a benefit but the amount of a person's own income that they **must** be left with after charges have been deducted. Where a person has no income, the local authority is not responsible for providing one. However, the local authority **should** support the person to access any relevant welfare benefits to which they may be entitled or any independent advocacy available to help them access such benefits.
- 3.4 The purpose of the MIA is to ensure that a person has a certain amount of money left after contributing to the costs of their care and support to spend as they wish. It **must not** be used to cover any aspect of their care and support that has been provided or arranged by the local authority, or is to be provided through direct payments, to meet a person's eligible needs. This amount is for the person to spend as they wish and local authorities **must not** put pressure on a person to spend their MIA in a particular way.
- 3.5 There may be some circumstances where it would not be appropriate for the local authority to leave a person only with their MIA. For example:
- (a) Where a person has a dependent child the local authority **should** consider the needs of the child in determining how much income a person should be left with after charges. This applies whether the child is living with the person or not;
 - (b) Where a person is paying half their occupational or personal pension or retirement annuity to a spouse or civil partner who is not living in the same care home, the local authority **must** disregard this money. This does not automatically apply to unmarried couples although the local authority may wish to exercise its discretion in individual cases to do so;
 - (c) Where a person is temporarily in a care home and is a member of a couple (whether married or unmarried) the local authority **must** disregard any Income Support or Pension Credit awarded to pay for home commitments and should consider the needs of the person at home in setting the MIA. It should also consider disregarding other costs related to maintain the couple's home (see below);
 - (d) Where a person's property has been disregarded the local authority **must** consider whether the MIA is sufficient to enable the person to meet any resultant costs. For example, allowances should be considered for fixed payments (like mortgages, rent and council tax), building insurance, utility costs (including basic heating during the winter) and reasonable property maintenance costs;

- (e) Where a person is funding their own residential care and has a deferred payment agreement in place (see Annex D on Deferred Payment Agreements), the local authority **must** ensure the person retains sufficient resources to maintain and insure the property in line with the appropriate minimum guarantee used in those agreements.

Non-residential care and support

4.1 The following sections only apply to financial assessments in relation to those who are receiving non-residential care and support.

- Minimum income amount

4.2 Local authorities **must** ensure that a person's income is not reduced below a specified level after charges have been deducted for non-residential care and support. This is referred to as the minimum income amount (MIA) and **must** be at least the equivalent of the value of their "basic entitlement" to a relevant welfare benefit plus a minimum "buffer" of 35% of this. Exact details of this are set out in regulations 12 and 27 (Minimum income amount for a person with needs for non-residential care and support) of the Charging Regulations. As indicated in paragraph 2.38 this MIA **must** also include at least a further 10% of a person's "basic entitlement" to a relevant welfare benefit to allow for disability related expenditure. These amounts of the MIA are minimum requirements and local authorities have discretion to set higher levels of either the "buffer", the disability related allowance, or both if they wish.

4.3 The purpose of the MIA is to promote independence and social inclusion and ensure that people have sufficient funds after charging has occurred to meet the costs of basic needs aside from their care and support, such as food, utility costs or insurance.

Annex C – Choice of Accommodation and Additional Costs

This annex covers:

- Choice of accommodation when arranging care and support in a care home
- An additional cost for preferred accommodation in a particular care home

General

- 1.1 A person's ability to make an informed choice as to how their needs will be met is a key element of the care and support system. This must extend to where the care and support assessment process has determined that a person's needs are best met by them living in a specific type of accommodation.
- 1.2. The care and support assessment process will have determined what type of accommodation will best meet the person's needs. Where this is a care home, subject to certain conditions the person will have a right to choose their preferred accommodation (such as the particular accommodation they wish to live in or the location of the accommodation they would like). The Care and Support (Choice of Accommodation) (Wales) Regulations 2015 (the "Regulations") made under section 57 (Cases where a person expresses preference for particular accommodation) of the Social Services and Well-being (Wales) Act 2014 (the "Act") and this Annex **must** be applied in meeting that preference. In doing so, local authorities **must** have regard to the following principles:
- good communication of clear information and advice to those requiring accommodation in a care home so as to enable them to make well informed decisions over the choice of their home should they wish to do so;
 - a consistent approach to ensure genuine choice;
 - clear and transparent arrangements for meeting choice where it is expressed and any additional cost that may arise from a particular choice being expressed;
 - clear understanding of potential consequences should payment of an additional cost fail, with clear exit strategies; and
 - ensuring that any choice expressed which is met is suitable to meet the person's identified care and support needs.
- 1.3. Local authorities **must** remember that the Act, the Regulations and this code of practice apply equally to those entering residential care for the first time, those who have already been placed by a local authority and those who have been self-funding their own residential care but who because of diminishing financial resources subsequently need local authority support.

Choice of Accommodation

- 2.1. Where a local authority is to meet a person's care and support needs under sections 35 to 38 (Meeting care and support needs of adults and children) of the Act, and that person's needs have been assessed as requiring accommodation in a care home, the person **must** have the right to express a preference for a care home of their choosing provided that:
- the care home is suitable to meet the person's assessed needs;
 - to do so would not cost the local authority more than the amount it would usually expect to pay for accommodation of that type;
 - a place in the care home is available; and
 - the provider of the care home is willing to enter into a contract with the local authority to provide the accommodation on the local authority's terms and conditions
- 2.2. This choice **must not** be limited to those care homes or individual providers with which the local authority already contracts or operates, or those that are within that local authority's geographical boundary. It must be a genuine choice for the person across the appropriate care home accommodation available.
- 2.3. If a person chooses to be placed in a care home that is outside the local authority's area, the local authority **must** still arrange for their preferred accommodation provided that the conditions listed above in 2.1 are met. In connection with this local authorities **must** follow the regulations and code of practice on ordinary residence issued in connection with section 194 (Ordinary residence) of the Act.

Suitability of Accommodation

- 3.1. In exercising choice, a local authority **must** ensure the care home accommodation for which a person expresses a preference is suitable to meet their assessed needs and identified well-being outcomes established as part of the care and support assessment process. In doing this authorities **must** take account of any specific impairment or sensory needs a person has, so as to ensure the chosen accommodation has appropriate facilities or specialist services to meet these.
- 3.2. As part of the care and support assessment process, people are able to express a preference about the type of accommodation in which their needs are best met. This process considers both the person's needs and preferences. Once the type of accommodation is agreed as that in a care home the choice of accommodation is between different care homes and different locations, not different types of residential settings. A person cannot exercise the right to a choice of accommodation by choosing another type of accommodation where the care and support assessment has identified that their assessed needs are best met in a care home of a particular type.

Cost

- 4.1. Where a local authority is arranging for a person's needs to be met by the provision of accommodation in a care home of a particular type, whether or not a person has expressed a choice over this, it **must** take into consideration circumstances where the cost to the local authority of doing this may need to be adjusted to ensure that needs are met. For example, a person may have specific dietary requirements or sensory requirements that can only be met in specific care homes. In all cases the local authority **must** have regard to the actual cost of good quality care in meeting a person's needs to ensure that the care home placement can genuinely meet their assessed needs. As such a local authority **must** not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect the actual needs of the person being placed.
- 4.2. A person **must not** be asked to pay an additional cost towards the cost of providing the type of accommodation in a care home to meet their assessed needs. To ensure they have a genuine choice over this a local authority **must** have more than one option available for a person to choose from within its standard amount for residential care. Where no suitable accommodation is available at its standard amount to meet a person's assessed needs in full, the local authority **must** arrange a placement in a suitable more expensive setting and adjust its funding accordingly to ensure that needs are met. In such circumstances, the local authority **must not** ask the person being placed or a third party to pay the additional cost. Only where a person has chosen a care home that is genuinely more expensive than a local authority would usually pay for a care home placement of that type or, where a person has requested services or facilities that do not form part of their assessed needs, can an additional cost be sought (see "additional cost" below).

Availability

- 5.1. In general, a local authority **must** avoid a person being forced to wait for assessed needs to be met. However, in some cases a short wait may be unavoidable, particularly when a person has chosen a particular care home that is suitable but not immediately available. This may include putting in place temporary arrangements, taking into account the person's preferences and needs, and securing their agreement to these, including placing the person on the waiting list for their preferred choice of care home. It should be remembered, however, that such arrangements can be unsettling for the person and **must** be avoided wherever possible.
- 5.2. In such cases, the local authority **must** ensure that in the interim appropriate care and support is provided and should set out how long the interim arrangement may last. In establishing any interim arrangements, the local authority **must** provide the person with clear information in writing on the detail of the arrangements as part of their care and support plan. As a minimum this should include the likely duration of the arrangement and information on the operation of the waiting list for their preferred care home, alongside any other information that may be relevant. If any interim arrangements exceed 12 weeks, the person **must** be reassessed to ensure that both the interim arrangement and the preferred option are still able to meet the person's needs and that remains their choice.

5.3. Where a place subsequently becomes available at a person's chosen care home they **must** be offered this without delay where it is still appropriate to meet their needs. In some cases a person may decide that they wish to remain in the interim setting, even if their preferred accommodation subsequently becomes available. If the care home where they are staying temporarily is able to accommodate the arrangement on a permanent basis this **should** be arranged and the person removed from its waiting list. Before doing so, the local authority **must** make clear the financial implications associated with the person being placed in the accommodation on a permanent basis, including any additional cost associated with the permanent placement.

Choice that cannot be met and refusal of arrangements

6.1. Whilst a local authority **must** do everything it can to meet a person's choice for a particular care home, inevitably there will be some instances where a choice cannot be met, for example if the provider does not have capacity to accommodate the person. In such cases, a local authority **must** in accordance with regulation 5 (Refusal to provide preferred accommodation) of the Regulations set out in writing that it is unable to meet that choice and provide its reason(s) for this. It **must also** offer suitable alternatives to the person so that they can decide which suitable care home they should be placed in instead.

6.2. A local authority **must** do everything it can to take into account a person's circumstances and preferences when arranging their care home placement. However, in all but a very small number of cases, such as where a person is being placed under guardianship under Section 7 of the Mental Health Act 1983, a person has a right to refuse to enter a care home whether that is on an interim or permanent basis. Where a person unreasonably refuses the arrangements, a local authority is entitled to consider that it has fulfilled its statutory duty to meet needs and may then inform the person in writing that, as a result, they need to make their own arrangements. This should be a step of last resort and local authorities **must** consider the risks posed by such an approach, for both the authority itself and the person concerned. Should the person contact the local authority again at a later date, the local authority **must** reassess their needs as necessary and consider how best these are met.

Contractual terms and conditions

7.1. In placing a person in a care home of their choice, a local authority **must not** stipulate strict or unreasonable conditions in contractual arrangements with the care home as a means to avoid or deter the arrangement and avoid meeting the person's choice of accommodation. This includes where the local authority may need to enter into a contract with a provider that it does not currently have an arrangement with. Where this occurs, it should ensure that the contractual conditions are broadly the same as those it would negotiate with any other provider whilst taking account of the individual circumstances.

An Additional Cost

- 8.1 In some cases, a person may choose a care home that is more expensive than the local authority would usually expect to incur for the provision of the accommodation of that type for that person. Where the person has chosen a care home that is more expensive an arrangement will need to be made as to how the difference in cost will be met. This is known as an “additional cost” and is the difference between the amount a local authority would usually pay for care home accommodation of that type for the person and the actual cost of the chosen care home. In such cases, the local authority **must** arrange for the person to be placed in their chosen accommodation, **provided** a third party, or in certain circumstances the person in need of accommodation, is willing and able to meet the additional cost. If this is not the case, then under regulation 3 (Conditions for provision of preferred accommodation) of the Regulations a local authority is able to refuse to provide the chosen accommodation.
- 8.2 Where a person is placed in a more expensive care home solely because the local authority has been unable to make arrangements at its usual cost for such accommodation, the local authority **must** meet the difference in cost itself. The person would then contribute towards this according to the outcome of their financial assessment. The additional cost arrangement **must not** apply in such circumstances.
- 8.3. Where a person has chosen accommodation that is more expensive, the local authority **must** ensure that the person understands the full implications of this choice, remembering that people often enter residential care at a point of crisis. This understanding **must** extend to the fact that a third party, or in certain circumstances the person needing accommodation, will need to meet the additional cost of that accommodation for the full duration of the person’s stay and that should the additional cost not be met, the person may need to move to an alternative care home.
- 8.4. The local authority **must** ensure that the person paying the additional cost is willing and able to meet this for the likely duration of the arrangement, recognising this may be for some time into the future. To confirm this it would be good practice for a local authority to ask the person who is to pay the additional cost to provide proof of their financial means to do this, such as evidence of their salary or savings.
- 8.5 A local authority **must** ensure the person paying the additional cost enters into a written agreement with it, agreeing to meet that cost. The agreement **must**, as a minimum, include the information required in the regulation 4 (The additional cost condition) of the Regulations. This will include information such as the amount to be paid, the frequency of payments, the effect of an increase in the amount of the payments and the consequences of non-payment.
- 8.6. Before entering into the agreement, the local authority **must** provide the person paying the additional cost with access to sufficient information and advice to ensure they understand the terms and conditions, including that the person may want to consider obtaining independent financial information and advice. Further detail on each of these points is set out below.
- The amount to be paid

8.7. The amount of the additional cost should be the difference between the actual cost of the preferred accommodation and the amount the local authority would usually pay to meet the person's assessed needs by the provision of accommodation in a care home of the same type. When considering the cost of care in its area, the local authority is likely to have identified a range of costs which apply to different circumstances and settings. For the purposes of agreeing an additional cost the local authority must consider what it would have paid for accommodation of the same type as that chosen at the time it is needed. It should not automatically default to the cheapest rate or to any other arbitrary figure.

- Frequency of payments

8.8 In agreeing any additional cost arrangement, the local authority **must** clearly set out how often such payments need to be made, e.g. on a weekly or monthly basis and to whom payments are made.

- Responsibility for additional cost payments and payment arrangements

8.9 A local authority is responsible for the full cost of any residential placement it makes. Consequently, when entering into a contract with a care home that is more expensive than the amount the local authority would usually pay for a placement at a home of this type, it is responsible for the total cost of that placement including the additional cost. This means that if there is a breakdown in the arrangements for meeting the additional cost, for instance if the person making the payment ceases to make these, then the local authority is liable for the full cost of the more expensive accommodation until it makes alternative arrangements for the additional cost incurred in the future to be met, or make alternative arrangements to meet the person's accommodation needs.

8.10 In securing the funds needed to meet the total cost of the more expensive accommodation, including the additional cost payment, a local authority has two options, except where a placement is being funded by a deferred payment agreement (in which case see Annex D on deferred payment agreements). In choosing which option to take a local authority will need to consider the individual circumstances of the case, and should be able to assure itself of the security of the arrangements. Whichever option it chooses, the local authority remains responsible for the total amount. The options are:

- agree with the person paying the additional cost, and the provider of the accommodation, that payment of this will be made directly to the provider by that person with the local authority paying the remainder separately. The person whose needs are being met should be informed of this arrangement; or
- the person paying the additional cost pays this to the local authority. The local authority then pays the full amount for the accommodation to the provider.

8.11 In deciding which option to put in place for the payment of additional costs, local authorities will need to consider the practical implications for them of operating each and their ability under each to ensure payments are made. Given that authorities are ultimately liable for the full cost of any placement made in a more expensive care home, it would be good practice to monitor the payment of additional costs to ensure this is occurring and is being met at the correct level.

- Provisions for reviewing the agreement

8.12 As with any financial arrangement, an agreement to pay an additional cost must be reviewed. A local authority **must** set out in writing details of how the arrangement will be reviewed, what may trigger a review and circumstances when any party can request a review.

8.13 Local authorities **must** also consider how often it may be appropriate to review the arrangement. In doing so they should bear in mind how often they review other financial arrangements, such as deferred payment agreements. Reviews must take place at least annually and in line with wider reviews of the financial assessment.

- Consequences of ceasing to pay an additional cost

8.14 The local authority **must** make clear in writing to the person paying the additional cost the consequences should there be a breakdown in the arrangement or any default in paying the additional cost in line with the requirements of the written agreement. This **must** include stating that the local authority may seek to recover any outstanding debt from the person responsible for paying the additional cost and that if payments do not continue, and it cannot make an alternative arrangement for payment of the additional cost to be made, it may have to make arrangements to meet the person's needs in alternative accommodation. As with any change of circumstance, a local authority **must** undertake a new needs assessment before considering this course of action, including consideration of the impact on the person's well-being that a change in accommodation may have.

- Cost increases

8.15 The level of the additional cost will need to be reviewed from time to time, for example in response to any changes in: the needs of the person whose needs are being met; in the level of the local authority's commissioning of the person's placement; in provider costs. However, these changes may not occur together and a local authority **must** set out in writing in its agreement with the person to meet the additional cost how these changes will be dealt with.

8.16 The local authority **must** also clearly set out in writing in its agreement with the person its approach to how any increased costs may be shared. This **must** include details of how agreement will be reached on the sharing of any cost increases. This **must** also state that there is no guarantee that these increased costs will automatically be shared evenly should the provider's costs rise more quickly than the amount the local authority would have increased its funding for the care home placement.

8.17 A local authority may wish to negotiate any future cost increases with the provider at the time of entering into a contract. This can help provide clarity to individuals and providers and help ensure additional cost remains affordable.

8.18. The local authority **must** also make clear that where the person whose needs are being met has a change in circumstances that requires a new financial assessment, and this results in a change in the level of contribution the person makes, this may not necessarily reduce the need for an additional cost to be met.

- Consequences of changes in circumstances of the person paying the additional cost

8.19 The person paying the additional cost could see an unexpected change in their financial circumstances that will impact upon their ability to continue to make payments. Where a person is unable to continue paying the additional cost, the local authority may seek to recover any outstanding debt and is able to make alternative arrangements to meet a person's needs, subject to a needs assessment. The local authority **must** set out in writing in its agreement with the person paying the additional cost how it will respond to such a change and what the responsibilities of the person are in terms of informing the local authority of any change in their circumstances.

- “First party” additional cost

8.20. The person whose needs are to be met by the accommodation in a care home may themselves choose to pay an additional cost but only in the following circumstances:

- where they are subject to a 12-week property disregard (Annex A on the treatment of capital); or
- where they have a deferred payment agreement in place with the local authority. Where this is the case, the terms of the agreement should reflect this arrangement (see Annex D on deferred payment agreements).

Self-funders who ask the local authority to arrange their care

9.1 Section 35 (Duty to meet care and support needs of an adult) of the Act enables a person who can afford to pay, in full, for their own care and support in a care home to ask the local authority to arrange this on their behalf. Where this occurs the same principles on them being able to express a preference for their accommodation **must** apply. More information on this is contained in the code of practice on Part 4 of the Act (Meeting Needs).

Information and advice

10.1 Under section 17 (Provision of information, advice and assistance) of the Act a local authority **must** establish and maintain a service for providing people in its area with information and advice in relation to care and support. This **must** include information and advice about the different care providers available in the local area to enable choice, as well as information and advice to help people to understand care charges, different ways to pay and money management. Local authorities **should** also have a role in facilitating access to financial information and advice provided independent of the local authority, including regulated information and advice where appropriate, to support people in making informed financial decisions. This may be particularly appropriate when a person is considering paying an additional cost to help them understand what they would be paying the additional cost for and come to a judgment about whether it would represent good value for money for them.

Annex D – Deferred Payment Agreements

This annex covers:

- What are deferred payment agreements;
- Who to offer a deferred payment to;
- Provision of information and advice before entering into a deferred payment agreement;
- How much can be deferred and security for the agreement;
- Interest rate for the required amount and administrative costs;
- Making the agreement, responsibilities while the agreement is in place and termination of the agreement.

Definitions

1.1 Definitions used in this annex are:

- “The Act” – means the Social Services and Well-being (Wales) Act 2014;
- “Care costs” – all costs charged for a person’s care home placement, including any additional cost due;
- “Required amount” – the amount of the care costs that the adult is required (or is going to be required) to pay under section 59 (Power to impose a charge) of the Act and any amount the adult is required to pay under section 57 (Cases where a person expresses a preference for particular accommodation) of the Act;
- “Additional cost” – are payments due under the Care and Support (Choice of Accommodation) (Wales) Regulations 2015 in connection with agreeing to a person’s request to be provided with more expensive accommodation than a local authority would usually provide;
- “The Regulations” – mean the Care and Support (Deferred Payment) (Wales) Regulations 2015.

Introduction

- 2.1 By entering into a deferred payment agreement a person, whose property is taken into account in their financial assessment, can defer or delay paying some or all of their care costs until a later date so as to not be required to sell their property immediately upon entering a care home. Deferring payment of these costs can help a person to delay the need to sell their home at a time that can be challenging (or even a crisis point) for them and their family as they make the transition into residential care.
- 2.2 A deferred payment agreement can provide additional flexibility for when and how a person pays their care costs. It should be stressed that payment is deferred and not written off – the care costs must still be repaid by the person (or a third party on their behalf) at a later date.
- 2.3 Local authorities **must** offer a deferred payment agreement to those persons entering or in a care home who meet certain criteria governing eligibility. Local authorities will need to ensure that adequate security is in place for the amount being deferred, so they can be confident that the required amount (ie the amount deferred) will be repaid in the future.

- 2.4 A deferred payment agreement can last for the whole period of a person's stay in a care home, or for as long as they wish. This will provide them with time and flexibility to sell their property when they choose to do so and it is up to the individual to make that decision. Further details on deferred payment agreements are set out in the sections below.

Who to offer deferred payments to

- 3.1 Deferred payment agreements are designed to avoid those persons who will be required to sell their home to pay their care costs from having to do this immediately and being able to do this at a time that suits them. Local authorities **must** offer a deferred payment agreement to people entering or in residential care who meet the eligibility criteria set out in regulation 3 (Local authority required to enter into a deferred payment agreement) of the Regulations. In essence this is:
- (a) a person whose needs are to be met by the provision of care and support in a care home, whether this is being provided by a local authority using its duty to meet needs under section 35, or its powers to meet needs under section 36(1), both under Part 4 (Meeting needs) of the Act;
 - (b) the person is or will be required to pay a charge for this under section 59 (Power to impose charges) of the Act; and
 - (c) the local authority has carried out a financial assessment under section 63 (Duty to carry out financial assessment) of the Act.
- 3.2 This requirement to offer a deferred payment agreement to those in this position **does not** apply unless the conditions listed the Regulations are met. These include where:
- (a) the local authority is satisfied the person has an interest in a property which the person occupies as their home, or which they used to occupy as their home;
 - (b) the value of this interest has not been disregarded for the purposes of calculating the amount of the person's capital in accordance with Part 4 (Treatment and calculation of capital) of the Care and Support (Financial Assessment) (Wales) Regulations 2015 (the Financial Assessment Regulations) and that the person's capital, not including the value of this interest, does not exceed the capital limit as set out in regulation 11 (capital limit) of the Care and Support (Charging) (Wales) Regulations 2015 (the Charging Regulations);
 - (c) the person's weekly assessed income (as calculated under the Charging Regulations) is insufficient to meet the full care costs for their residential accommodation in a care home;
 - (d) the person is in agreement with all of the terms and conditions included in the deferred payment agreement offered;
 - (e) the local authority has obtained consent from any other person who it considers has an interest over the property and which it considers may prevent it from realising the sale of the property or recovering any deferred amount;
 - (f) the local authority is able to create a charge over the property which the person has an interest in and that it takes priority over and ranking before any other interest or charge on the property.

Ability to refuse a deferred payment agreement

- 4.1 While a local authority **must** offer a deferred payment agreement to a person who meets the eligibility criteria set out above, there will be situations in which a local authority may refuse a request for a deferred payment agreement where these are not met. This would occur, for example, where:
- (a) a local authority is unable to secure the consent of another person with an interest in the property to placing a charge on it, or where it cannot obtain a priority or ranking first charge on the property;
 - (b) a person's capital, other than the value of the property, is above the capital limit, or where their weekly assessed income is sufficient to meet their care costs, so that they are able to afford the full cost of the residential accommodation without the need for an agreement;
 - (c) a person does not agree to the terms and conditions of the deferred payment agreement. This might be, for example, failing to meet a condition that the person insures and maintains the property in good order.
- 4.2 In any circumstance where any of the eligibility criteria for a deferred payment is not met, a local authority **should** consider the nature of the non-compliance with this criteria and whether in any event to exercise discretion to offer a deferred payment agreement. For example, a person's property may be uninsurable for some reason but has a high land value, in which case the local authority may choose to accept a priority charge against this land as security for the agreement instead.

Circumstances in which local authorities may stop deferring care costs

- 5.1 There are also circumstances where a local authority may refuse to defer any further care costs for a person who has an active deferred payment agreement in place. This refusal may be permanent or temporary depending upon whether the reason for it is a permanent or temporary change in the person's circumstances. Local authorities **cannot** demand repayment of the whole required amount deferred in these circumstances and repayment of that amount is still subject to the usual terms of termination, as set out later in paragraph 12.1 to 12.9.
- 5.2 The local authority **must** provide advance notice that further deferred payments will cease and **must** provide the person with an indication of how their care costs will need to be met in future. Depending on their financial circumstances, the person may be required to meet all or part of their care costs from their weekly assessed income where this is more than the appropriate minimum guarantee set out in regulation 6 (Adult's contribution) of the Regulations, or from any capital assets (not including the value of the property which is the subject of the agreement) they hold above the level of the capital limit. Local authorities exercising these powers to cease a deferred payment agreement must consider their decision to do so in the light of the person's financial circumstances and their overarching duties to meet a person's needs under Part 4 of the Act (Meetings needs).

5.3 Other circumstances in which a local authority may refuse to defer any further care costs include:

- (a) when a person's total capital (including the value of the remaining equity in their property once the required amount deferred is taken into account) falls to the level of the capital limit so that the person becomes eligible for local authority support in paying for their care costs;
- (b) when the person's weekly assessed income (as calculated under the Charging Regulations) becomes sufficient to meet the full care costs for their residential accommodation in a care home;
- (c) where a person no longer has need for care in a care home;
- (d) if a person breaches certain predefined terms or conditions of their agreement (which must be clearly set out in the agreement) and the local authority's attempts to resolve the breach are unsuccessful (and the agreement specifies that the authority will stop deferring any further care costs in such a case); or
- (e) if, under the Financial Assessment Regulations the value of the property subsequently becomes disregarded for any reason and the person consequently qualifies for local authority support in paying their care costs, including but not limited to:
 - where a spouse or dependent relative (as defined in the Financial Assessment Regulations) has moved into the property after the agreement has been made;
 - where a relative who was living in the property at the time of the agreement subsequently becomes a dependent relative (as defined in Financial Assessment Regulations).

Information and advice

- 6.1 Under section 17 (Provision of information, advice and assistance) of the Act local authorities **must** provide information and advice to people about care and support. This extends to information and advice in relation to the availability of deferred payment agreements. In order to be able to make well-informed choices, it is essential that people access appropriate information and advice before entering into a deferred payment agreement. It is also important that people are kept informed about their agreement throughout its duration and that they receive appropriate information upon it at its eventual termination.
- 6.2 Deferred payment agreements are often considered at a time that can be stressful for a person and their family. People may need additional support during this period, and the local authority **should** take a role in providing this together with providing information and advice that is clear and easy to understand.
- 6.3 If a local authority identifies a person who may benefit from or be eligible for a deferred payment agreement, or a person approaches them for information about them, the local authority **must** make this information available to them and explain how deferred payment agreements operate. This explanation should, at a minimum:
 - set out the criteria governing eligibility for an agreement;
 - detail the requirements that must be adhered to for the duration of the agreement;

- set out clearly which care costs would be deferred and make clear that they must still be repaid at a later date, for example through the sale of their property (including following the death of the person);
- explain the security that a local authority is prepared to accept (see the section entitled 'Obtaining Security' below);
- explain that the total amount they can defer will be governed by the level of their care costs and the value of the property the person has an interest in used for the deferred payment agreement;
- explain the implications that a deferred payment agreement may have on a person's income, their entitlement to any welfare benefit and the application of the charging regime;
- provide an overview of potential advantages and disadvantages of entering into a deferred payment agreement and explain what other options may be available to a person as a way of paying their care costs;
- explain the 12-week property disregard (as set out in the Financial Assessment Regulations), which could afford those eligible for a deferred payment additional time to consider other options for paying their care costs;
- explain the circumstances where the local authority may cease to defer further care costs (such as described in paragraphs 12.1 to 12.9);
- explain whether interest would be charged on the deferred amount (ie the required amount) and if so, the level of this;
- explain whether administrative costs would be charged for establishing and maintaining the agreement and if so, the level of these;
- explain how an agreement can be terminated and what happens on termination of the agreement, including how the required amount due for repayment is to be repaid and the options for so doing;
- explain what happens if the required amount due is not repaid in full in the manner or time a local authority specifies; and
- suggest that people may want to consider taking independent financial advice prior to entering into a deferred payment agreement.

6.4 Local authorities **must** provide information in a suitable format to match the communication needs of the person. This may be in the form of a standardised information sheet with additional information, where appropriate, to cater for a person's individual circumstances.

6.5 Local authorities **should** advise people that where they have a property they have an interest in, they will need to consider how they plan to use, maintain and insure their property if they take out a deferred payment agreement; that is whether they wish to rent it out, prepare it for sale, or leave it vacant for a period. The local authority should advise if it intends to place conditions on how the property is maintained or used whilst any agreement is in place.

How much can be deferred

7.1 In principle a person should be able to defer all their care costs, subject to any contribution their financial assessment has determined they are required to pay towards this cost from their assessed income. Regulation 5 (Required amount) of the Regulations set out that a deferment can be for:

- (a) 100% of the care costs due from the person, less any amount they are required to pay towards these costs by regulation 6 (Adult's contribution) of the Regulations;
- (b) such lesser amount as the person requests, less any amount they are required to pay under regulation 5 of the Regulations;

- (c) the amount at (a) or (b) less any amount as the local authority agrees not to defer.
- 7.2 The local authority will need to consider whether a person can provide adequate security for the amount of the deferment agreed (ie the required amount) (see next section entitled 'Obtaining Security').
- 7.3 If the person has expressed a preference for a care home that costs more than the local authority's usual rate for the type of care home they require, it may charge the person in certain circumstances, or a third party, an additional cost payment for the additional cost involved (see the Care and Support (Choice of Accommodation) (Wales) Regulations 2015 and Annex C of this code - Choice of Accommodation and Additional Costs). Where this occurs and the person requests that the additional cost forms part of the amount to be deferred (ie to be included in the required amount), the local authority **should** also consider whether the total amount being requested as a deferred payment agreement is appropriate for the value of the security to be used for the agreement.
- 7.4 Where a person intends to secure their deferred payment agreement against their interest in a property, local authorities **must** obtain a valuation of that property. Reasonable property valuation costs can be passed onto a person as part of the administrative costs local authorities can charge for putting an agreement in place, should they wish to do so. People may request an independent assessment of the property's value (in addition to the local authority's valuation). If an independent assessment finds a substantially differing value to the local authority's valuation, the local authority and person should discuss and agree an appropriate valuation prior to proceeding with the agreement.

Contributing to care costs from other sources

- 8.1 The share of their care costs that a person defers will depend on their income and whether they are required to contribute towards these costs from this.
- 8.2 Local authorities may require a contribution towards the care costs from a person's weekly assessed income (as calculated under the Charging Regulations), where it is above the level of the appropriate minimum guarantee as set out in regulation 6 (Adult's contribution) of the Regulations.
- 8.3 A person may choose to keep less of the appropriate minimum guarantee should they wish. This might be advantageous to the person as they would be contributing more towards their care costs from their income, and consequently reducing the amount they are deferring (and accruing less debt to their local authority overall). However, this **must** be entirely at the decision of the person and a local authority **must not** ask the person to retain less if they want to retain the full amount.
- 8.4 If a person decides to rent out their property during the course of their agreement, a local authority **should** permit the person to retain a percentage of any rental income they secure.

- 8.5 A person may also benefit from contributions to their care costs as a result of payments made by a third party, or from income not taken account of in a financial assessment should they wish to do so. Contributing to care costs from another source would be beneficial for a person as it would reduce the amount they are deferring (and hence reduce their overall required amount owed to the local authority). A local authority **must not** ask a person to contribute to their deferred payment from these sources.

Obtaining security

- 9.1 In cases where an agreement is to be secured with property, local authorities **must** seek the owner's consent (and agreement) to a charge being placed on the property. In cases where there are more than one owner, the authority must seek such consent (and agreement) from all owners. All owners will then need to be signatories to the charge agreement and where there are co-owners, they will need to agree not to object to the sale of the property for the purpose of repaying the required amount due to the local authority (following the same procedure as in the case where a person is the sole owner of a property).
- 9.2 The local authority **must** obtain similar consent to a charge being created against the property from any other person who has a beneficial interest in the property.

Interest and administrative costs

- 10.1 Deferred payment agreements are intended to operate on a cost-neutral basis, with local authorities able to recover the costs associated with deferring a person's care costs by charging interest should they wish to do so. Local authorities can also recover the administrative costs associated with agreements, including legal and the ongoing operating costs of an agreement. Such costs can be passed on to the person and added to the total required amount deferred as they accrue, although a person may request to pay these separately if they choose. The agreement **must** make clear that all care costs deferred, alongside any interest and administrative costs incurred must be repaid in full by the person.
- 10.2 Local authorities may charge interest on any amount deferred, including any administrative costs deferred. This is to cover the cost of the agreement and the financial risks to local authorities associated with lending. Where local authorities charge interest this **must not** exceed the maximum amount specified in regulation 9 (Interest) of the Regulations.
- 10.3 The national maximum interest rate an authority can charge is 0.15% above the "relevant rate". The relevant rate will change every six months on 1st January and 1st June to track the market gilts rate specified in the most recently published report by the Office of Budget Responsibility. This is currently published in the Economic and Fiscal Outlook, which is usually published twice-yearly alongside the Budget and Autumn Statement. Local authorities **must** ensure that any changes to the national maximum rate are applied to any agreements they have entered into (unless they are already charging less than the national maximum). Individual agreements must also contain adequate terms and conditions to ensure that the interest rate within any given agreement does not exceed the nationally-set maximum.

- 10.4 Local authorities **must** inform a person before they enter into an agreement if interest will be charged, what interest rates are currently set at, and when interest rates are likely to change. This is to enable people to make well-informed decisions about whether a deferred payment agreement is the best way for them to meet their care costs.
- 10.5 The interest charged and added to the deferred amount will be compound and local authorities **should** ensure when making the agreement that people understand that interest will accrue on a compound basis.
- 10.6 Interest can accrue on the required amount deferred up to the point where this is repaid. Hence it could still be charged after a person has died up until the point at which the required amount is repaid in full to the local authority. If for some reason the local authority cannot recover the required amount it is owed in a deferred payment agreement, and seeks to pursue this through the courts, the local authority **may** charge the County Court rate of interest in that instance.
- 10.7 Local authorities **must** set their administrative costs at a reasonable level and this level **must** not be more than the actual costs incurred by the local authority. Relevant costs may include (but are not limited to) the costs incurred by a local authority whilst:
- registering a legal charge with the Land Registry against the title of the property, including Land Registry search charges and any identity checks required;
 - undertaking relevant postage, printing and telecommunications;
 - cost of time spent by those providing the agreement;
 - cost of valuation and re-valuation of the property;
 - costs for removal of charges against property;
 - overheads, including where appropriate (shares of) payroll, audit, management costs, legal services.
- 10.8 Local authorities **should** maintain a publicly-available list of administrative costs that a person may be liable to pay. It is good practice to separate charges into a fixed set-up fee for deferred payment agreements, reflective of the costs incurred by the local authority in setting up and securing a typical deferred payment agreement, and other reasonable onetime fees during the course of the agreement (reflecting actual charges incurred in the course of the agreement).

Making the agreement

- 11.1 Where a person chooses to enter into a deferred payment agreement, local authorities **should** aim to have the agreement finalised and in place by the end of the 12-week disregard period which is provided for in the Financial Assessment Regulations (where applicable), or within 12 weeks of the person approaching the local authority regarding an agreement in other circumstances.
- 11.2 Decisions on a person's care and support needs, the amount they intend to defer, the property as security they intend to use and the terms of the agreement **should** only be taken following discussion between the local authority and the person. Once agreement in principle has been reached between the local authority and the person, it is the local authority's responsibility to include the details agreed into a deferred payment agreement, taking the legal form of a contract between the local authority and the person.

11.3 The local authority **must** provide a hardcopy of the deferred payment agreement to the person, and they should be provided with reasonable time to read and consider the agreement, including time for the individual to query any clauses and discuss the agreement further with the local authority.

11.4 The agreement must clearly set out all terms, conditions and information necessary to enable the person to ascertain his or her rights and obligations under the agreement. These **must** as a minimum include:

- (a) terms to explain how the interest will be calculated and that it will be compounded if it is to be added to the required amount to be deferred;
- (b) information as to administrative costs the individual might be liable for;
- (c) terms to explain how the person may exercise his or her right to terminate the agreement, which should explain the process for and consequences of terminating the agreement and specify what notice should be given (see the section entitled 'terminating the agreement' below);
- (d) terms to explain the circumstances in which the local authority might refuse to defer further care costs;
- (e) that the local authority will secure their debt either by placing a legal (Land Registry) charge against the property;
- (f) a term requiring the local authority to provide the person with a written statement every six months and within 28 days of request by the person, setting out how much the person owes to the authority and the cost to them of repaying the debt;
- (g) a term which explains the maximum amount which may be deferred and that this is likely to vary over time;
- (h) a term which requires the person to obtain the consent of the local authority for any person to occupy the property; and
- (i) an explanation that the local authority will stop deferring care costs if the person no longer receives care and support in a care home.

11.5 Local authorities should ensure at a minimum that people sign or clearly and verifiably affirm they have received adequate information on options for paying their care costs, that they understand how the agreement works and understand the agreement they are entering into; and that they have had the opportunity to ask questions about the agreement. A term reflecting this should be included in the agreement itself.

11.6 Local authorities **must** at a minimum provide people with six-monthly written updates of the amount of care costs deferred, of the interest and administrative costs accrued to date, of the total amount due and an estimate of the equity remaining in the home not covered by the required amount deferred. Local authorities **should** also provide the person with a statement on request within 28 days. Local authorities **may** provide updates on a more frequent basis at their discretion. The update should set out the required amount deferred during the previous period, alongside the total amount deferred to date, and should also include a projection of how quickly the required amount deferred would leave only the level of the capital limit entity in their property (at which point no further deferral against the value of the property could occur).

11.7 Local authorities **should** reassess the value of the chosen property used as security once the amount deferred exceeds 50% of the security (and periodically thereafter), and consider this amount against the level of the capital limit so as to ensure a person is left with at least the level of the capital limit equity in their property.

Termination of agreement

12.1 A deferred payment agreement can be terminated in three ways:

- (a) at any time by the person by repaying the outstanding care costs (including any outstanding interest and administrative costs) due in full (this can happen during a person's lifetime or when the agreement is terminated through the agreement holder's death);
- (b) when the property is sold and the authority is repaid; or
- (c) when the person dies and the amount is repaid to the local authority from their estate.

12.2 On termination, the full required amount deferred due must be paid to the local authority.

12.3 If a person decides sell their property, they should notify the local authority during the sale process. They will be required to pay the amount due to the local authority in full from the proceeds of the sale, and the local authority will be required to relinquish the charge on their property.

12.4 A person may decide to repay the amount due to the local authority from another source, or a third party may elect to repay the amount due on behalf of the person. In either case, the local authority should be notified of the person's/the third party's intention in writing, and the local authority **must** relinquish the charge on the property on receipt of the full amount due.

12.5 If the deferred payment is terminated due to the person's death, the amount due to the local authority must be either paid from the estate or paid by a third party. A person's family or a third party can settle the debt to the local authority by other means of repayment if they wish, so as to avoid selling the property against which the deferred payment agreement had been secured. Where they do, the local authority **must** accept an alternative means of payment in this case, provided this payment covers the full amount due to the local authority.

12.6 The executor of the will or Administrator of the Estate can decide how the amount due is to be paid; either from the person's estate or from a third party source.

12.7 A local authority **should** wait at least two weeks following the person's death before approaching the executor with a full breakdown of the total amount deferred (but a family member or the executor can approach the local authority to resolve the outstanding amount due prior to this point). Responsibility for arranging for repayment of the amount due (in the case of payment from the estate) falls to the executor of the will.

- 12.8 Interest will continue to accrue on the amount owed to the local authority after the person's death and until the amount due to the local authority is repaid in full. If terminated through a person's death, the amount owed to a local authority under a deferred payment agreement falls due 90 days after the person has died. After this 90 day period, if a local authority concludes active steps to repay the debt are not being taken, for example if the sale is not progressing and a local authority has actively sought to resolve the situation (or the local authority concludes the executor is wilfully obstructing sale of the property), the local authority may enter into legal proceedings to reclaim the amount due to it.
- 12.9 In whichever circumstance an agreement is terminated, the full amount due to the local authority must be repaid to cover all costs accrued under the agreement, and the person (and/or the third party where appropriate) must be provided with a full breakdown of how the amount due has been calculated. Once the amount has been paid, the local authority **should** provide the person or the appropriate third party with confirmation that the agreement has been concluded, and confirm (where appropriate) that the charge against the property has been removed.

Annex E – Review of Charging Decisions and Determinations

This annex covers:

- Reviews of a determination that a person is required to pay a charge for the care and support they receive, or of their liability as a transferee to pay an amount to a local authority where a transfer of assets has occurred to avoid charges;
- Reviews of the level of the charge or amount resulting from these.

General

- 1.1 The Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011 introduced the right for a person receiving non-residential care and support, or direct payments to secure the provision of such care and support, to request a review of a decision to impose a charge or require payment of a contribution or reimbursement for this. The principle was that where a person felt an inappropriate decision has been made, either in the level of the charge, reimbursement or contribution or in relation to the basis upon which the decision to impose this was made, the person should be able to request the local authority to review this in a consistent, clear manner. In line with the principles of dealing with a complaint, these Regulations specified that this initial review should involve the authority itself reassessing the decision made and deciding whether its original decision was correct, particularly where further information was now available.
- 1.2 The Care and Support (Review of Charging Decisions and Determinations) (Wales) Regulations 2015 (the “Regulations”), made under the Social Services and Well-being (Wales) Act 2014 (the “Act”), replace the 2011 Regulations and introduce a similar review process in respect of determinations of a charge, contribution or reimbursement, and the level of these, with both non-residential and residential care and support. They also extend reviews to situations where a person has been deemed to be a liable transferee, having received an asset with the intention of avoiding or reducing charges for a person deemed to be liable for a charge. This process does not seek to replicate or replace the wider formal complaints procedure which local authorities are required to operate under Part 10 of the Act (Complaints, Representations and Advocacy Services). Instead, it is to establish a consistent review process for such decisions so that where a person wishes a determination in relation to charging, or the level of a charge, reviewed, they will be able to ask an authority to do this in a relatively straight forward way and in doing so, potentially obviate the need for a person to make a formal complaint to the authority.
- 1.3 It is hoped the vast majority of these requests would be satisfactorily resolved through the review process. Where, however, a person is still unhappy with an authority’s determination they will, as now, be able to make a formal complaint about this to an authority to be considered through its formal complaints procedure. This would be where they consider the authority has not made a properly considered decision in determining their review, e.g. not following its charging policy or not properly considering relevant information.

- 1.4 Local authorities **must** operate a review process as set out in the Regulations and this code to enable reviews to be sought of a determination of a charge, contribution or reimbursement, or the level of these, or where a person has been deemed to be a liable transferee.
- 1.5 In this annex future references to “charge” should be construed to include reference to a contribution or reimbursement set for direct payments provided to a person to secure care and support they require.

Operation of the Review Process

- Making a request for a review
- 2.1 Regulation 3 (Persons who may request a review) of the Regulations sets out the persons who can request a review. These are:
- those upon whom a charge has been imposed for the care and support they will, or already, receive as described in section 60 of the Act (Persons upon whom charges may be imposed). Such persons will include adults whose needs are met under Part 4 of the Act (Meeting Needs), including where support is to be provided, or is already being provided, to meet an adult carer’s needs;
 - those who are required to pay a contribution or make a reimbursement for the care and support they will, or already, secure through receipt of direct payments as described in section 50 to 53 of the Act (Direct Payments). Such persons will include adults whose needs are met under Part 4 of the Act by the making of direct payments, including where support is provided, or is already being secured, by the receipt of direct payments to meet an adult carer’s needs;
 - a liable transferee as defined in section 72 of the Act (Transfer of assets to avoid charges) who has received a transfer of an asset from a person whose needs have been or are being met by a local authority with the sole intention of avoiding charges for meeting that need.
- 2.2 Regulation 4 (Circumstances in which a review may be requested) of the Regulations sets out the circumstances where a review can be requested. These range from a local authority not having complied with any of the duties placed on it by relevant parts of the Act, the regulations and this code, to it not following its agreed charging policy, to it not taking into proper account relevant information connected with the determination of the charge made or the level of this. The circumstances also include certain factual disputes such as whether care and support, in respect of which a charge has been imposed, has in fact been provided or, in the case of a liable transferee, that the asset was not transferred with the intention of avoiding charges for care and support. Where a person’s financial circumstances change (such as where a change in their welfare benefits occur or where there is an annual change in the level of their benefits or state pension) it is envisaged that local authorities will re-assess the charge for which a person may be liable, or that the person may request this. Such circumstances **do not** give rise to a review request. Only where the person is unhappy with the outcome of a re-assessment are they able to seek a review under the circumstances set out in regulation 4.

- 2.3 Local authorities **must** have a review process in place which considers requests for a review from the individuals listed above in the circumstances listed in regulation 4. Authorities **must** consider requests for reviews made at any time after a local authority has made a determination to impose a charge, set the level of this or deem a person to be a liable transferee, and communicated that to the person to be charged.
- 2.4 A request **must** state which circumstance(s) in regulation 4 it is being made in accordance with and provide the reason(s) for the review being made. Local authorities **must** consider requests for a review made both in writing and orally; see regulation 5 (Process for requesting a review) of the Regulations.
- 2.5 A request for a review can, in accordance with regulation 6 (Representatives) of the Regulations, be made by a representative on behalf of the person seeking the review, either for the whole of the review or for such part as the person wishes. This can be, for example, a friend or relative appointed by the person, or a formal advocate whom they wish to act for them. In either case the person **must** provide the local authority with their authorisation for this, either orally or in writing. Where the person does this orally, the local authority **must** provide a statement to the person and their representative confirming this appointment and the extent of the representative's involvement in the review, i.e. whole or part. A person appointing a representative for a review **must** be allowed to withdraw their consent for this at any time during the period of the review should they wish to do so. Notice of this **must** be able to be made either orally or in writing.
- Appointing a person to deal with a request for a review
- 2.6 Under regulation 7 (The appointed person) local authorities **must** appoint a suitably trained staff member to deal with a review request made but not to make the decision upon it (referred to for these purposes as the "appointed person"). The appointed person **must** be familiar with the requirements of the Act, Regulations and this code in relation to such reviews. It is good practice to include contact details for such staff in the section of a statement of a charge issued to a person in accordance with the Care and Support (Charging) (Wales) Regulations 2015 (the "Charging Regulations") so as to provide that person with this information, together with information on how to access this review process, should they subsequently wish to seek a review. It is also a requirement under regulation 10 (Acknowledgement of the request) of the Regulations for the appointed person's contact details to be included in an acknowledgement of a valid review request made.
- Withdrawing a request for a review
- 2.7 A person, or their representative, can withdraw a request for a review at any time while it is being considered, either orally or in writing, by informing the local authority's appointed person. Where this occurs the local authority **must** provide a statement to the person and any representative to confirm that the request has been withdrawn and that no further action on it will be taken as a result.
- Acceptance of a request for a review

- 2.8 Where a previous request for a review has been dealt with and a subsequent request is made by the same person in connection with the same circumstances, under regulation 9 (Acceptance of the request) of the Regulations an authority is under no duty to consider this if it believes that there has been no material change in any of the circumstances listed in regulation 4 of the Regulations that gave rise to the original request being made. Where this occurs an authority **must** send a statement to the person and any representative that the subsequent request will not be considered and provide its reason(s) for this of believing there has been no material change in any of the circumstances listed in regulation 4 that gave rise to the previous request and that no additional information or circumstances has been provided to justify a second review of the same circumstances.
- 2.9 Where a request for a review is from a person listed in regulation 3 of the Regulations (listed above in 2.1), or their representative, and relates to one or more of the circumstances listed in regulation 4 (outlined above in 2.2), a local authority **must** consider this request in accordance with the requirements of the Act, the Regulations and this code.
- Acknowledgement of a request for review
- 2.10 A local authority **must** within 5 working days of receiving a valid request for a review (which complies with requirements of regulations 3, 4 and 5), send the person making the request, or their representative, a statement of acknowledgement confirming receipt of the request and which provides key information with regard to the review. That information is set out in regulation 10 (Acknowledgement of the request) of the Regulations and covers such information as confirmation of the basis of request, what further information or documentation the authority requires to process the review, that this can be provided by means of a visit to their home or other place if they wish, how the authority will process the review and, where they have not done so already, that person can appoint a representative if they wish.
- 2.11 If the person making the request for a review is a liable transferee, the acknowledgement **must** also indicate if the authority intends to request information or documentation from a person other than the person requesting the review and what information or documentation will be requested, if any. Where the local authority is requesting information or documentation from another person, it **must** send that person a statement requesting this which contains the information listed at regulation 10 (3) of the Regulations.
- 2.12 Where a local authority considers it can make a decision on a valid review requested on the basis of the information and documentation contained within it, and can make that decision within 5 working days, the requirements of 2.10 and 2.11 do not apply.
- Payment of the charge, reimbursement or contribution during the review
- 2.13 The acknowledgement to be issued under regulation 10 (as set out above at 2.10 and 2.11) **must** inform the person requesting the review, or their representative, that the charge which is the subject of the review (or the part of this which is the subject of the review) does not need to be paid during the period of the review, if the person wishes.

- 2.14 Where a person does not wish to pay a charge (or a part of this) during the period of the review, they or their representative must confirm this to the authority orally or in writing within 5 working days of receiving the acknowledgement of their request. Where this occurs a local authority **must not** collect the charge or relevant part of this during the period of the review. However, a person's liability for these payments remains. Consequently, the acknowledgement **must** also inform the person or their representative whether or not it is the authority's policy to recover such unpaid amounts once the review has been completed should it transpire that the person is liable for them.
- 2.15 In the case of those who pay a contribution for direct payments so that they would normally receive direct payments net of this deduction, for the review period an authority **must** pay the direct payments gross without this deduction should the recipient elect not to pay the contribution during the period of the review. This is so that these individuals are treated in a comparable way to those who receive their care and support direct from a local authority.
- Time limit for providing further information or documentation
- 2.16 If a local authority reasonably requires further information or documentation to process a review request, the person requesting the review or their representative must provide this within 15 working days of the date that the request for this was made in the acknowledgment outlined in 2.10 and 2.11 above. It would be good practice before the end of this period to remind a person or their representative of the timescale for submitting the information or documentation requested, where this was yet to be provided.
- 2.17 Under regulation 12 (Time limit for the provision of further information or documentation) within this timescale the person or their representative can ask, either orally or in writing, for an extension of time in which to provide the required information or documentation. For example, a person may have difficulty in obtaining certain documents required or in contacting certain individuals or organisations that hold such documents or information required. This equally applies where a local authority requests information or documentation from a third person in relation to a review involving a liable transferee. The request for the extension must, therefore, explain the reason(s) for this request.
- 2.18 Authorities **must** grant any reasonable request for such an extension and confirm to the person, or their representative, that this has been done and the revised time to submit the information or documentation. This confirmation **must** be in writing. If for any reason an authority does not grant a request for an extension, it **must** confirm this to the person, or their representative, and provide its reason(s) for not agreeing to this extension request.
- 2.19 In accordance with regulation 11 (Home visit) of the Regulations the person requesting the review, or their representative, may notify the appointed person orally or in writing that they intend to comply with any request for further information or documentation referred to at 2.16 above during a home visit. Where such notification is received, an authority **must** carry out a home visit for the purposes of obtaining this further information or documentation.

2.20 Under regulation 12 (Time limit for the provision of further information or documentation) of the Regulations should a local authority not receive the requested information or documentation to process the review, or any request to extend the time for submitting this, within the 15 working days allowed for submitting this, it may treat the request for the review as if it had been withdrawn. If this occurs the local authority **must** send a statement to the person who sought the review, or their representative, containing the information required in regulation 12 (6) of the Regulations to confirm this has been done and that the charge it related to is now payable, the amount(s) due and the date by which this must be paid. This statement **must** be in writing.

2.21 In the event that a local authority does not receive information or documentation from a third person in connection with a review involving a liable transferee within the 15 working days, or a request for an extension of time during this period, the local authority **must** send a statement to that third person, the person requesting the review and any representative. This **must** include the information required in regulation 13 (3) (Provision of information or documentation by a person other than the requester) of the Regulations, confirmation that the third party has failed to provide the information or documentation requested, that the authority will make a decision on the review on the basis of the information or documentation it has available and that the failure to provide the information or documentation requested may have an adverse impact upon the decision made. If the information or documentation is provided after the time limit for providing it has expired but before a decision upon the review is made, a local authority may take that information or documentation into account when making the decision.

- Deciding a review

2.22 Under regulation 14 (Decision) of the Regulations as soon as possible, and in any event within 10 working days of receiving sufficient information or documentation to enable it to determine a review, the local authority **must** make a decision upon it and identify the action necessary to implement that decision. It **must** send a statement to the person who requested the review, and any representative, containing the information required in regulation 14 to confirm the decision, the reason(s) for that decision and whether the person's charge has been amended as a result. If the decision results in an amendment of the charge the authority **must** also send the person and any representative a statement of the amended charge issued to a person in accordance with regulation 14 (1) of the Charging Regulations.

2.23 Should a local authority only receive partial requested information or documentation to process the review (either within the 15 working days outlined above or within an extended period of time), a local authority **must** within 10 working days of the end of the later of these periods make a decision upon the review on the basis of the available information or documentation. It **must** also determine what action is necessary to implement that decision and send a statement to the person who requested the review, and any representative, containing the information required in regulation 14 of the Regulations to confirm the decision, the reason for that decision and whether the person's charge has been amended as a result. If the decision results in an amendment of the charge the authority **must** also send the person and any representative a statement of the amended charge issued to a person in accordance with regulation 14 (1) of the Charging Regulations.

2.24 Where an authority is unable to make a review decision within the 10 working days it **must** as soon as possible, but in any event within this period, provide the person who requested the review, or any representative, with a statement containing the information required under regulation 14 (3) of the Regulations to confirm this fact, the reason(s) for it and the date by which a decision will be made. It **must** also inform the person that if they wish, they can elect not to pay the charge which is the subject of the review while the review is being completed. The person, or any representative, may then do this if they wish by notifying the authority orally or in writing. A local authority **must** make it clear in this statement that charges that would have accrued during this extended period are not recoverable by the authority irrespective of the outcome of the review and local authorities **must not** seek to collect such amounts.

- Basis for a review decision

2.25 Local authorities **must** designate appropriate officers of the authority to make decisions on reviews. This could be an appropriate officer of a similar standing to the one who took the original decision which is the subject of the review, but who was not involved in the making of the original decision; or section head(s); or head of service(s); or a Director of Social Services. Whatever decision making process is used, local authorities **must** ensure that this is fair, open and impartial, supporting the principles of natural justice.

2.26 Regulation 14 (4) of the Regulations sets out the factors which those taking a decision on a review **must** take into account. This lists the relevant legislation to consider, as well as the financial circumstances of the person who is the subject of the review and the circumstances that impact upon their ability to pay a charge.

2.27 In undertaking a decision on a review, as well as considering whether the person concerned has the financial means to pay a charge and the impact upon their independence of so doing, local authorities **must** take into account any wider “financial hardship” a person may have as a result of their impairment, medical condition or personal circumstances. This could be, for example, unpredicted household expense where the person needs to urgently spend to replace a loss, a sudden change in their income (such as being made redundant) or an unpredicted domestic crisis (such as someone being moved to a place of safety where they need to urgently buy clothing and household items).

- Payment of charges after review period

2.28 A local authority **may**, where the person who is the subject of the review has elected not to pay a charge during the review period, seek to recover any unpaid amounts following the completion of the review but it is **not** obliged to do so. The amount that can be recovered would be the amount of the charge the authority has decided is now correct as a result of the outcome of the review.

2.29 A local authority **must not** recover any amount that accrued from the time it extended the period on the review to the time the review was completed. Where an authority seeks to recover unpaid amounts it **must** have regard to the person’s financial circumstances and be satisfied that the recovery of this would not cause them undue financial hardship. If it considers this to be the case, then it **must** offer the person the option of repaying the amount in periodic instalments.

2.30 Regulation 15 (Payment of the charge during and after the review) of the Regulations sets out the detail of the payment of the charge, reimbursement or contribution during and after the review period, which local authorities **must** follow in this situation.

- Provision of statements and information

2.31 Where local authorities are required to provide a statement or information to a person seeking a review, or their representative, this **must** be provided in writing and in any format appropriate to meet the communication needs of the person and their representative.

Annex F – Recovery of Debt and Deprivation of Assets

Section 1 of this annex covers:

- The principles underpinning the approach to debt recovery;
- Options for debt recovery;
- Processes around debt recovery.

Section 2 of this annex covers:

- The deprivation of assets in order to avoid or reduce charges for care and support;
- Identifying possible deprivation;
- What happens where deprivation of assets has occurred;
- Recovering charges from a third party (a transferee).

Section 1 - Recovery of Debt

General

- 1.1 This annex of the code applies where a person has accrued a debt in relation to charges made under section 59 (power to impose charges) of the Social Services and Well-being (Wales) Act 2014 (“the Act”) for care and support arranged or provided for that person, or support provided where that person is a carer, by a local authority.
- 1.2 The general provisions governing a local authority’s recovery of a debt are set out in section 70 (Recovery of charges, interest etc) of the Act. In considering the recovery of debts local authorities must abide by the requirements of that section and of this annex to the code of practice.
- 1.3 Where a person accrues a debt the local authority **should take** all reasonable steps to ascertain the reason this has occurred and **must not** assume that the person is deliberately not meeting a charge imposed for care and support, or for support if a carer. A local authority **must** seek to establish the reason for a debt accruing and only where it is clear that it is as a result of a person’s deliberate non-payment **should** they consider debt recovery.
- 1.4 In dealing with debts local authorities **should** bear in mind that they are bound by the public law principle of acting reasonably at all times and **must** act not only in accordance with powers they have in relation to debts under the Act but also in accordance with the principles established in the human rights legislation. However, a local authority **must**, where it is clear non-payment is deliberate and it has decided to collect the debt which has accrued, pursue all other reasonable options to do this before using their debt recovery powers under section 70 (Recovery of charges, interest, etc.) of the Act, including taking court action if this is considered appropriate in the particular case.

Recovery of Debt

- 2.1 When designing its system for debt recovery, local authorities **should** be aware of the client group with which they are dealing. Unlike council tax or rent arrears debt, a local authority is not dealing with a potentially healthy general population but those with a physical or sensory impairment, or potentially older frail people. All debt recovery systems **must** therefore be designed with a full understanding of the needs and characteristics of these clients given that financial assessment and charging processes can be confusing and complex. The recovery of debt from those in this situation is therefore a sensitive issue given their potential vulnerability and a local authority's ultimate responsibility to meet needs.
- 2.2 Local authorities **must** bear in mind that there are a number of genuine reasons why a debt may occur and they **must** consider each case on the merits of its specific circumstances before undertaking any form of formal debt recovery. Given this, local authorities **must** where a debt occurs:
- ensure the person concerned understands the nature of the debt which has occurred and the consequences of this;
 - establish why the debt has occurred and whether this is a temporary situation which could be overcome or permanent which may not;
 - decide on the basis of the circumstances of the case whether it is appropriate to recover the debt and if so, whether to recover all of the debt or a reasonable proportion;
 - if a debt or part of a debt is to be recovered, consider and propose a method of doing so and if possible, agree this with the person including how this would operate. Where this occurs local authorities **must** ensure repayments are affordable for the individual and do not put the person at undue financial risk of not being able to afford other reasonable living costs.
- 2.3 Only where these are exhausted and a solution is not found and a local authority thinks it is appropriate to continue to recover a debt, **should** it consider formal debt recovery action under section 70 of the Act, including action through the courts where appropriate.
- 2.4 Before pursuing any debt recovery, either through a negotiated arrangement or formal action under the Act, a local authority **must** consider whether it is appropriate to recover the debt which has accrued, either in full or a proportion of it. For example, the expense in recovering a small debt, or a debt of a temporary nature, may be disproportionate to the amount that would be collected. It **should** also consider the impact on a person's financial position and/or well-being the recovery of debt may have, in line with a local authority's general duty to promote a person's well-being.

Timing of debt recovery

- 3.1 The point at which a debt becomes due continues to be the date at which the amount imposed becomes due to the local authority. This means that, for example, if an invoice was issued giving 30 days to pay, the payment becomes due on day 30 and a debt accrues if this is not met.

3.2 For any debts that have accrued prior to the commencement of the Act the time period for recovering that debt will continue to be three years as set out under section 56 of the National Assistance Act 1948. For debts that occur after the commencement of the Act, the time period to recover these will now be six years from the date when the amount imposed became due to the local authority but was not paid. Where a debt takes time to be recovered, provided legal proceedings have commenced within this six year limitation period, recovery can continue. If it has not, and this period is reached, the debt **must** be written off.

Options to recover debt

4.1 Where a debt is to be collected local authorities **should** explore the full range of options available to recover this. This is to ensure that the appropriate method is chosen without undue expense on the authority or undue impact on the person concerned. This is particularly important should a debt ultimately become subject to court proceedings as the court will want to consider what alternatives have been taken by the local authority to resolve the issue before court action was sought. If no effort has been made to reach an agreement first, not only may this result in an authority prematurely taking court action but may also be held by the court against the local authority when considering its judgement.

4.2 The greater the person's care needs, the more effort should be made to resolve the issue positively through the use of effective social work skills. Options may include negotiation, mediation and arbitration with court action only being taken as a last resort.

4.3 Local authorities **must** not send threatening letters demanding payment to those accruing debts and **should** always engage with those in this position to establish a dialogue. As a first step, a local authority **should** contact the person concerned to alert them to the situation, to ascertain why a debt has occurred and to establish whether the debt is to be met and if so, agree how this is to occur. This **should** be through personal contact with the person, which could be by telephone or by a visit, as an authority considers appropriate. Where this does not resolve the situation and the debt remains, a local authority **should** consider a number of alternative options to resolve the situation which include, but is not limited to, the following:

- Negotiating an agreement - an agreement on repayment of the debt could be negotiated by the local authority either directly with the person concerned or through a third party, such as an advocate to assist the person to understand the options available as regards repayment;
- Mediation – an agreement on repayment could be reached through an independent third party who assists the local authority and the person concerned to reach agreement. This could be carried out by a professional mediation service, or a person or organisation not involved in the case, such as an independent social worker or a local voluntary organisation. In these circumstances the local authority and the person must ultimately agree the course of action and not the mediator;
- Arbitration – a resolution could be reached which involves an independent arbitrator hearing both sides of the case and making a decision on behalf of the parties. If this option is chosen local authorities need to be aware that arbitration is usually binding on both sides and therefore, if it were not happy with an outcome it could not usually subsequently take a case to court.

- 4.4 In many cases the situation will be resolved through one of the above approaches or similar action, with an agreed repayment of the debt. Only where this does not occur **should** an authority consider whether to pursue recovery of the debt further.

Recovering debt where a person has a legal interest in property

- 5.1 Where a debt has accrued in relation to a person who is in receipt of care and support in a care home, and a financial assessment has determined that they have an interest in an eligible property, they **must** be offered the choice of meeting this debt through a deferred payment agreement (DPA) where they are eligible for an agreement. The operation of DPAs, and eligibility for them, is set out in the Care and Support (Deferred Payment) (Wales) Regulations 2015 (the “Deferred Payment Regulations”) and Annex D of this code. Where a person has accrued a debt and meets the eligibility criteria for a DPA, they **must** be offered the choice of entering into a DPA as a means of repaying this.
- 5.2 This option could be attractive to a person as it is a relatively simple way of meeting the debt without causing them immediate financial problems. It is also attractive as the interest rate that can be applied to a DPA is set by the Deferred Payment Regulations and is lower than the maximum amount a court can apply should an authority ultimately seek recovery of the debt through the courts. A local authority might also consider this option more viable as it will ensure the debt is secured, is at less risk of default and is likely to be quicker to secure than taking court action should that be ultimately required.

Creation of a charge over an interest in property

- 6.1 Where a person who has accrued a debt has an interest in a property and declines the option of a DPA, or does not meet the eligibility criteria for a DPA, a local authority can, if it considers it appropriate, create a charge over that property under section 71 (Creation of a charge over an interest in land) of the Act to secure payment of the debt. Section 71 sets out the requirements where an authority wishes to pursue the recovery of a debt through this method and **must** be followed in all such circumstances.

Recovery of a debt through the courts

- 7.1 Only where a local authority has exhausted all reasonable options to recover a debt which it considers appropriate to recover, should it consider taking action through the courts. Where such action is ultimately considered, the HM Courts and Tribunals Service has developed a number of leaflets to help guide those taking action through the court process. These can be found at:

<http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>

Section 2 - Deprivation of Assets

General

- 8.1 This section of the code applies where a local authority believes that a person has deliberately deprived themselves of assets to avoid or reduce charges made under section 59 (power to impose charges) of the Act for care and support arranged or provided for that person, or support provided where that person is a carer, by a local authority.

- 8.2 The general provisions governing such circumstances are set out in section 70 (Recovery of charges, interest, etc) in relation to a person and section 72 (Transfer of assets to avoid charges) of the Act in relation to a third party (a transferee). In considering how to deal with such circumstances local authorities **must** abide by the requirements of these sections and of this annex of the code of practice.
- 8.3 For the purposes of this section of the code “assets” means capital and/or income.

Identify possible deprivation

- 9.1 When undertaking or reviewing a financial assessment, or determining or reviewing a person’s charge a local authority may identify circumstances that suggest that a person may have deliberately deprived themselves of assets in order to reduce, or avoid, the financial contribution they are required to make towards the cost of their care and support.
- 9.2 Where a local authority believes that deprivation may have occurred it **should take** all reasonable steps to ascertain if this has occurred and if so, the reason for this. It **must not** assume that the person is deliberately depriving themselves of the relevant assets to reduce or avoid a charge which has been imposed for their care and support, or for support if a carer. A local authority **must** seek to establish the reason for the deprivation where it has occurred and only where it is clear that it is as a result of a person’s deliberate action should they consider further action.
- 9.3 In dealing with such cases local authorities **should** bear in mind that they are bound by the public law principle of acting reasonably at all times and **must** act not only in accordance with powers they have in relation to deprivation of assets in the Act but also in accordance with the principles established in the human rights legislation. Given this a local authority **must**, where it is clear deprivation has occurred and it has decided to collect the debt which results from this, pursue all other reasonable options to collect this before using their deprivation powers under sections 70 or section 72 of the Act, including taking court action if this is considered appropriate in the particular case.
- 9.4 Local authorities **should** be aware of the client group with which they are dealing. Unlike council tax or rent arrears debt, a local authority is not dealing with a potentially healthy general population but those with a physical or sensory impairment, or potentially older frail people. Hence in considering potential cases of deprivation local authorities should bear in mind the needs and characteristics of these clients given that financial assessment and charging processes can be confusing and complex. The recovery of a resultant debt from those in this situation is therefore a sensitive issue given their potential vulnerability and a local authority’s ultimate responsibility to meet needs.
- 9.5 Local authorities **must** bear in mind that there are a number of genuine reasons why apparent deprivation may have occurred and **must** consider each case on the merits of its specific circumstances before undertaking any form of formal debt recovery. Given this, local authorities **must** where it believes deprivation may have occurred follow a similar set of actions to those described in paragraph 2.2 in relation to debts, to alert the person to the fact that deprivation may have occurred, to establish what the deprivation has entailed, the reason for this and if possible where deprivation has occurred, to agree a solution.

What is meant by deprivation of assets

10.1 Deprivation of assets has occurred where a person has intentionally deprived or decreased their overall assets in order to reduce or remove any charge imposed for their care and support, or support if a carer. This means that they must have made a conscious decision to do this in the knowledge that to do so would have such an effect on their charge.

10.2 Where an asset has been used by a person to meet any debt that would otherwise remain, even if that is not immediately due, this **must not** be considered as deprivation but as a normal use of financial resources by a person to meet expenses.

Has deprivation of capital occurred

11.1 It is up to the person to prove to the local authority that they no longer own a capital asset. If they are not able to, the local authority may assess them as if they still had the asset. For capital assets, acceptable evidence of their disposal would be:

- (a) A trust deed;
- (b) Deed of gift;
- (c) Receipts for expenditure;
- (d) Proof that debts have been repaid.

11.2 A person can deprive themselves of capital in many ways, but common approaches may be:

- (a) A lump-sum payment to someone else, for example as a gift;
- (b) Substantial expenditure has been incurred suddenly and is out of character with previous spending;
- (c) The title deeds of a property have been transferred to another person;
- (d) Assets have been put in to a trust that cannot be revoked;
- (e) Assets have been converted into another form that would be subject to a disregard under a financial assessment, for example personal possessions;
- (f) Assets have been reduced by living extravagantly, for example buying an expensive sports car;
- (g) Assets have been used to purchase an investment bond with life insurance.

11.3 Apparent deprivation will not be deliberate in all cases. Questions of deprivation therefore should only be considered where the person ceases to possess assets that would have otherwise been taken into account for the purposes of a financial assessment or has turned the asset into one that is now disregarded in an assessment.

11.4 As there are many reasons for a person depriving themselves of an asset, a local authority **should** consider the following before deciding whether deprivation has deliberately occurred and whether as a result, it wishes to pursue any resultant lost income:

- (a) Whether avoiding or reducing a charge was a significant motivation;
- (b) The timing of the disposal of the asset. At the point the capital was disposed of could the person have had a reasonable expectation of the need for care and support, even if at this point they were not yet receiving this; and
- (c) Would the person have had a reasonable expectation of needing to contribute towards the cost of this either now or at some future point.

11.5 It would be unreasonable to decide that deprivation had occurred where if at the time the disposal took place they were fit and healthy and could not have foreseen any need for care and support in the foreseeable future.

Has deprivation of income occurred

12.1 It is also possible for a person to deliberately deprive themselves of income. For example, they could give away or sell the right to an income from an occupational pension.

12.2 It is up to the person to prove to the local authority that they no longer have the income. Where a local authority considers that a person may have deprived themselves of income, they may treat them as possessing notional income for the purposes of a financial assessment.

12.3 The local authority will need to determine whether deliberate deprivation of income has occurred and if so, what action to take as a result of this. In doing so it should consider:

- (a) Was it the person's income;
- (b) What was the purpose of the disposal of the income;
- (c) The timing of the disposal of the income. At the point the income was disposed of could the person have had a reasonable expectation of the need for care and support, either now or at some point in the future.

12.4 In some circumstances the income may have been converted into capital. The local authority should consider the level of the capital limit and whether the subsequent change made a material change to the charge which was imposed for the person's care and support, or support if a carer.

Local authority investigations

13.1 In some cases a local authority may wish to conduct its own investigations into whether deprivation of assets has occurred rather than relying solely on the declaration of the person. There is separate guidance under the Regulation of Investigatory Powers Act 2000 which sets out the limits to a local authority's powers to investigate. Local authorities **must** have regard to that Act in any investigations it undertakes.

What happens where deprivation of assets has occurred

14.1 If a local authority decides a person has deliberately deprived themselves of assets to avoid or reduce a charge for care and support, they will first need to decide whether to pursue this and treat the person as if they still had the asset for the purposes of their financial assessment.

- 14.2 If an authority decides to do so it **should** treat the asset as notional capital or notional income, as appropriate, in the person's financial assessment as if the deprivation had not occurred.
- 14.3 If the person in depriving themselves of an actual resource so as to reduce the remaining value of their capital or income, then for the purposes of the person's financial assessment they should be treated as notionally possessing the difference between the value of their current resources and the resources which they use to hold.

Recovering charges from a third party (a transferee)

- 15.1 Where the person has transferred the asset to a third party (a transferee) to deliberately reduce or avoid a charge, the transferee is liable to pay the local authority the difference between what it would have collected and what it did collect as a consequent of the transfer. However, the transferee is not liable to pay anything which exceeds the benefit they have received as a result of the transfer.
- 15.2 If the person has transferred assets to more than one transferee, each of those people is liable to pay the local authority the difference between what it would have collected and what it did collect in charges as a result of the transfer, in proportion to the amount they received.
- 15.3 As with any other debt, the local authority can ultimately use the courts to recover debts should they wish, but this **should only** be used after other avenues of securing the debt have been exhausted. When pursuing the recovery a local authority **should** do so in accordance with the first section of this annex on debt recovery.

Other recovery routes

- 16.1 Local authorities may also want to consider other options that may be available to them in the recovery of debts. For example, Section 423 of the Insolvency Act 1986 provides additional routes to recover debts where a person may have transferred or sold their assets to a third party at a price that is lower than the market value. This is with the intention of putting those assets out of reach or, or prejudicing the interests of, someone who may wish to bring a claim against that person. In considering such options, a local authority **should** obtain its own legal advice.

Appendix 3 - Glossary of Terms

Short term care/respite	Temporary care in a residential or nursing home to provide relief from a caring role undertaken by their usual carer
Income Disregard	Income which is not taken into account when calculating available income to pay for care and support.
Disability Living Allowance (Care) DLA Care	Disability Living Allowance is a welfare benefit that helps with extra costs that disabled people face as a result of their disabilities. DLA is not means tested and it is tax free. You don't need to have paid National Insurance contributions to claim DLA
Attendance Allowance (AA)	Attendance Allowance is a Welfare Benefit awarded to help with personal care because a person is physically or mentally disabled and aged 65 or over. It's paid at 2 different rates and how much a person gets depends on the level of care that they need. AA is not means-tested and is tax free.
Financial Assessment	A means-tested calculation carried out by Local Authorities to ascertain what income a person has available if any to pay towards their care and support. It is subject to a minimum income amount. Which guarantees the person is left with enough money to live on and pay their bills. It is also subject to a maximum weekly contribution of £60.00 per week.

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Report To: Cabinet
Date of Meeting: 26th April 2016
Lead Member / Officer: Councillor Barbara Smith
Report Author: Catrin Roberts
Title: **Members Involvement in Employment Appeals**

1. What is the report about?

The report relates to the involvement of members in some employment processes.

2. What is the reason for making this report?

To gain Cabinet agreement to change the requirement for members to be involved in Disciplinary and Job Evaluation Appeals.

3. What are the Recommendations?

That Cabinet agrees that there is no requirement for members to be involved in Disciplinary and Job Evaluation Appeals.

That Cabinet agrees that Disciplinary Appeals will be heard by the next level of manager, another manager, appropriate Head of Service or Director. Where there is an appeal against dismissal then a two HoS/Director Panel would be convened.

That Cabinet agrees that Job Evaluation Appeals will be chaired by a Head of Service with one management representative and one trade union representative.

4. Report details

Members are currently involved in disciplinary and job evaluation appeals. All other appeals are heard either by the managers' manager, the Head of Service or another appropriate manager/Head of Service/Director.

The purpose of the Appeal (as defined by ACAS) is to consider if the process was procedurally fair and whether the penalty given is in the range of reasonableness. The process should deal with the appeal impartially and where possible by "a manager" not previously involved in the case. ACAS guidance also states that an Appeal should be heard without unreasonable delay.

The constitution also states that:

In consultation with Head of Strategic Human Resources where appropriate, each Chief Officer is authorised to act in relation to staffing matters in accordance with any relevant HR Policies and to appoint staff below Chief Officer Level.

Effectively the councillor's role is around strategic issues with the day-to-day management and operational issues delegated to officers. Disciplinary appeals and job evaluation appeals are an operational management process and not a democratic process. It is therefore proposed that appeals for these two processes are dealt with at officer level with no member involvement.

This means that for Disciplinary Appeals this would replicate the current process for Grievances, Absence and Capability which requires the appeal to be heard by the next level of manager, another manager, appropriate Head of Service or Director. Where there is an appeal against dismissal then a two HoS/Director Panel would be convened.

This approach will comply with the ACAS code of practice that states that "an Appeal process should deal with the appeal impartially and where possible by a manager not previously involved in the case.

For Job Evaluation appeals, it is proposed that a Head of Service chairs with one management representative and one trade union representative.

5. How does the decision contribute to the Corporate Priorities?

This does not impact on Corporate Priorities.

6. What will it cost and how will it affect other services?

There is no additional costs associated with this and there is no impact on services.

7. What are the main conclusions of the Equality Impact Assessment (EqIA) undertaken on the decision? The completed EqIA template should be attached as an appendix to the report

There is no impact on any of the protected characteristics in implementing this decision.

8. What consultations have been carried out with Scrutiny and others?

This has been discussed numerous times as part of the Corporate Joint Meeting. A report was taken to LJCC on the 10th February 2016. The Trade Unions were in agreement with the proposal but some members expressed concerns as this impacted on the remit of their role.

This has also been discussed with the Lead Officer for HR and SLT.

9. Chief Finance Officer Statement

Not applicable.

10. What risks are there and is there anything we can do to reduce them?

There are no risk associated with this proposal.

11. Power to make the Decision

Local Government Act 2000 and regulations made thereunder.

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Members Involvement in Appeal Panels 6th April 2016

Equality Impact Assessment

Fixed Term Contracts Policy

Contact: Catrin Roberts, HR Services Manager

Updated: 06.04.2016

1. What type of proposal / decision is being assessed?

A new procedure

2. What is the purpose of this proposal / decision, and what change (to staff or the community) will occur as a result of its implementation?

The purpose of the proposal is that appeals for disciplinary meetings and job evaluations are dealt with at officer level with no member involvement. This continues to remain in line with ACAS guidance and code of practice. There will be a change the Denbighshire County Council's Appeal Procedure, Disciplinary Policy and Job Evaluation policy.

Disciplinary appeals heard by the next level of manager, another manager, appropriate Head of Service/Director. Where there is an appeal against a dismissal, then a two Head of Service/Director would be convened.

Job Evaluation Appeals will be chaired by a Head of Service with one management representative and one trade union representative.

3. Does this proposal / decision require an equality impact assessment? If no, please explain why.

*Please note: if the proposal will have an impact on people (staff or the community) then an equality impact assessment **must** be undertaken*

Yes

4. Please provide a summary of the steps taken, and the information used, to carry out this assessment, including any engagement undertaken

(Please refer to section 1 in the toolkit for guidance)

An assessment of protected characteristics and the effects of this policy on those protected characteristics has been undertaken.

Consultation has taken place with the usual CJM and recognised trade unions.

This procedure was also taken to LJCC on 10th February.

- 5. Will this proposal / decision have a positive impact on any of the protected characteristics (age; disability; gender-reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation)?**
(Please refer to section 1 in the toolkit for a description of the protected characteristics)

This procedure has a neutral effect on the protected characteristics as the procedure will be the same for all employees regardless of their characteristic.

- 6. Will this proposal / decision have a disproportionate negative impact on any of the protected characteristics (age; disability; gender-reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation)?**

No, this procedure will have a neutral effect on the all protected characteristics

- 7. Has the proposal / decision been amended to eliminate or reduce any potential disproportionate negative impact? If no, please explain why.**

No	Not applicable
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- 8. Have you identified any further actions to address and / or monitor any potential negative impact(s)?**

No	Not applicable
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Action(s)	Owner	By when?

9. Declaration

Every reasonable effort has been made to eliminate or reduce any potential disproportionate impact on people sharing protected characteristics. The actual impact of the proposal / decision will be reviewed at the appropriate stage.

Review Date:	06.04.2017
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Name of Lead Officer for Equality Impact Assessment	Date
Catrin Roberts	06.04.2016

Report To: Cabinet

Date of Meeting: 26 April 2016

Lead Member / Officer: Barbara Smith, Lead Member for Modernisation and Housing. Gary Williams, Monitoring Officer/Head of Legal, HR and Democratic Services.

Report Author: Lisa Jones, Deputy Monitoring Officer/Solicitor

Title: Officer Scheme of Delegation

1. What is the report about?

1.1 To provide Cabinet with the updated Officer Scheme of Delegation.

2. What is the reason for making this report?

2.1 To ensure Officers' executive powers are properly delegated to them in order to lawfully carry out the Council's statutory duties or any discretionary or incidental powers.

3. What are the Recommendations?

3.1 That the Cabinet note the contents of the report and approve the Officer Scheme of Delegation in respect of any executive functions that are contained within it.

4. Report details.

4.1 This report seeks members' approval on the amendments to the Officer Scheme of Delegation. The proposed scheme is attached as Appendix 1 to the report. The scheme has been updated to reflect changes in legislation, the senior management structure of the Council and the transfer of responsibilities that have taken place as a result.

4.2 Officers receive the majority of their powers from either the Full Council, Statutory Committees or the Cabinet. A small number of their powers may be implied by law, but it is neater to have all powers contained in one scheme. This report confirms the executive functions only and the scheme will also be included in a future report on the new Constitution to the Full Council, to approve the non-executive functions.

4.3 Members will note that this amended scheme provides flexibility in that even if a particular piece of legislation is not listed within the scheme, if that function is necessary or incidental to that Officer and that Service, Cabinet is expressly authorising them to act accordingly.

4.4 There is also an express obligation, where appropriate, for a Head of Service to maintain a 'departmental delegated scheme' so that officers acting on their behalf do so with authority.

5. How does the decision contribute to the Corporate Priorities?

- 5.1 A fit for purpose Scheme of Delegation will contribute to the priority of becoming a high performing Council providing assurances on governance and decision making and allowing the public to see who is the responsible decision maker on issues affecting them.

6. What will it cost and how will it affect other services?

- 6.1 There are no direct costs associated with this report.

7. What consultations have been carried out?

- 7.1 The Councils Constitution Working Group, Corporate Governance Committee and SLT have been involved in the debate on the key proposals in the new constitution and scheme of delegation for officers and members. The new model constitution as a whole is nearing completion, it will be taken to the wider Council in January in the form of a workshop, in advance of the document being considered for adoption by the Full Council in February 2016.

8. Chief Finance Officer Statement

- 8.1 A clearly defined scheme of delegation defines accountability and is a key component of the council's governance framework.

9. What risks are there and is there anything we can do to reduce them?

- 9.1 There is a risk that a Constitution (and Scheme of Delegation that sits within in) that is not amended to keep up to date with corporate and legislative changes ceases to be fit for purpose.

10. Power to make the Decision

- 10.1 The Local Government Act 2000 requires all councils to have a constitution and the Local Government Act 1972 requires a scheme of delegation.

SCHEME OF DELEGATION FOR OFFICERS

1. Definition

- 1.1 In this scheme, 'Chief Officer' means the Chief Executive, Corporate Director and Head of Service.
- 1.2 'Departmental Delegated Scheme' means that scheme which is held and managed by the Chief Officer and sets out the sub-delegations (where appropriate) made by that Chief Officer to those Officers who form part of his or her service or where there is indirect responsibility for the delivery of some of that service, in the event the officer receiving the sub-delegation does not sit within that particular Chief Officer's service.
- 1.3 Any reference to an Act in this scheme includes reference to any amendment thereto, or re-enactment thereof, of any order or secondary legislation made under it.
- 1.4 Function or power means all relevant functions, powers and duties of the Council, whether under any specific legislation identified in the scheme or not expressly referred to in it, but by implication, given the nature of the function itself as the case may be.
- 1.5 Any reference to a Chief Officer or officers being delegated to carry out or perform any functions in this scheme shall be deemed to include a reference to performing any other functions, even if not specifically referred to, which are necessary or incidental to, or required to facilitate or be conducive to the performance of the function in question.
- 1.6 Subject to any specific restriction in writing, a function or power which may be discharged by a Chief Officer or Officer, may also be discharged by any person formally acting up into that post or interim post holders.
- 1.7 Subject to any specific restriction in writing, a function or power which may also be discharged by any person who is deputizing (whether on a full, part time or an absence basis) for that post.
- 1.8 Any interpretation of this Scheme of Delegation shall be in accordance with the Council's wish that the powers granted to officers under the scheme shall not be construed restrictively.

2. General Provisions

- 2.1 Under this scheme, each Chief Officer is authorised to act on behalf of the Council in relation to any matter within the service areas for which they are responsible. Any exercise of delegated powers shall comply with, and be subject to :-
 - 2.1.1 Any statutory provisions

- 2.1.2 The Councils overall policy and budget framework
 - 2.1.3 Protocol on Member/Officer Relations, the Officers Code of Conduct and where appropriate in liaison with local members.
 - 2.1.4 The Constitution and relevant Rule of Procedure
 - 2.1.5 Financial Regulations
 - 2.1.6 Contract Procedure Rules
 - 2.1.7 The duty of achieving Best Value and Continuous Improvement
 - 2.1.8 Agreed arrangements for recording the decisions.
 - 2.1.9 The taking of and compliance with any legal or other professional advice.
 - 2.1.10 Have regard to sustainability generally and the well-being of current and future generations.
 - 2.1.11 Having regard to the Council's obligations under the Welsh Language Standards and it's Welsh Language Policy.
- 2.2 Where the exercise of delegated powers is likely to affect more than one service, the Chief Officer must consult with any other Chief Officer whose service may be so affected.
- 2.3 Without prejudice to his/her delegated powers or to that of the relevant Committee, and in appropriate circumstances only, each Chief Officer should, when exercising his/her powers : -
- 2.3.1 keep the Cabinet fully informed, in particular members of the Cabinet who are the Portfolio Holders for the service area in question and also have due regard to any comments made in the relevant scrutiny committee regarding the matter in question.
 - 2.3.2 ensure, where appropriate, that he/she consults with/or informs the local member(s) in advance;
 - 2.3.3 ensure that he/she consults with/or informs, where appropriate, the Chief Executive. Before exercising a delegated power, each Chief Officer must consider whether the decision is one that should be referred to the appropriate Committee for input or referred to the Cabinet, or appropriate Committee or sub-Committee.
- 2.4 In deciding whether to refer a matter to the Cabinet, Committee or sub-Committee the Chief Officer shall have regard to the following considerations:-
- 2.4.1 day to day decisions on technical or professional issues will normally be taken without reference to Members.
 - 2.4.2 the views of the local member, Portfolio Holder and Chief Executive must be taken into account, where appropriate.
 - 2.4.3 if a decision is likely to have a significant impact on the Councils' profile, is likely to attract unfavourable comment in the news media, or may have substantial financial implications there will be a presumption in favour of referring it to members.

- 2.5 Functions are not delegated where:
- 2.5.1 they are reserved by law or by this Constitution to the Council
 - 2.5.2 they may not by law be delegated to an Officer
 - 2.5.3 they are reserved to a Cabinet Member or Members.
- 2.6 The powers listed in this Scheme shall be construed in conjunction with any powers delegated by any Committee.
- 2.7 The Chief Executive and Directors are authorised, in the absence of or inability to act of the Chief Officers reporting to them, to exercise all powers delegated from time to time to those Chief Officers except where specifically prevented from so acting by limitation of statute, professional qualification or where other arrangements have been made in the relevant delegation.
- 2.8 The Chief Executive and Directors are authorised to take or authorise in consultation with the relevant Committee or Sub-Committee Chair or Vice-Chair, or in their absence the Chair or Vice-Chair of the Cabinet, any action on any matter within the Terms of Reference of the relevant Committee or Sub-Committee which they consider to be of such urgency that it cannot await a meeting of that Committee or Sub-Committee provided that such action shall be reported for information to the next available meeting of the relevant Committee or Sub-Committee.
- 2.9 The Chief Executive and Directors are authorised to take or authorise in consultation with the Chair and Vice-Chair of the Cabinet, any action on any matter within the Terms of Reference of the Cabinet which they consider to be of such urgency that it cannot await a meeting of the Cabinet provided that such action shall be reported for information to the next available meeting of the Cabinet.

2.10 The relevant Director and each Head of Service is responsible for ensuring compliance with the Data Protection Act 1998, Freedom of Information Act 2000, Environmental Information Regulations 2004, Human Rights Act 1998, the Health and Safety at Work etc. Act 1974 and the Safeguarding of Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) in so far as his/her service is concerned, including compliance with any decision of the Councils' Freedom of Information Exemptions Panel.

3. General Delegations

3.1 Each Chief Officer (having consulted with the relevant Portfolio Holder where appropriate) is authorised to take any action necessary to protect or promote the Councils interests, subject to the restrictions in 2 above.

3.2 Without prejudice to the generality of the provisions in 2 above, this includes exercising his/her professional judgment to take such decisions as are necessary to implement the Councils policies and to promote the management and delivery of the services which are his/her responsibility.

3.3 Any powers granted to a Chief Officer may be discharged either in his/her absence by such Officers as may be authorised by him/her in accordance with any general or specific instructions given. In the absence of the Chief Officer, any Officer appointed by him/her to deputise on his/her behalf may also authorise the exercise of delegated powers, subject to any statutory provision preventing any deputy from acting. For the avoidance of doubt such authorizations may not be granted to persons who are not Officers of the Council unless there is an arrangement facilitating joint working with the relevant person's employing authority. Such authorisations under this paragraph shall include authorization to issue and sign statutory notices in the name of the relevant chief officer or other person with delegated functions.

It shall be the responsibility of the Chief Officer to maintain an up to date list of Departmental Delegations where this is appropriate. Where a Chief Officer holds such a Departmental Scheme of Delegation, this shall be provided to the Monitoring Officer on an annual basis and changes notified within 25 days to enable the Monitoring Officer to keep the central register updated.

3.4 Authority to serve requisitions for information under the Local Government (Miscellaneous Provisions) Act 1976 or other enabling legislation.

3.5 Each Chief Officer is authorised to manage assets, vehicles and equipment belonging to the Service for which he/she has responsibility.

3.6 Each Chief Officer is authorised to act on financial matters, in accordance with the Financial Regulations and Contract Procedure Rules.

3.7 In consultation with Head of Legal, HR and Democratic Services. where appropriate, each Chief Officer is authorised to act in relation to staffing

matters in accordance with any relevant HR Policies and to appoint staff below Chief Officer level.

- 3.8 Each Chief Officer is entitled to submit planning applications in pursuance of approved schemes (but not the determination of the application)
- 3.9 To approve fees and charges, (and subject to any limit on such charge or fee set by statute) including any subsidies and concessions, in accordance with the policy adopted by Cabinet on the setting of Fees and Charges. Decisions on these matters are subject to the agreement of the Head of Finance and Assets, and subject to the provisions of the Local Government Act 2003 in respect of lawful charging and trading provisions. (this does not include fees and charges that are set by the Planning and Licensing Committees or Housing Rents which are set by reference to Housing Rents Setting Policy or subsequent amendment)
- 3.10 All Chief Officers may approve the submission of bids for grant funding and to accept any grant offered, subject to any funding requirement from the Council being contained within existing budgets. Where such a funding requirement cannot be afforded from existing budgets, the consent of the Head of Finance and Assets must be obtained before a bid is made or a grant is accepted. Where appropriate, the advice of the Head of Legal, HR and Democratic Services should be sought on the terms and conditions of acceptance or submission of a grant.
- 3.11 In accordance with any policy adopted by the Cabinet on grants, to determine grants to other bodies or individuals (including determining parameters or criteria for decisions by Officers on such grants.
- 3.12 Subject to any specific restriction in writing, a function or power which may be discharged by a Chief Officer, may also be discharged by any person who holds a post which is a successor post to that of the original Chief Officer following any reorganisation, restructure or similar process including any changes made to the job titles of Chief Officer posts.
- 3.13 Any reference in this Scheme to any legislation or to any Council procedure or rule shall be deemed to include a reference to any successor legislation, procedure or rule as may be introduced or enacted by way of substitution, revision or amendment. This provision shall be interpreted as in addition to the provisions of paragraph 1.6
- 3.14 All Chief Officers exercise their delegated authority within their own area. However, due to the urgency of the circumstances, where the matter cannot wait and it is not practicable for a Corporate Director to exercise their authority under 2.7, another Chief Officer may carry out the delegation where there are not specific restrictions on them doing so.
- 3.15 If the Council acquires a new function it may be necessary for this to be reported to the Cabinet so that a decision can be taken on any new delegations to officers. However, in the absence of such a decision, the Chief Officer with

responsibility for the relevant services shall be deemed to have full delegated authority to discharge the function on the Council's behalf in accordance with these General Provisions and Functions unless it is a function reserved to the Cabinet or a Committee of the Council.

3.16 In the event of a local government reorganisation, where an officer of any transferor authority was , before reorganisation day, specifically authorised to enter into a contract, prepare and execute a document (subject to contract procedural rules) or take any other action; if that contract is not entered into, document not executed, or as the case may be, action not taken before reorganisation day, the officer of the Council holding the corresponding office shall, on and after reorganisation day, be deemed to have the authority previously granted to the former officer.

4. To The Chief Executive (Head of Paid Service)

4.1 Any decision, whether it is normally the responsibility of the Cabinet, Cabinet committee or individual Cabinet Member, where the decision has to be taken immediately in response to a major civil emergency as defined in the Major Emergency Management Plan.

4.2 Authorising Officers to undertake particular roles on behalf of the Council, where such authorisation is an executive function and has been delegated to the Head of Paid Service.

4.3 To represent the views of the Council in responding to consultations with the Council by any outside body.

4.4 As Returning Officer, to apply the annually agreed uplift in respect of election fees for local government purposes in consultation with colleagues in other authorities in North Wales.

4.5 Carrying out the following functions imposed on the Council by emergency planning regulations:-

- Civil Defence (General Local Authority Functions) Regulations 1993 - preparation, exercise and implementation of plans for civil defence purposes, including complying with directions from the designated Minister
- Public Information for Radiation Emergencies Regulations 1992 - supplying information to the public in the event of a radiation emergency involving transport of radioactive substances
- Pipelines Safety Regulations 1996 - preparation of and charges for a plan in respect of a major accident hazard pipeline

- Control of Major Accident Hazards Regulations 1999 - preparation, testing and charges for off-site emergency plan for major accident hazards

Radiation (Emergency Preparedness and Public Information) Regulations 2001 - preparation of, testing and charges for off-site emergency plan and supplying information to the public in the event of radiation emergencies involving premises.

4.6 To act on a day to day basis, as appropriate, as the Head of Paid Service and in the following areas: -

- Strategic Development and Leadership
- Management of the Council as a whole
- Performance Management of the Council as a whole
- Service Modernisation and Continuous Improvement
- Major Projects
- Communication with the Media
- Medium and Major Corporate Risks
- External Relationships
- Civil Contingency

4.7 To act as an Authorised Officer for the purposes of the Regulation of Investigatory Powers Act 2000, in particular in respect of the acquisition of confidential private information within the meaning of this Act.

4.8 In consultation with the Leader of the Council, to give instructions for the flying of the relevant flag or flags on Council Offices on significant occasions either high in celebration or half mast as appropriate.

4.9 In the absence or inability of the Chief Executive to act he/she will designate a Corporate Director to exercise the above delegations and other functional responsibilities as he/she deems appropriate.

5. To the Head of Facilities, Assets and Housing.

5.1 To have responsibility for the operation, maintenance and strategy in respect of all Council facilities, assets, housing, leisure and library buildings and public conveniences, catering, civic arrangements relating to facility management and council allotments.

5.2 To act as the proper officer representing the Corporate Landlord.

5.3 To institute and conduct civil proceedings for the recovery of monies (whether from tenanted premises or otherwise) owed to the Council in consultation with the Head of Legal, HR and Democratic Services.

- 5.4 To negotiate and settle rentals and other terms for short term licences, easements and wayleaves, including those required by statute upon terms agreed by statutory formula or otherwise, subject to appropriate consultation with Local Members.
- 5.5 To make home loss payments under the provisions of the Land Compensation Act 1973 (amount calculated by statutory formula related to rateable value)
- 5.6 To make disturbance payments under the provisions of the Land Compensation Act 1973.
- 5.7 In consultation with the Corporate Director: Economy and Public Realm, to negotiate the acquisition and/or disposal of land for all purposes, in conjunction with the Councils Asset Management Group and/or the Strategic Investment Group and subject to the results thereof being reported to all Members for information, where appropriate.
- 5.8 To value all property assets of the Council
- 5.9 To value properties for mortgage or grant and for other approved purposes, including the property assets of elderly persons entering the care of Social Services, where their assets are taken into consideration.
- 5.10 To recommend and negotiate rents and rent reviews and appropriate terms for all managed property, including any agricultural estate land and buildings, but not any property falling within the purview of the Housing department.
- 5.11 To negotiate and agree lease agreements, including rent reviews leased by and to the Council, subject to reports to any Asset Management Group and to Members, where appropriate.
- 5.12 To take action upon reports concerning mortgage defaulters.
- 5.13 To manage all allotment sites including the allocation of and the taking of action against tenants of untidy allotments.
- 5.14 To exercise the following powers in respect of property matters in consultation with and on terms and conditions agreed by the Head of Legal, HR and Democratic Services: -
 - 5.14.1 Disposals of freehold interest in land up to the market value is up to £30k, to include disposals at an undervalue.
 - 5.14.2 Disposals of freehold interest in land, including disposals at an undervalue (taking into account any local policy adopted), where the market value is between £30,001 and £1,000,000 (one million) in

consultation with the S.151 Officer, the Monitoring Officer and the Lead Member.

5.14.3 To undertake all other disposals, following a decision by the Cabinet or the Lead Member in accordance with their delegated functions.

5.14.4 Granting leases at market value, or under market value (taking into account any local policy adopted), up to a rental commitment of £1,000,000 for the term; including renewal of leases not longer than the original lease. This delegation includes (but not limited to) all matters to do with agricultural estate leases and tenancies, and all other tenancies, wayleaves, easements, licences, change of user or assignments. This delegation includes powers to terminate tenancies and licences, and to sign tenancy agreements and licences, except:

- a) granting tenancies for agricultural estate. Officers to conduct interviews and make recommendations to the Lead Member.
- b) Notices to quit for tenants of agricultural estate, such decision to be taken by the Lead Member on advice from Officers.

5.14.5 Acquisitions of land by freehold or leasehold, up to a market value or rental commitment for the term of the lease up to £30,000 if funding is available.

5.14.6 Acquisitions of land by freehold or leasehold, up to a market value or rental commitment for the term of the lease from £30,001 and £1,000,000; if funding is available and in consultation with the Lead Member, S.151 Officer and the Monitoring Officer.

5.14.7 Purchase of land/easements for highway and drainage schemes and the making of stopping up orders, subject to a) the cost of the acquisitions being available within the capital funding scheme or b) in cases where the acquisition is in order to facilitate the disposal of land and property under 6.31.1, the cost being covered by the capital receipts being generated.

5.14.8 The renewal of any lease or tenancy, subject to budget provision being available to continue to pay charges under the lease or tenancy.

5.14.9 To undertake all other acquisitions and taking of leases or tenancies, following a decision by Cabinet or the Lead Member in accordance with their delegated functions.

5.14.10 Miscellaneous powers in respect of property:

- The Service of Statutory Notices
- Appropriation of property between services.
- Lodging and settlement of rating appeals, including representation in the Valuation Tribunal

- Other property management and emergency matters including granting consent for tenants improvements, reallocation and apportionment of milk quota and settlement of end of tenancy and dilapidation claims.
- 5.15 Authorising Officers to appear on the Authority's behalf to conduct proceedings in the Magistrates Court under s.223 Local Government Act 1972.
- 5.16 To act in accordance with any powers set out in the Council's Contract Procedure Rules and generally, as the senior leadership officer for procurement; and in accordance with any obligations set out therein to make decisions in consultation with the Monitoring Officer.
- 5.17 Power to vary charges or to agree promotional packages or to introduce minor new charges to cover the cost of all departmental activities and facilities in compliance with s.19 Local Government (Miscellaneous Provisions) Act 1976 in relation to certain leisure functions.
- 5.18 Authority to accept or reject gifts, bequests or loans to the Council's Museum Service within the terms of the Policy
- 5.19 To comply with the Activity Centres (Young Persons Safety) Act 1995 and any regulations made thereunder, including holding any licence required by virtue of these provisions, or designating an appropriate Officer for such purposes.
- 5.20 To keep under review (and ensure relevant staff awareness) any safeguarding practices and procedures including registration (if required) with any Safeguarding Authorities and reporting matters on safeguarding to the Statutory Lead Director for Children and Young People and/or the Statutory Director of Social Services, where appropriate.
- 5.21 To have overall responsibility pursuant to the Health and Safety At Work etc Act 1974 including carrying out any risk assessments and taking steps to minimise such risks to health and safety, or designating an appropriate Officer for such purposes in accordance with the Management of Health and Safety at Work Regulations 1999.
- 5.22 To ensure the provision of statutory youth services jointly with the Head of Education and Children's Services.
- 5.22 To ensure the provision of facilities and organized leisure time occupation connected with any training and education pursuant to the Council's duties as set out in the Learning and Skills Act 2000 in consultation with the Head of School Improvement and Inclusion.
- 5.23 To authorise in writing all officers of the Housing Services department who may from time to time be employed to discharge the specific duties and functions delegated to the Head of Facilities, Assets and Housing, subject to

such officers being suitably qualified for the discharge of those duties and functions.

To undertake inspections, investigations, interviews, sampling, prohibitions, seizures, detentions, recording, service of notices, (including suspension notices), notifications, waivers, transfers, authorisations, licensing, registrations and legal proceedings as are within the purview of the Housing department under the legislation applicable thereto set out below, together with any regulations made thereunder, and any amendments or additions thereto and to exercise all other relevant powers, including powers of entry provided under such legislation set out below in a non exhaustive list:

Legislation

Accommodation Agencies Act 1953
Administration of Justice Act 1970
Anti Social Behaviour Act 2003
Children and Young Persons Act 1933
County Courts Act 1984
Crime and Disorder Act 1998
Health Act 2006
Homelessness Act 2002
Housing Act 1985 (as amended by the Local Government and Housing Act 1989)
Housing Act 1996 (including amendments made under the Anti Social Behaviour Act 2003)
Housing Act 2004
Housing (Wales) Act 2014
Housing Grants, Construction and Regeneration Act 1996
Local Government Act 1972
National Assistance Act 1948
National Assistance (Amendment) Act 1951
Noise Act 1996
Noise and Statutory Nuisance Act 1993
Protection from Eviction Act 1977
Social Services and Well Being (Wales) Act 2014

5.24 To issue Certificates of Approval of Works carried out for works of improvement, repair, conversion and adaptations under Part I of the Housing Grants, Construction and Regeneration Act 1996, including payments by instalments.

5.25 To deal with all matters arising from applications for grants under Part 1 of the Housing Grants, Construction and Regeneration Act 1996 including approval and rejection of applications, subject to consultation with the Head of Finance in respect of financial aspects, and to any financial allocation available for this purpose in any one year not being exceeded.

5.26 To deal with all aspects of approval and payments for unforeseen work above currently agreed limits in respect of House Renovation Grants.

5.27 To administer the housing needs register (waiting list, transfer list etc.)

5.28 To let Council dwellings and to nominate to other social landlords including temporary non-secure lets, waiting list applicants, transfers, exchanges, key workers, tied tenancies and mobility schemes.

5.29 not used.

5.30 To make determinations in respect of applicants considered unsuitable to be a tenant.

5.31 To sign and serve all relevant notices under the Housing Act, 1985 (and any other relevant Housing Acts) pertaining to:-

- The setting and collection of rents and charges
- Varying terms and conditions of tenancies
- All matters under the 'Right to Buy' Provisions (not otherwise specifically delegated)
- Consultation with tenants
- Right to Repair
- Compensation for tenants' improvements

5.32 To sign and serve all relevant Notices to Quit, Notices Seeking Possession and, in consultation with the Head of Legal HR and Democratic Services, authorise legal proceedings for Possession, Costs and Warrants of Execution and to secure the eviction of Secure, Demoted and Introductory tenants (if relevant).

5.33 To carry out or arrange for the carrying out of repairs and maintenance of all Council owned properties.

5.34 To carry out or arrange for the carrying out of repairs, improvements and adaptations in accordance with the Housing Capital programme or revenue estimates.

5.35 To authorise legal proceedings for nuisance in consultation with the Head of Legal and Democratic Services and the Local Member(s)

5.36 To authorise Housing Officers to exercise the right of audience in the County Court under Section 60(2) of the County Courts Act 1984.

5.37 To exercise functions under the Anti-Social Behaviour Act 2003 or the Anti Social Behaviour Crime and Policing Act 2015 on behalf of the Council in its capacity as landlord, to deal with instances of anti-social behaviour.

5.38 To review decisions to seek an order for possession of dwelling houses let under introductory and demoted tenancies, in accordance with the Introductory Tenants (Review) Regulations 1997 and the Demoted Tenancies (Review of Decisions) (Wales) Regulations 2005.

5.39 In consultation with Local Members and the Lead Member to approve, where

there are no objections, future disposal schemes in accordance with the Council's policy for the fencing in of open plan gardens on Council housing estates.

- 5.40 To act as the Authorised Officer under the Housing Act 2004.
- 5.41 To provide a Certificate of Housing Authority under the Schedule 15 Part iv of the Rent Act 1977
- 5.42 To issue a Certificate of Housing Authority under Schedule 4 Rent (Agriculture) Act.

6. To the Head of Finance

- 6.1 To undertake all duties assigned to him or her by Financial Regulations which relate to the provision of his/her service*
- 6.2 To act as Chief Finance Officer under s.151 of the Local Government Act 1972 and any other statutory functions assigned to the s.151 Officer.
- 6.3 To be the Proper Officer for the purpose of s.114 Local Government and Finance Act 1988 and the power to appoint a deputy to act in their absence.
- 6.4 To be the proper Officer for the purposes of s.115 and 146 Local Government Act 1972.
- 6.5 The right to sign a certificate that contracts comply with the Local Government (Contracts) Act 1997 and that a lease or contract does not constitute credit arrangements. *
- 6.6 Subject to a policy for such writing off having been established, to write to determine whether repayment of a grant may be waived, subject to the agreement of the Lead Member for Finance, where the amount of the repayment waived in an individual case exceeds 10k.
- 6.7 Nominate authorised officers under the Social Security Administration Act 1992 or subsequent amendment.
- 6.8 Nominate authorised officers under the Social Security Administration (Fraud) Act 1997.
- 6.9 Authorising Officers to appear on the Authority's behalf to conduct proceedings in the Magistrates Court under s.223 Local Government Act 1972.
- 6.10 Organising the Council's banking arrangements.
- 6.11 Authorising leasing arrangements.

- 6.12 Authorising the use of electronic financial systems to transfer money.
- 6.13 To institute and conduct civil proceedings for the recovery of monies owed to the Council in consultation with the Head of Legal, HR and Democratic Services.
- 6.14 To act as the Councils' Money Laundering Officer for the purposes of the Money Laundering Regulations 2003.
- 6.15 To act on a day to day basis in the following areas: -
- Accountancy (including Revenue budgeting and final accounts and Capital budgeting and final accounts)
 - Risk Management and Insurance
 - Creditor Payments
 - The Pension Scheme including the teacher's pension scheme
 - Treasury Management (including investments and borrowing for revenue and capital purposes and investment for funds for which the Council is custodian)
 - Payroll (including car allowances, expenses, employee benefits, income tax, national insurance and all other deductions)
 - Car Leasing/Purchase Scheme
 - Tax matters including the Councils income tax and VAT.
 - Council Mortgage Interest rate calculations
 - Revenues and Benefits
- 6.16 Determining the instalment dates for Council Tax and NNDR payments for financial years beginning in and after 2004.
- 6.17 To secure the safe custody of policies and to make claims under the Council's insurances.
- 6.18 To act as an Authorising Officer under the Regulation of Investigatory Powers Act 2000.
- 6.19 To authorise the write off of bad debts up to the amounts noted in the Financial Procedure Rules.
- 6.20 Authorising and managing petty cash payments.
- 6.21 Authorising the use of electronic financial systems to transfer money.
- 6.22 To act as the Proper Officer in respect of the Proceeds of Crime Act 2002 and any regulations made thereunder.
- 6.23 To secure the safe custody of policies and to make claims under the Council's insurances.

6.24 To authorise investment decisions following recommendations from Strategic Investment Group and their terms of reference.

*may be exercised by the deputy s.151 Officer in the absence of the s.151 Officer.

7. To the Head of Legal, HR and Democratic Services

7.1 To act as the Monitoring Officer under the Local Government and Housing Act 1989.

7.2 To authenticate Documents for Legal Proceedings.*

7.3 To institute and conduct all civil, criminal and administrative proceedings, (including settlement of claims out of Court) and tribunal hearings of a quasi-judicial nature (other than matters specifically delegated to another Officer).*

7.4 To secure the safe custody of policies and to make claims under the Council's insurances in conjunction with the S.151 Officer*

7.5 To maintain records, including Minutes and Conveyances, Leases, Mortgages and other securities.*

7.6 To authorise the settlement of all claims for compensation whether from tenants, Council employees or other members of the public where such claims are the result of damage caused by Council or allied services and are not covered by insurance.*

7.7 To affix the seal and execute documents on behalf of the Council. *

7.8 To serve all Notices under the Town and Country Planning Acts not otherwise specifically delegated.*

7.9 To issue warrants to the High Sheriff to deliver possession of properties included in confirmed Compulsory Purchase Orders, where the Council have served notice of entry but where the occupiers have refused to grant possession to the Council.*

7.10 To take all appropriate legal action to secure the eviction of 'squatters' from Council property that is to say any persons occupying such property without the Council's authority and in contravention of its policies governing the letting of the same, in consultation with the Head of Housing and the Head of Adult Services.*

7.11 To enter into Agreements with developers for the adoption of amenity areas on private housing estates.*

7.12 To apply to the Court for a Prohibition Order under the provisions of the Food Safety Act, 1990, in consultation with the Head of Planning, Regeneration and

Regulatory Services.*

7.13 To issue and serve the following Notices under the provisions of the Housing Act, 1985, namely:-*

Notices requiring tenants to complete transactions (Sections 140 and 141).

7.14 To undertake and conclude all the necessary legal formalities in connection with the disposal of Council dwellings and to recover possession of Council dwellings in appropriate cases, pursuant to the provisions of the Housing Act, 1985.*

7.15 To serve all appropriate notices in connection with the Rents to Mortgage Scheme under the provisions of the Leasehold Reform, Housing and Urban Development Act, 1993. *

7.16 To exercise the powers of direction available to the Council under Section 77 of the Criminal Justice and Public Order Act, 1994, and also to make complaints to the Magistrates' Court on behalf of the Authority under Section 78 of the Act. *

7.17 To vary the fees payable under Part VA of the Local Government Act 1972 (Access to Information) *

7.18 To sign contracts for the acquisition and disposal of interests in land in accordance with the Council's policy. *

7.19 To sign and serve requisitions for information under Section 16 of The Local Government (Miscellaneous Provisions) Act, 1976. *

7.20 To negotiate, conclude and execute on behalf of the Council any document or agreement required to give effect to any decision taken by the Council, Cabinet, other Committee, Sub-Committee or Officer whether or not specifically so authorised by such decision. *

7.21 To exercise the Council's functions relating to the approval of premises under the Marriage Act 1994 and Marriages (Approved Premises) Regulations 1995 and the registration of civil partnerships under the Civil Partnerships Act 2004 in consultation with the Local Member)

7.22 To amend the Councils Constitution document to accord with decisions of the Council, Cabinet or Committees.

7.23 To authorise a Council Officer to appear on behalf of the Council in proceedings under section 60 of the County Courts Act 1984 and in the Magistrates Court under s.223 of the Local Government Act 1972.

7.24 To act as the Proper Officer for the purposes of s100B Local Government Act 1972 i.e. to exclude access by the public to reports in respect of which, in his/her opinion, the meeting is not likely to be open to the public.

7.25 In consultation with the members of the Access to Information Panel and the Deputy Monitoring Officer (together forming the FOI Exemptions Panel) to decide whether information may be withheld under exemptions contained in the Freedom of Information Act 2000, the Data Protection Act 1998 or the Environmental Information Regulations 2004 on behalf of the Council.

7.26 To act as an Authorising Officer, in particular with regard to the surveillance of Council Staff and act as the Councils' Senior Responsible Officer under the Regulation of Investigatory Powers Act 2000; including reporting annually to the Council's Corporate Governance Committee on its ripa activities.

7.27 To act as the Authority's 'qualified person' under s. 36 of the Freedom of Information Act 2000.

7.28 not used

7.29 To act on a day to day and be responsible for the strategic and operational delivery of the following areas:-

- Legal Services
- Human Resources
- Elections/Electoral Registration
- Member Support and Services
- Committee and Democratic Services (jointly with the Head of Democratic Services)
- Translation

* in the absence or inability of the Head of Legal, HR and Democratic Services to act, the Deputy Monitoring Officer/Legal Services Manager or in their absence a Team Leader for the Places or People Team are authorised to exercise these functions.

7.30 To prepare and maintain a list of those posts which are considered to be politically restricted under the provisions of the Local Government and Housing Act 1989.

7.31 To review and update the Council's Constitution from time to time, to include any incidental changes emanating from amended, substituted or new legislation, any restructure of the organisation and where appropriate to reflect the provisions of paragraph 3.15 of this Scheme.

7.32 To ensure the Council's decision making processes are robust.

8. To the Head of Planning and Public Protection

The following delegations relate to public protection and regulatory functions:-

To have the power:-

- 8.1. To authorise in writing all officers of the Planning and Public Protection department and certain Housing Officers who may from time to time be employed to discharge the specific duties and functions delegated to the Head of Planning and Public Protection, subject to such officers being suitably qualified for the discharge of those duties and functions.
- 8.2 To undertake inspections (including the inspection of a licence or operator records), authentications, investigations, interviews, sampling, testing (including the testing of vehicles), prohibitions and applications to court for prohibition orders, seizures (including the removal of plates upon expiry or revocation), detentions, recording, service of notices, (including suspension notices), notifications, waivers, transfers, authorisations, licensing, registrations and legal proceedings as are within the purview of the Planning and Public Protection department, including certain Housing Officers under the legislation applicable to it and set out below (as a non-exhaustive list), together with any regulations made thereunder, and any amendments or additions made to it, or any subsequent new or current functions which can properly be regarded as incidental to the functions of the Planning and Public Protection department and to exercise all other relevant powers or duties, including powers of entry provided under such legislation.

Legislation

Accommodation Agencies Act 1953
Activity Centres (Young Persons Safety) Act 1995
Administration of Justice Act 1970
Administration of Justice Act 1970
Agriculture (Miscellaneous Provisions) Act, 1968, 1972 and 1976
Agriculture Act, 1970
Agriculture Produce (Grading and Marking) Act, 1928
Animal Boarding Establishments Act, 1963
Animal Health Act 1998
Animal Health Act 2002
Animal Health Act, 1981
Animal Health and Welfare Act, 1984
Animal Welfare Act 2006
Anti Social Behaviour Crime and Policing Act 2014
Anti Social Behaviour Act 2003
Anti-Terrorism, Crime and Security Act 2001
Banking Act, 1987
Breeding and Sale of Dogs (Welfare) Act 1999
Breeding of Dogs Act, 1973 and 1991
Building Act, 1984
Burial Act 1857
Business Names Act, 1985
Cancer Act, 1939
Caravan Sites Act 1968

Caravan Sites and Control of Development Act, 1960
Celluloid and Cinematographic Film Act, 1922
Children and Families Act 2014
Children and Young Persons (Protection from Tobacco) Act, 1991
Children and Young Persons Act 1933
Christmas Day (Trading) Act 2004
Cinemas Act, 1985
Civic Amenities Act 1967
Civil Contingencies Act 2004
Clean Air Act, 1993
Clean Neighbourhoods and Environment Act 2005
Companies Act 2006
Companies Act, 1985
Consumer Credit Act, 1974
Consumer Credit Act, 2006
Consumer Protection Act, 1987
Consumer Rights Act 2015
Contaminated Land (Wales) Amendment Regulations 2012
Contaminated Land (Wales) Regulations 2006
Control of Horses (Wales) Act 2014
Control of Pollution (Amendment) Act, 1989
Control of Pollution Act, 1974
Copyright, Designs and Patents Act, 1988
Copyright, Etc and Trade Marks (Offences and Enforcement) Act, 2002
Corporate Manslaughter and Corporate Homicide Act 2007
County Courts Act 1984
Court and Legal Services Act, 1990
Crime and Disorder Act 1998
Crime and Disorder Act 1998
Criminal Attempts Act, 1981
Criminal Justice Act, 1988
Criminal Justice and Public Order Act 1994
Criminal Procedures and Investigations Act 1996
Crossbow Act, 1987
Dangerous Dogs Act, 1991
Dangerous Wild Animals Act 1976 (Modification) (No.2) Order 2007
Dangerous Wild Animals Act, 1976
Defective Premises Act 1972
Development of Tourism Act, 1969
Disability Discrimination Act 1995
Dog (Fouling of Land) Act 1996
Dogs (Amendment) Act 1928
Dogs Act, 1906
Energy Act, 1976
Energy Conservation Act, 1981
Enterprise Act 2002
Environment Act, 1995
Environmental and Safety Information Act, 1968
Environmental Protection Act, 1990
Estate Agents Act, 1979

European Communities Act, 1972
Explosives (Age of Purchase) Act, 1976
Explosives Act, 1875 and 1923
Factories Act, 1961
Fair Trading Act, 1973
Farm and Garden Chemical Act, 1967
Financial Services and Markets Act 2000
Fire Safety and Safety at Places of Sports Act 1987
Firearms Act 1968
Fireworks Act 2003
Fireworks Act, 1951
Food and Environmental Protection Act, 1985
Food Hygiene Rating (Wales) Act 2013
Food Safety Act, 1990
Forgery and Counterfeiting Act, 1981
Fraud Act 2006
Gambling Act 2005
Guard Dogs Act, 1975
Hallmarking Act 1973
Health Act 2006
Health Act 2006
Health and Safety at Work, etc. Act, 1974
Healthy Eating in Schools (Wales) Measure 2009
Hire Purchase Act, 1964
Home Safety Act 1961
Homelessness Act 2002
House to House Collections Act 1939
Housing Act 1985
Housing Act 1985 (as amended by the Local Government and Housing Act 1989)
Housing Act 1996
Housing Act 1996 (including amendments made under the Anti Social Behaviour Act 2003)
Housing Act 2004
Housing Act 2004
Housing Grants Construction and Regeneration Act 1996
Housing Grants, Construction and Regeneration Act 1996
Housing (Wales) Act 2014
Insurance Brokers (Registration) Act, 1977
Insurance Companies Act, 1982
Intellectual Property Act 2014
Intoxicating Substances (Supply) Act, 1985
Knives Act, 1997
Landlord and Tenant Act 1985
Litter Act 1983
Law of Property (Miscellaneous Provisions) Act, 1989
Legislative and Regulatory Reform Act 2006
Licensing Act 2003
Local Government (Miscellaneous Provisions) Act, 1976 and 1982 (as amended)
Local Government (Wales) Act 1994
Local Government Act 1972

Local Government Act 2003
Local Government and Housing Act 1989
London Olympic and Paralympic Games Act 2006
Magistrates Court Act, 1980
Magistrates Court Act, 1980
Malicious Communications Act, 1988
Medicines Act, 1968
Mines and Quarries (Tips) Act 1969
Mines and Quarries Act, 1954
Mobile Homes (Wales) Act 2013
Mock Auctions Act, 1961
Motor Cycles Noise Act, 1987
Motor Vehicles (Safety Equipment for Children) Act, 1991
National Assistance (Amendment) Act 1951
National Assistance Act 1948
National Assistance Act 1948 and 1951
Noise Act 1996
Noise Act, 1996
Noise and Statutory Nuisance Act 1993
Noise and Statutory Nuisance Act, 1993
Nurses Agencies Act, 1957
Offices, Shops and Railway Premises Act, 1963
Olympic Symbol etc (Protection) Act 1995
Opticians Act, 1989
Performing Animals (Regs) Act, 1925
Pet Animals Act, 1951
Petroleum (Consolidation) Act, 1928
Petroleum (Consolidation) Regulations 2014
Plant Health Act, 1967
Poisons Act, 1972
Police and Criminal Evidence Act 1984
Police, Factories, Etc (Miscellaneous Provisions) Act 1916
Pollution Prevention and Control Act 1999
Prevention of Damage by Pests Act, 1949
Prices Act, 1974 and 1975
Proceeds of Crime Act 2002
Property Misdemeanors Act, 1991
Protection Against Cruel Tethering Act, 1988
Protection from Eviction Act 1977
Protection from Eviction Act 1977
Protection from Harassment Act 1997
Protection of Animals (Amendment) Act, 1954
Protection of Animals (Anaesthetics) Act, 1954
Protection of Animals Act 2000
Protection of Animals Act 2000
Protection of Animals Act, 1911 and 1934
Public Health (Control of Diseases) Act, 1984
Public Health Acts, 1875, 1936 and 1961
Radioactive Substances Act 1993
Rag Flock and Other Filling Materials Act, 1951

Refuse Disposal (Amenity) Act 1978
Registered Designs Act, 1949
Regulation of Investigatory Powers Act 2000
Regulatory Enforcement and Sanctions Act 2008
Regulatory Reform (Fire Safety) Order 2005
Riding Establishments Acts, 1964 and 1970
Road Traffic (Consequential Provision) Act, 1988
Road Traffic (Foreign Vehicles) Act, 1972
Road Traffic Act, 1988 and 1991
Road Traffic Offenders Act, 1988
Safety of Sports Grounds Act 1975
Scotch Whisky Act, 1988
Scrap Metal Dealers Act 2013
Scrap Metal Dealers Act, 1964
Slaughter of Poultry Act, 1967
Smoke-Free Premises etc (Wales) Regulations 2007
Social Services and Well Being Act (Wales)2014
Solicitors Act, 1974
Sunbeds (Regulation) Act 2010 (Wales) Regulations 2011
Sunbeds (Regulations) Act 2010
Sunday Trading Act, 1994
Telecommunications Act, 1984
The European Communities Act 1972
The Products of Animal Origin (Import and Export) Regulations 1996 (as amended)
The Tobacco Advertising and Promotion Act 2002
The TSE (Wales) Regulations 2002 (As amended)
The Violent Crime Reduction Act 2006
Theatres Act, 1968
Theft Act, 1968 and 1978
Timeshare Act, 1992
Town Police Clauses Act, 1847
Town Police Clauses Act, 1889
Trade Descriptions Act, 1968
Trade Marks Act, 1994
Trading Representation (Disabled Persons) Act, 1958 and 1982
Trading Schemes Act, 1996
Trading Stamps Act, 1964
Transport Act, 1982
Unsolicited Goods and Services Act, 1971 (as amended)
Vehicle (Crime) Act 2001
Vehicle (Excise) Act, 1971
Video Recordings Act, 1984
Water Act 2003
Water Act, 1989
Water Industry Act, 1991
Water Resources Act 1991
Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009
Weights and Measures Act, 1985
Weights and Measures etc. Act, 1976
Wildlife and Countryside Act, 1981

Young Persons (Employment) Acts, 1938 and 1964
Zoo Licensing Act, 1981
Housing Grants, Construction and Regeneration Act 1996
Local Government Act 1972
National Assistance Act 1948
National Assistance (Amendment) Act 1951
Noise Act 1996
Noise and Statutory Nuisance Act 1993
Protection from Eviction Act 1977
Social Services and Well Being Act (Wales)2014

- 8.3. To arrange burials under Section 46 of the Public Health (Control of Disease) Act, 1984.
- 8.4 To discharge the duties imposed on the Council under the provisions of Section 149 of the Environmental Protection Act, 1990, and any amendments made thereon or any regulations made thereunder.
- 8.5 To ensure the appointment of a suitably qualified person who shall be designated The Chief Inspector of Weights and Measures for the Authority.
- 8.6 In consultation with the Head of Legal, HR and Democratic Services to authorise and commence legal proceedings in respect of those matters for which the Head of Service has operational responsibility including the decision to prosecute the obstruction of an authorised Officer exercising properly delegated powers under this scheme.
- 8.7 To nominate others to accompany officers in the course of their duty, as provided in the relevant legislation.
- 8.8 To provide a consumer advice and assistance service under the provisions of the Weights and Measures Act, 1985.
- 8.9 To authorise in writing Officers of the Planning and Public Protection department to issue Fixed Penalty Notices under Section 88 of the Environmental Protection Act, 1990, subject to those Officers being suitably trained to carry out the duties authorised.
- 8.10 To authorise in writing Officers of the Planning and Public Protection department to issue fixed penalty notices under Section 43 of the Anti Social Behaviour Act 2003 (graffiti) and Section 8 of the Noise Act 1996 (excessive noise), subject to such Officers being suitably trained and qualified to carry out the duties authorised.
- 8.11 To authorise in writing Officers of the Planning and Public Protection Services department to issue fixed penalty notices under Section 59 (offences under dog control order) and Section 73 (offences relating to audible intruder alarms) of the Clean Neighbourhoods and Environment Act 2005, subject to such Officers being suitably trained to carry out the duties authorised; or in the alternative and subject

to any thresholds under the Contract Procedure Rules of the Council to enter into arrangements with third party suppliers to exercise such functions his or her behalf.

- 8.12 To undertake the gathering of evidence, issuing of Fixed Penalty Notices and allied action including legal proceedings in respect of offences relating to litter under the Environmental Protection Act 1990.
- 8.13 To issue Variations of Authorisations under Sections 10 and 11 of the Environmental Protection Act, 1990 and permits under Regulation 17 of the Pollution Prevention and Control Regulations 2000, which do not involve a substantial change in consultation with the Local Members.
- 8.14 To act as the Home Authority Officer for the Council.
- 8.15 To authorise designated Officers of the Planning and Public Protection department for the Purposes of Enforcement of the Intoxicating Substances (Supply) Act 1985.
- 8.16 To maintain registers of Licences issued and to approve the grant or refusal of licences (and renewals if permitted under the legislation) under the following Acts, subject to any licence or decision that is reserved to the Licensing Committee as set out in Part 3 of the Constitution and within Council Policy:-
- Police, Factories etc (Miscellaneous Provisions) Act, 1916
and House to House Collections Act, 1939 (House to House and Street Collections)
Charities Act 1992 (or such other legislation as may replace or supersede such Act)
- Local Government (Miscellaneous Provisions) Act 1982 (power to renew sex shop and cinema licence where no representations received and the power to deal with Street Trading Consent applications, in consultation with the Chair of Licensing Committee if no representations received)
- 8.17 To undertake inspections, investigations, interviews, service of notices, notifications, waivers, transfers, authorisations, licensing, registrations and legal proceedings as are within the purview of the Licensing Committee under the relevant legislation applicable thereto and to exercise all other relevant powers, including powers of entry provided under such legislation.
- 8.18 To approve the grant of licences under the Town Police Clauses Act, 1847 and 1889 and the Local Government (Miscellaneous Provisions) Act, 1976 Part II in respect of hackney carriages and private hire vehicles, operators and drivers in accordance with the Council's policies and to act as the Council's authorised officer for the purpose of Part II of the Act.
- 8.19 To refuse applications for Private Hire Vehicle Licences.
- 8.20 To enforce the provisions of the Licensing Act 1964, as amended by the Criminal Justice and Police Act 2001, relating to the sale of alcohol to children.

- 8.21 To approve each advertisement to be displayed on Denbighshire Hackney Carriages.
- 8.22 To appoint Proper/Alternate Proper Officers for medical matters under all sections of the Public Health (Control of Diseases) Act 1984 and associated regulations.
- 8.23 To enforce the powers contained in the Products of Animal Origin (Third Country Imports) (Wales) Regulations 2002.
- 8.24 Power to appoint Officers as Inspectors under Section 19 (1) of the Health and Safety at Work, etc. Act, 1974.
- 8.25 To authorise designated Officers of the Planning and Public Protection department for the purposes of Enforcement of the Intoxicating Substances (Supply) Act 1985.
- 8.26 Powers in respect of registration and enforcement of motor salvage operators contained in The Vehicles (Crimes) Act 2001.
- 8.27 To enforce the powers contained in The Caravan Sites Act 1968
- 8.28 To license premises for acupuncture, tattooing, cosmetic piercing, electrolysis .and semi-permanent skin colouring
- 8.29 To authorise in writing Officers of the Planning and Public Protection department to issue Penalty Notices under the Smoke-Free Premises etc. (Wales) Regulations 2007, subject to those Officers being suitably trained to carry out the duties authorised.
- 8.30 To authorise the enforced sale of empty properties under the provisions of Part III of the Law of Property Act 1925 and Local Land Charges Act 1975.
- 8.31 Undertake inspections, investigations, interviews, recording, service of notices and legal proceedings as are applicable to the Licensing Act 2003, together with any regulations made thereunder, and any amendments or additions thereto and to exercise all other relevant powers, including powers of entry provided under such legislation, and to maintain registers of Licences issued thereunder.
- 8.32 The power to suspend and revoke licenses in respect of hackney carriages, private hire vehicles, private hire vehicle operators and hackney carriage/private hire vehicle drivers.
- 8.33 Approve all applications for the grant or transfer of a premises licence or club premises certificate where there are no relevant representations.
- 8.34 Approve all applications for a personal licence, variation of a designated premises supervisor or notices given in respect of an activity taking place under the authorisation of a temporary event notice where there is no police objection.

- 8.35 Determine whether a complaint is irrelevant, frivolous, vexatious, excluded or repetitive.
- 8.36 Determine all requests to be removed as a designated premises supervisor.
- 8.37 Determine whether a Hearing should take place pursuant to the Licensing Act 2003 if all parties are in agreement that no Hearing is necessary.
- 8.38 Request information from a party to clarify a point to be considered at a Hearing pursuant to the Licensing Act 2003 (Hearings) Regulations 2005.
- 8.39 To determine the following applications under the Gambling Act 2005 where no representations are received or where representations are withdrawn:
- Application for a premises licence
 - Application for a variation to a licence
 - Application for a provisional statement
 - Application for club gaming/club machine permits
- 8.40 To determine the following matters:
- Applications for permits other than club gaming/club machine permits
 - The cancellation of licensed premises gaming machine permits
 - Consideration of temporary use notice
- 8.41 To determine applications for a transfer of a licence where no representations are received from the Gambling Commission.
- 8.42 To give consent for the operation of loudspeakers under Schedule 2 of the Noise and Statutory Nuisance Act 1993.
- 8.43 To exercise the authority's functions under Chapter 1 Violent Crime Reduction Act 2006 (Drinking Banning Orders) and Section 15 (Power to impose charges on licence holders in zones)
- 8.44 To exercise the Authority's powers to deal with dangerous structures under the Building Act 1984.
- 8.45 To lodge objections in consultation with the Chair and Vice-Chair of the Licensing Committee and the Local Member regarding a Vehicle Operating License.
- 8.46 The following delegations relate to Planning or other Applications:-
- 8.46.1.1 All types of planning or other applications on which Officers are recommending approval where 3 or less individual written objections have been received from different neighbours/residential properties

raising material planning objections.

- 8.46.1.2 All types of planning or other application on which Officers are recommending refusal.
- 8.46.1.3 All types of prior determinations, neighbouring authority notifications, the need for Environmental Impact Assessments (screening and scoping opinions) and other notifications.
- 8.46.1.4 Authority to enter into agreements or obligations which arise from planning applications decided under delegated powers and power to discharge or modify such agreements or obligations.
- 8.46.1.5 Compliance cases which have been investigated by a Planning Compliance Officer and require no further action.
- 8.46.1.6 Authority to issue a notice under Section 215 of the Town and Country Planning Act 1990.
- 8.46.1.7 Authority to take all enforcement action authorized under the Town and Country Planning Act 1990, the Planning Hazardous Substances Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning and Compensation Act 2004 including (but without prejudice to the generality of the foregoing) the issue, variation and withdrawal of enforcement notices and listed contravention notices, breach of condition notices, completion notices, hazardous substances contravention notices, building preservation notices, urgent works notices and the carrying out of works in default and the recovery of expenses in connection therewith.
- 8.46.1.8 Decide the type of planning appeal, subject to consultation with the Local Ward Member(s), and undertake to defend the Council's position in accordance with the Protocol for Member Involvement in Planning Appeals.
- 8.46.1.9 To submit observations on behalf of the Council on external consultations or draft documents
- 8.46.1.10 Minor amendments to the terms of a Section 106 legal agreement where the substance of the authorized terms has not significantly altered, submit to informal consultation with the Local Ward Member(s).
- 8.46.1.11 Minor amendments to the working of planning conditions/notes to applicants on applications approved at Planning Committee, including minor amendments to Committee authorized enforcement notices where the substance of the suggested condition/note to applicant/notice has not significantly altered, subject to informal consultation with the Local Ward Member(s).

8.46.1.12 To submit observations on behalf of the Council on the following pre-application stages of major renewable energy infrastructure projects:

- Responding to the Infrastructure Planning Commission (IPC's) environmental impact assessment (EIA) scoping opinion consultation.
- Responding to the developer's consultation on the draft Statement of Community Consultation (SoCC).
- Responding to the IPC's consultation on the adequacy of the developer's pre-application consultation.

8.46.1.13 .To make and serve Tree Preservation Orders and deal with applications for works to trees having a Tree Preservation Order or works to Trees in Conservation Areas. To confirm unopposed Tree Preservation Orders.

8.46.2. To carry out the following functions:

Listed Buildings*

- (i) To determine applications for internal works only to buildings listed as of Special Architectural or Historic Interest of Grade II.
- (ii) To pass to CADW, with observations on behalf of the Council, applications for alterations/extensions to buildings listed Grade II.
- (iii) To determine applications for demolition of unlisted buildings in Conservation Areas in consultation with CADW.
- (iv) To determine within the guidelines laid down by the Council, applications for grant aid in respect of buildings of special architectural or historic interest.**

8.46.3.To determine deemed consent applications under the Planning (Hazardous Substances) Act, 1990 in consultation as necessary with the relevant Chief Officer with such Housing responsibilities.

8.46.4.To determine, following notification, whether the prior approval of the Council will be required for the demolition of buildings which are not already protected by listed building and conservation area legislation and in cases where it is determined that approval is required to approve the application unless objections to the proposal have been received.*

8.46.5 To determine applications for Certificates of Lawfulness of Existing Use or Development and Certificates of Lawfulness of Proposed Use or Development under Sections 191 and 192 respectively of the Town and

Country Planning Act, 1990, in consultation with the Head of Legal HR and Democratic Services.*

- 8.46.6.To serve Breach of Condition Notices under Section 187A of the Town and Country Planning Act, 1990, subject to prior consultation with the Chair and Vice-Chair of the Planning Committee and the Local Member in line with the Member Officer Protocol. *
- 8.46.7To deal with and respond to Telecommunication Development Notifications, in consultation with the Chair and Local Member whether or not objections are received.*
- 8.46.8 To pass or reject all plans deposited under Building Regulations for the time being in force, or s.16 Building Act 1984. ***
- 8.46.9 .To arrange for the protection or demolition of dangerous structures, including the service of Notices under Section 77and 78 of the Building Act, 1984. ***
- 8.46.10.To serve Notices, where appropriate under the relevant provisions of the Building Act 1984 and/or Section 16 of the Local Government (Miscellaneous) Provisions Act 1976 (including the service of notices in respect of demolitions under s.81 of the Building Act 1984 ***
- 8.46.11 Not used.
- 8.46.12. Not used.
- 8.46.13.To arrange and approve the numbering of houses and the naming of streets providing, where legislative provisions allow ***
- 8.46.14.To issue the standard completion certificates to certify that completed works are in accordance with Building Regulations.***
- 8.46.15. To negotiate and establish appropriate Building Control and Pre-Planning Application Advice fees and charges in response to market forces***
- 8.46.16.To take enforcement action in respect of non-compliance with the Building Regulations for the time being in force. ***
- 8.46.17.To determine applications under the Hedgerow Regulations 1997.*
- 8.46.18.To authorise other Officers to have the powers of entry under Section 95 of the Building Act, 1984 and Sections 196A, 214B and 324 of the Town and Country Planning Act, 1990.
- 8.46.19.To authorise other Officers to have the powers of entry under Section 88 of the Planning (Listed Buildings and Conservation Areas) Act, 1990 and Section 36 of the Planning (Hazardous Substances) Act, 1990.

- 8.46.20. To determine whether proposed developments require Appropriate Assessments and the giving of opinions on tests of likely significance, under the European Habitat Directive 1992, the Conservation (Natural Habitats, & c.) Regulations 1994 and any associated legislation/regulations, following consultation with the Chair of the Planning Committee and relevant Local Members. **
- 8.46.21. To review annually the commuted sum payable for future maintenance of public open spaces in new housing developments and to set a new sum if it is deemed appropriate.
- 8.46.22. To vary or revoke Tree Preservation Orders subject to prior consultation with and the agreement of the Local Member(s). **
- 8.46.23. To make all necessary arrangements to set up and convene meetings of the Design Panel and to expand the membership of the Panel as considered appropriate. **
- 8.46.24. To update from time to time:
- (a) the Building Cost Multipliers and Contributions as shown in the Council's approved Local Planning Guidance Note on Developer Contributions to Schools in line with Government advice; ** and
 - (b) the list of schools with a current shortage of places based on the Denbighshire Schools Organisation Plan. **
- 8.46.25. To exercise all the functions of the Council in respect of high hedges under the provisions of Part 8 of the Anti-Social Behaviour Act 2003 and any Regulations made thereunder, including authority to charge the maximum fee permissible under the relevant Regulations in connection with complaints made to the Council, or any concessionary rate in accordance with Council policies. **

In the absence or inability to act of the Head of Planning and Public Protection, these delegations may be exercised in accordance with the service's departmental delegations as agreed by the Head of Planning and Public Protection or by:

- * the Development Manager
- ** the Strategic Planning and Housing Policy Manager
- *** the Built Environment Manager

In the absence or inability to act of the Head of Planning and Public Protection and the other three officers referred to above that these delegations may be exercised by the Corporate Director – Economy and Public Realm.

8.47 To issue Certificates of Approval of Works carried out for works of improvement, repair, conversion and adaptations under Part I of the Housing Grants, Construction and Regeneration Act 1996, including payments by instalments

8.48 To deal with all matters arising from applications for grants under Part 1 of the Housing Grants, Construction and Regeneration Act 1996 including approval and rejection of applications, subject to consultation with the Head of Finance and Assets in respect of financial aspects, and to any financial allocation available for this purpose in any one year not being exceeded.

8.49 To deal with all aspects of approval and payments for unforeseen work above currently agreed limits in respect of House Renovation Grants.

To carry out the following functions in respect of car parks:

8.50 To have responsibility for the management of the enforcement function for parking contraventions, both on-street and off-street and any other contraventions covered by the road traffic and traffic management legislation, including responsibility for setting parking charges and penalty charge levels.

8.51 To waive or amend car parking charges for special promotions.

8.52 To take all necessary action to provide additional temporary car parks as required, in consultation with the Local Member(s).

8.53 In consultation with the Local Member(s) to undertake all necessary action following consideration of objections to Off Street Parking Places Orders.

In respect of economic and business development:

8.54 To authorise the establishment of a Business Loan Scheme in consultation with the s.151 Officer, Corporate Director: Economy and Public Realm; and in line with the terms of reference (where applicable) of the Council's Strategic Investment Group.

8.55 To authorise the establishment of a Business Development Grant Scheme in consultation with the s.151 Officer and the Corporate Director: Economy and Public Realm and in line (where applicable) with the terms of reference of the Council's Strategic Investment Group.

9. To the Head of Customers, Communications and Marketing

9.1 To act on a day to day basis and within this scheme in the following areas:

- Customer Services
- One Stop Shops

- Communications (external)
- Marketing
- Media Relationships
- Partnerships
- Library Services and Standards

10. To the Head of Highways and Environmental Services

- 10.1 To have power to operate cleansing and waste and grounds maintenance responsibilities within the purview of the Environment Department from time to time under the following legislation as amended or re-enacted or substituted with new legislation
- Control of Pollution Act 1974
 - Criminal Damage Act 1971
 - Environmental Protection Act 1990
 - Litter Act 1983
 - Local Authority (Goods and Services) Act, 1970
 - Local Government (Miscellaneous Provisions) Act 1976
 - Local Government Act 1988
 - Local Government Planning and Land Act 1980
 - Refuse Disposal (Amenity) Act 1978
 - Town and Country Planning Act 1990
 - Transport Act 1968
- 10.2 To initiate Horticultural schemes within the Council's estimates.
- 10.3 To organise floral displays for Civic and Charitable functions.
- 10.4 To manage all cemeteries controlled by the Council.
- 10.5 To supervise and manage the Countryside Service and Country Parks including maintenance of park, amenity areas and children's playgrounds and all other outdoor recreation facilities, including pavilions and changing accommodation incidental thereto.
- 10.6 To exercise the Council's powers to deal with dangerous trees pursuant to Section 23 and Section 24 of the Local Government (Miscellaneous Provisions) Act 1976.
- 10.7 To make arrangements for the collection of domestic and commercial waste and for its safe disposal.
- 10.8 To prepare a plan of the Council's arrangements for recycling and to provide litter bins

- 10.9 To grant consents to Community Councils for the placing of litter bins within the highway.
- 10.10 To institute action for the cleansing of street litter and refuse, including publicity for litter campaigns.
- 10.11 In consultation with the Head of Legal, HR and Democratic Services, to authorise the institution of legal proceedings in respect of those matters for which the Head of Environment has operational responsibility.
- 10.12 To maintain the public register for the principal litter authority.
- 10.13 To take action to control abandoned vehicles and trolleys, to remove fly posting and graffiti.
- 10.14 To classify various types of waste for collection and disposal and streets requiring cleansing
- 10.15 The prohibition of street parking to facilitate street cleansing.
- 10.16 With the Head of Planning and Public Protection to control and monitor closed disposal sites to prevent pollution or environmental nuisance.
- 10.17 To carry out the Council's functions and duties in connection with the collection, reclamation, recycling and disposal of waste, street cleaning and litter, including the negotiation of terms for commercial waste collection.
- 10.18 To determine in consultation with Local Members applications for the temporary use of land under the control of the Environment Department for periods not exceeding one year.
- 10.19 To exercise, on behalf of the Council, the powers and duties arising from the statutory provisions relating to the service of notices for those functions for which he has responsibility.
- 10.20 To approve from time to time the scale of charges recommended by the Council's Refuse Collection Contractor for the commercial refuse collection service and the price of charges recommended by the Refuse Collection Contractor for the sale or rental by the contractor of commercial refuse containers
- 10.21 To exercise the power to authorise the erection of stiles, etc, on footpaths and bridleways pursuant to Section 147 of the Highways Act 1980 in consultation with the Local Members concerned.
- 10.22 In consultation with the Head of Legal HR and Democratic Services, to take action under Section 130 (protection of public rights in respect of highway) and Section 149 (removal of items deposited on a highway) of the Highways Act 1980, in relation to highways which are Local Rights of Way as defined in Section 60(5) of the Countryside and Rights of Way Act 2000.
- 10.23 To authorise in writing Officers of the Environment department to issue Fixed Penalty Notices under Section 88 of the Environmental Protection Act, 1990, subject to those Officers being suitably trained to carry out the duties authorised.
- 10.24 To undertake the gathering of evidence, issuing of Fixed Penalty Notices and allied action including legal proceedings in respect of offences relating to litter under the Environmental Protection Act 1990

- 10.25 To approve applications for grant aid under the Environmental Community Grants Scheme (or equivalent) in consultation with the appropriate Local Member(s).
- 10.26 To determine individual applications for an additional refuse bin for households of 5 or more persons.
- 10.27 To act on a day to day basis, and within the scheme of delegation in the following areas:-
- Agreements, deposits, licences, consents and enforcements under the Highways Act 1980 and all other relevant highways legislation.
 - Recovery of charges for licences for highway works
 - Recovery of costs for public footpath orders
 - Decisions on footpath diversion orders where there are no objections.
 - Enforcement in respect of deposits and obstructions on the highway
 - Highway nuisance
 - Safe routes to schools
 - Road safety, education and training
 - Surveys of public rights of way
 - Adoption of roads
 - Traffic Regulations and/or Orders
 - The undertaking of statutory consultations with the Police in relation to proposed Traffic Orders.
 - Disabled Parking Orders.
 - Operation of the Councils' Advance Payment Code
 - Service of all appropriate notices in respect of highway matters
 - Drainage in respect of the highway
 - Provision of road markings, rails, barriers and signs not requiring Assembly approval.
 - Delegated functions under the Trunk Road Agency Agreement in accordance with the North East Wales Trunk Road Agency Partnership Agreement
 - Maintenance of Highways (including Rights of Way)
- 10.28 Authority to determine the following applications:-
- Under the New Roads and Street Works Act 1991
 - The deposit of contractors skips on the highway
 - To obtain consent under Section 1 of the Local Government (Miscellaneous Provisions) Act 1976 in respect of erection of flagpoles and the positioning of cut or tub trees on the highway
 - In respect of proposed public footpath Orders where they are unopposed
 - Under Part VII A of the Highways Act 1980 and any adopted highway within the County, after consultation with the relevant Cabinet and Local Members.
 - From Public Utilities to undertake work on the highway
 - In relation to activities in pedestrianised areas and adopted highways, in consultation with Local Members.

- Unopposed applications for stopping up orders.
 - To authorize the making of road traffic regulation orders and to determine residents parking schemes, disabled parking spaces, parking orders, waiting restrictions, weight limits, speed limits, bus and other priority lanes and traffic calming measures.
- 10.29 Authority to take action under section 230 Highways Act 1980, in relation to urgent repairs to private streets.
- 10.30 Authority to determine the programme of revenue works (other than those included in the Council's capital programme and pre-programme schedules) for each financial year and to execute those works.
- 10.31 Authority to comment on behalf of the Council on proposals or draft Orders initiated by other public authorities for the extinguishment or diversion of highways or public footpaths.
- 10.32 To receive all notices and information from water undertakers, and to maintain the registers in accordance with the Reservoirs Act 1975.
- 10.33 To undertake all necessary action under the Reservoirs Act 1975 in connection with enforcement.
- 10.34 In consultation with the Local Member to select bus stop sites and to select suitable sites for the erection of bus shelters, and grant consent to Community Councils for the erection of bus shelters within the highway under Section 4 of the Local Government (Miscellaneous Provisions) Act 1953.
- 10.35 To authorise the letting of contracts for works associated with highways, transportation and drainage, general engineering, land remediation, land reclamation, and building and construction, in accordance with Financial Regulations and the Contract Procedure Rules.
- 10.36 To arrange for the making of permanent traffic regulation orders under the Road Traffic Regulation Act 1984 as amended and to consider objections to permanent traffic regulation orders in consultation with the Local Members.
- 10.37 In consultation with the Head of Legal HR and Democratic Services to sign and serve notices, give consents and take any other action, including authorising prosecutions for offences, as may be appropriate under any statute, including specifically the Highways Act, 1980, or any other legislation relating to the Highway or other functions, duties and powers within the purview of the Highway Services department, and additionally, in consultation with the Head of Environment in so far as Local Rights of Way (as defined by Section 60(5) of the Countryside and Rights of Way Act 2000) are concerned.
- 10.38 To undertake inspections (including the inspection of a licence or operator records), authentications, investigations, interviews, sampling, testing (including the testing of vehicles), prohibitions, seizures (including the removal of plates upon expiry or revocation), detentions, recording, service of notices,

(including suspension notices), notifications, waivers, transfers, authorisations, licensing, registrations and legal proceedings as are within the purview of the Highways and Environmental Services department under the legislation applicable and incidental to its functions, together with any regulations made thereunder, and any amendments or additions made to it, or any subsequent new functions which can properly be regarded as incidental to the functions of the department and to exercise all other relevant powers or duties, including powers of entry provided under such legislation.

- 10.39 To grant consent to Community Councils for the placing of seats within the highway under section 5 of the Parish Councils Act 1957.
- 10.40 To grant consent to the Post Office for the erection of post boxes within the highway, in consultation with Local Members.
- 10.41 To grant consent for the erection of telephone kiosks within the highway in consultation with Local Members.
- 10.42 To undertake such functions as are within the purview of the Highway Services department and as are required of the Council under the Joint Trunk Road Agency Agreement with the National Assembly for Wales.
- 10.43 To exercise the powers of the Council under Section 15 of the Clwyd County Council Act, 1985 where appropriate.
- 10.44 To authorise entry into Agreements under Section 278 of the Highways Act, 1980 where appropriate.
- 10.45 To authorise the making of applications to the Magistrates Court for the stopping up or diversion of highways under Section 116 of the Highways Act, 1980, in consultation with the Local Member(s).
- 10.46 In consultation with the Local Member(s) to undertake all necessary action following consideration of objections to Off Street Parking Places Orders.
- 10.47 To determine the commuted sum to cover the cost of maintenance, for a 10 year period, to be levied on developers who, as part of a development, create a highway verge.
- 10.48 To select contractors to undertake works in relation to the various categories of work falling within the purview of the Highways and Infrastructure department from the approved Select List of Contractors, and acting on behalf of other clients using the department for such works, in accordance with Financial Regulations.
- 10.49 To have the power to authorise (in writing) persons to enter onto land pursuant to, and for the purposes of, Sections 289 and 291 of the Highways Act 1980.

- 10.50 To set the level of charges for the issuing of consents for highway works and obstructions and other matters pursuant to the Local Authorities (Transport Charges) Regulations 1998 and to apply discretionary annual adjustments to such charges in line with inflation.
- 10.51 To authorise in writing Officers of the Highways and Infrastructure department to act for the purposes of enforcing Schedule 4 of the Environmental Protection Act 1990.
- 10.52 To serve written notices in accordance with the provisions of Part II of the Traffic Management Act 2004 on any Works Promoter or Contractor directly employed by the Council to prohibit or suspend planned works on any road within the County for any period of time where such prohibition secures the expeditious movement of traffic within the County.
- 10.53 To have the overall responsibility pursuant to the Transport Act 1968 for the proper operation and maintenance of the Council's transport fleet and to hold the relevant Operators Licence, or to designate an appropriate officer for such purpose.
- 10.54 To operate the testing of private hire and hackney carriage vehicles as well as operating a MOT service.
- 10.55 To exercise the function of making Public Path Extinguishment Orders under Section 118 of the Highways Act 1980 in consultation with the Local Members.
- 10.56 (i) To exercise the function of making Public Path Diversion Orders under Section 119 of the Highways Act 1980 and Section 257 of the Town and Country Planning Act 1990 in consultation with the Local Members.
- (ii) To formally abandon Public Path Diversion Orders made under Section 119 of the Highways Act 1980 or Section 257 of the Town and Country Planning Act 1990, subject to the Local Member having no objection to the proposal with the power to decide proposals to which the Local Member objects remaining with the Council.
- 10.57 To enter into Public Path Creation Agreements under Section 25 of the Highways Act 1980 on behalf of the Council.
- 10.58 To exercise the function of determining applications for Definitive Map Modification Orders, in consultation with the Local Members concerned (except in respect of 'legal event orders' under Section 53(3)(a) of the Wildlife and Countryside Act 1981) and the Head of Legal, HR and Democratic Services.
- 10.59 To exercise the power to authorise the erection of stiles, etc, on footpaths and bridleways pursuant to Section 147 of the Highways Act 1980.

- 10.60 In consultation with the Head of Legal, HR and Democratic Services, to take action under Section 130 (protection of public rights in respect of highway) and Section 149 (removal of items deposited on a highway) of the Highways Act 1980, in relation to highways which are Local Rights of Way as defined in Section 60(5) of the Countryside and Rights of Way Act 2000.
- 10.61 To decide applications for free and assisted transport to schools and colleges (except pupils with special educational needs) in accordance with the Council's policies relating to home to school transport.
- 10.62 To set the level of charges for the issuing of consents for highway works and obstructions and other matters pursuant to the Local Authorities (Transport Charges) Regulations 1998 and to apply discretionary annual adjustments to such charges in line with inflation.
- 10.63 To arrange for the making of temporary traffic regulation orders under the Road Traffic Regulation Act 1984 as amended.
- 10.64 To approve the making of orders under S.21 Town Police Clauses Act 1847, following consultation with Local Members.
- 10.65 To exercise all the powers of the Council under the Land Drainage Act 1989 including the service of notices under the Act.
- 10.66 To administer the provisions of the New Roads and Street Works Act 1991 in respect of Streets, Street Works and Undertakers.
- 10.67 To determine applications (in consultation with the Head of Planning and Public Protection) for licences under s.115E of the Highways Act 1980 to use the highway for the provision of facilities for refreshments.
- 10.68 To have the overall responsibility pursuant to the Transport Act 1968 for the proper operation and maintenance of the Council's transport fleet and to hold the relevant Operators Licence, or to designate an appropriate officer for such purpose.
- 10.69 To have overall responsibility in respect of the Council's Corporate Health and Safety department.

11. To the Corporate Director : Communities

- 11.1 To act as the Council's Statutory Director of Social Services in accordance with Section 6 of the Local Authorities Social Services Act 1970 and in Part 8 of the Social Services and Well Being (Wales) Act 2014 in relation to the Council's Social Services functions and be accountable for the effective delivery of such functions having regard to the duties in Part 2 of the Social Services and Well Being (Wales) Act 2014

11.2 The overall performance and strategic management responsibility for Social Services is delegated to the Corporate Director :Communities as the Statutory Director.

11.3 As Statutory Director to maintain an overview of the full range of social services activities within the Authority and as the Officer responsible for the quality of services provided to fulfil the authority social services function including the following core responsibilities as set in Statutory Guidance on the Role and Accountabilities of the Director of Social Services 2009 and any subsequent Statutory Guidance or Code of Practice issued under s.145 of the Social Services and Well Being (Wales) Act 2014

- **Providing clear professional leadership across Social Services**
 - Through the published Annual Report to Council, to ensure vision, strategic direction, priorities and improvement plans for social services are clear and help fulfil corporate plans and that awareness of the Director of Social Services role is raised amongst Councillors and what information Councillors can expect to receive in relation to the discharge of specific social services functions and the wider activities to promote well being of people with care and support needs
 - To ensure coherence and integrated leadership across social services and education. .
 - As a Member of the Regional Social Services Programme Board
 - To engage in regional and national social services networks e.g. through ADSS, SSIA, NWSSIC.
 - To ensure engagement of users of social services in bringing the Council closer to the community – shaping the delivery of priorities and services across the Council.
 - To contribute to the vision and direction of the Council and ensure services seek to promote the well being of people with care and support needs.

- **Having direct access and reporting to, and advising, the Chief Executive and Councillors on Social Services matters and on the direction and actions the authority should take in fulfilling its Social Services responsibilities.**
 - To brief and advise Council, Cabinet, Scrutiny and the Chief Executive on high risk issues relating to social services, the contribution of social services to corporate programmes and the impact of corporate programmes on vulnerable groups.
 - As Statutory Director to report to the Cabinet, Lead Member and Scrutiny Committees in relation to the planning, delivery and performance of the Councils' social services functions, and to be accountable for the oversight and co-ordination of such functions.
 - To ensure the governance and relationship with the Chief Executive is subject to periodic review.

- To ensure Councillors have clear advice on the level of resources required to enable the Council to effectively deliver its social services functions.
 - To identify and advise Councillors on priorities, challenges and risks across all aspects of social services including staffing issues affecting the Council's ability to discharge its statutory functions.
 - Briefing the Chief Executive and Councillors on high profile cases or matters likely to be of public concern.
 - To report to the Council on the detail of any inspection report
- **Ensuring that strong performance management arrangements are in place across Social Services and reporting at a corporate level and to Members on the authority's performance in respect of these;**
 - To receive defined performance and quality information on a monthly basis to enable overall performance management and quality assurance.
 - To intervene when financial position, performance or quality are below expected standards and improvement activity is not sufficiently timely or effective.
 - To undertake annual performance appraisals of the social services heads of service.
 - To be a principal point of contact with the Welsh Government and professional leads, the service and workforce regulators, audit and inspection bodies.
 - To be responsible for the reporting and communicating directly with the Welsh Government and the Care and Social Services Inspectorate for Wales; and the development and maintenance of productive relationships with other sectors and agencies as the lead officer on social services matters
 - To be responsible for ensuring the Chief Executive and Councillors that statutory functions laid on the Council have been carried out, and that proper information management and accurate records are kept;
 - To advise Councillors on strategies for improving methods of intervention, service provision, practice and use of resources.
 - To provide leadership on strategies to manage risk and co-operate with the full range of partners to work with families at the 'edge of care'.
 - To ensure strategic arrangements are in place to provide for co-operation across the Council and with partners to effectively provide care and support services for all Looked After Children.
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 - **Ensuring that the authority has proper safeguards to protect vulnerable children and young people, adults and older people, and reporting at a corporate level and to Members on their effectiveness,**
 - Ensuring the effective operation and partnership working of the Local Safeguarding Children Board and Denbighshire Adult Protection Committee

- To carry ultimate accountability across the Council for safeguarding children including ensuring safe employment practices and safeguarding arrangements within the Council and relevant partners.
 - To oversee and report to Councillors on the operation, monitoring and improvement of child and adult safeguarding systems within the Council
 - As a member of the Corporate Parenting Forum
- **Fulfilling overall responsibility for Social Services workforce planning, training and professional development.**
 - Ensuring employment arrangements for social care staff comply with Care Council Codes of Practice and that the overarching personnel and safe recruitment policies are in place and adhered to
 - To ensure integration of the social care workforce agenda with wider corporate and partnership workforce development agendas and collaborative workforce learning
 - To ensure high standards across the whole social care workforce and a whole sector workforce plan is in place.
 - To advise Councillors, partners and other providers where workforce shortfalls inhibit the Council's capacity to discharge statutory responsibilities; setting out actions necessary to rectify any such situation.
- **Ensuring that there are adequate arrangements in place for Social Services to work effectively with others, both within and outside the Authority, in fulfilling its Social Services functions and in contributing to the achievement of wider policy objectives.**
 - As a member of the LSB.
 - To act as Lead Officer for liaison with the NHS and the wellbeing agenda;
 - As a CPG member
 - As Lead Officer for regional social care and health/social care collaboration projects.
 - To lead and support continuous engagement and co-operation with inspectorates by all local authority officers.
 - To develop effective arrangements to promote co-operation and interagency working
 - To ensure the Council and its partners develop a strategic approach to prevention, including developing a co-operative approach to the planning, development, procurement and delivery of services.
 - To ensure that preventative services are provided or arranged specifically to address the care and support needs identified by the population assessment.
 - To ensure effective information, advice and assistance services are available in supporting individuals to achieve their well being outcomes.

11.4 To act as an Authorised Officer under the Regulation of Investigatory Powers Act 2000.

- 11.5 To keep the Statutory Director of Education apprised of key corporate decisions/actions which will impact or have possible implications for their Statutory Officer role.
- 11.6 To act as the Emergency Planning Lead for Social Services.
- 11.7 To act as Welsh Language lead in respect of the Welsh Language Standards Regulations 2015

12. To the Head of Community Support Services

- 12.1 The strategic and operational delivery and/or securing by the Council of Personal Social Services for Adults and Homelessness services.
 - Adult services, including mental health, learning disabilities, older people, acquired brain injury and physical disabilities;
 - Performance and Financial Management, including complaints and representations relating to social services for adults;
 - Inter-agency and Partnership Working;
 - Commissioning and contracting across all adult services.
 - To act as Lead Officer in respect of Workforce Planning and Development across both Adult and Children’s Social Services.
 - The management of the complaints services across both Adult and Children’s Services in accordance with any relevant complaints procedures and Directions.
 - The safeguarding of vulnerable adults or adults at risk, in accordance with the current statutory and policy framework.
- 12.2 In particular, to exercise those functions of the Council which relate to personal social services for adults under the appropriate Sections of the following Acts as amended or re-enacted as set out in the below non exhaustive list, having regard to any Statutory Guidance, Directions and Regulations issued thereunder:-
 - Accommodation Agencies Act 1953
 - Administration of Justice Act 1970
 - Anti Social Behaviour Act 2003
 - Care Act 2014
 - Care Standards Act 2000
 - Carers (Equal Opportunities) Act 2004
 - Carers (Recognition and Services) Act 1995
 - Carers Act 2000
 - Carers and Disabled Children Act 2000
 - Children and Young Persons Act 1933
 - Chronically Sick and Disabled Persons Act 1970

- Community care (Delayed discharge) Act 2003
- County Courts Act 1984
- Crime and Disorder Act 1998
- Criminal Justice Act 1991
- Data Protection Act 1998
- Disabled Persons (Employment) Act 1958
- Disabled Persons (Services, Consultation and Representation) Act 1986
- Health Act 1999
- Health Act 2006
- Health and Social Care Act 2001 and 2008
- Health and Social Services and Social Security Adjudication Act 1983
- Health Services and Public Health Act 1968
- Homelessness Act 2002
- Housing (Wales) Act 2014
- Housing Act 1985
- Housing Act 1985 (as amended by the Local Government and Housing Act 1989)
- Housing Act 1996 (including amendments made under the Anti Social Behaviour Act 2003)
- Housing Act 2004
- Housing Grants, Construction and Regeneration Act 1996
- Local Government Act 1972
- Local Government Act 2000
- Mental Capacity Act 2005
- Mental Health (Wales) Measure 2010
- Mental Health Act 1983 and 2007
- National Assistance (Amendment) Act 1951
- National Assistance Act 1948
- National Health Service (Wales) Act 2006
- National Health Service Act 1977 and 2006
- National Health Service and Community Care Act 1990
- Nationality, Immigration and Asylum Act 2002
- Noise Act 1996
- Noise and Statutory Nuisance Act 1993
- Protection from Eviction Act 1977
- Public Health (Control of Disease) Act 1984
- Safeguarding of Vulnerable Groups Act 2006
- Social Care Charging (Wales) Measure 2010
- Social Security Administration Act 1992
- Social Services and Well Being Act 2014
- Supplementary Benefits Act 1976
- Violence against Women, Domestic Violence and Sexual Violence (Wales) Act 2015
- Well Being of Future Generations (Wales) Act 2015

12.3 To act as the Senior Responsible Person for the purposes of the Care Standards Act 2000 and be the Lead Officer for DAPC and line manage POVA Co-Ordinator in accordance with 'In Safe Hands' guidance

- 12.4 In consultation with the Head of Finance and Assets and the Corporate Director Communities, to approve fee increase, within budgetary resources, for residential and nursing home provision following approval by Cabinet of the methodology of setting the fee.
- 12.5 The setting and administration of all charges levied in respect of social services for adults including the waiving of charges and subject to any limit on such charge or fee, set by statute.
- 12.6 The provision of improvements and adaptations to a disabled persons' home under section 2(1)(e) of the Chronically Sick and Disabled Persons Act 1970.
- 12.7 In consultation with the Head of Legal, HR and Democratic Services to institute proceedings in a Court or other Tribunal under the following Acts as amended or re-enacted.
- Health and Social Services and Social Security Adjudications Act 1983 Section 22
 - Insolvency Act 1986 Section 339,
 - Mental Capacity Act 2005
 - Mental Health Act 1959 Section 131
 - Mental Health Act 1983 Sections 29 and 30, Part V and VII and Section 130
 - National Assistance Act 1948 Section 47 and 56(3)
 - Recovery in the County Court for debt matters arising from the provision of services rendered under Section 21 and 29 National Assistance Act 1948
 - The High Courts' jurisdiction in respect of vulnerable adults who lack capacity.

Any other function of the Council in relation to the provision of personal social services for adults which involves an application to a Court or other Tribunal including the prosecution of offences or which requires the execution of any document having effect in law.

- 12.8 To approve a Panel of suitable and willing persons to act as members in respect of independent reviews on complaints under procedures established under the National Health Service and Community Care Act 1990.
- 12.9 To respond at the formal stage on behalf of the Authority on complaints dealt with under proceedings established under the National Health Service and Community Care Act 1990.
- 12.10 To act as Guardian and decide upon the reception of persons into Guardianship of the Council under Section 7 and 37 of the Mental Health Act 1983.
- 12.11 To approve a package of Community Care in excess of the gross cost of Residential Placement for the registration category of the person concerned when the cost can be met by the budget holder.

- 12.12 To appoint Approved Mental Health Practitioners.
- 12.13 To respond on behalf of the Authority at the appeal stage following independent reviews and complaints under social services complaints procedures
- 12.14 To exercise the power to appoint Proper/Alternative Proper Officers for medical matters under the National Assistance Act 1948 and the National Assistance (Amendment) Act 1951.
- 12.15 To make decisions on consent under s.30 to 31(2) of the Anti Social Behaviour Act 2003 on dispersal of groups and removal of persons under 16 to their place of residence (jointly with the Head of Children and Family Services in respect of those under 16 who form part of such groups).
- 12.16 To keep the Statutory Director of Social Services apprised of key corporate decisions/actions which will impact or have possible implications for the Statutory Officer role.
- 12.17 To consult and keep apprised of key corporate decisions/actions relevant to the Councils' Older Peoples Champion and Lead Member, where appropriate.
- 12.18 To ensure service users are engaged in shaping priorities and delivery of adult social services.
- 12.19 To engage in regional and national networks relating to Adult Services.
- 12.20 To develop the annual Service Business Plan and contribute to ACRF
- 12.21 To develop and manage service risk registers and undertake any corporate Service Challenge process.
- 12.22 To commission and receive regular management information to enable strategic planning and operational management of the services.
- 12.23 To have overall responsibility for the annual budget agreed for Adult Services.
- 12.24 To report annually to Scrutiny and Council on adult protection procedures.
- 12.25 To act as Lead Officer for specific health/social care integration projects;
- 12.26 To be a CPG member;
- 12.27 To administer the Council's functions and responsibilities towards the Homeless under the provisions of the Housing Act 1985 and the Housing (Wales) Act 2014
- 12.28 To consider and determine any requests received by the Council pursuant to Section 8 of the Homelessness Act 2002 and the Housing Wales Act 2014

calling for a review of the suitability of accommodation offered by the Council.

12.29 To act as Lead Officer for regional social care and health/social care collaboration projects.

13. To the Head of Education and Children's Services

13.1 To act as the Statutory Director of Education appointed under s.532 of the Education Act 1996 or any re-enactment of that provision.

13.2 The strategic and operational management responsibility for Education and Children's Services is delegated to the Head of Education and Children's Services.

13.3 As Statutory Director for Education to maintain an overview of the full range of education services within the Authority and as the Officer responsible for the quality of services provided to fulfil the authority's education functions.

13.4 As Statutory Director to report directly to the Corporate Director: Communities and to report to Cabinet, Lead Members and Scrutiny and other relevant Committees in relation to the planning, delivery and performance of the Councils Education functions and be accountable for the oversight and co-ordination of such functions.

13.5 To be responsible for the reporting and communicating directly with the Welsh Government and (Estyn) on education matters and the development and maintenance of productive relationships with other related sectors and agencies.

13.6 To keep the Statutory Director of Social Services (Corporate Director: Communities) apprised of key corporate decisions/actions which will impact or have possible implications for their Statutory Officer role.

13.7 To grant and revoke licences to children of compulsory school age regarding child performances in accordance with the Children and Young Persons Act 1963 and the Children's (Performance) Regulations 1968 and any statutory modification thereof.

13.8 To supervise, prohibit and/or restrict the employment of children of compulsory school age pursuant to the Education Act 1996.

13.9 To act as the Statutory Lead Director for Children and Young People's Services under s.27 of the Children Act 2004.

- As Statutory Lead Director for Children and Young People to maintain an overview of the full range of children and young peoples' services and activities within the Authority and as the Officer responsible for the quality of services provided to fulfil the authority function including the following core responsibilities

- **Ensuring effective cross sector partnership arrangements to improve the wellbeing of children and young people.**
 - As an LSB Member.
 - Ensuring planning for children, young people and their families is seen as a corporate and cross sector activity embedded in the achievement of agreed corporate and public sector priorities.
 - Ensuring planning is increasingly harmonized across North Wales, in conjunction with other Lead Directors.
- **Production and publication of children and young people's plan.**
 - Ensuring Denbighshire's Big Plan meets statutory requirements relating to children and young people's planning.
- **Clear governance arrangements for partnership planning, a focus on outcome measures and regular performance management.**
 - Ensuring effective mechanisms are in place to deliver jointly agreed outcomes for children and young people.
 - Leading the inspection processes relating to Children and Young Peoples' Partnership activity.
- **Attention to implementation of the UN Convention on the Rights of the Child**
 - Championing children's rights across the Council, including the right of children and young people to have their voices heard.
 - Ensuring that the participation of children and young people is embedded in formal and informal education settings.

13.10 Jointly with the Head of Finance, to suspend the right of the governing body to have a delegated budget in circumstances permitted by the legislation.

13.11 To monitor and evaluate the performance of schools.

13.12 To deal with nominations for Local Education Authority governors, making an appointment in instances where a single suitable nomination is received for any vacancy or otherwise reporting to the Cabinet (or Lead Member as appropriate) for determination and appointment.

13.13 To establish temporary governing bodies.

13.14 To make necessary arrangements for the election of parent governors, teacher and staff governors and to determine any questions arising from the election process.

13.15 To consider any resolutions sent to him/her from an annual parents meeting and to respond accordingly.

- 13.16 To manage governor training.
- 13.17 To act on behalf of the Local Education Authority in any consultations initiated by the governors of any school, in relation to the times of school sessions and, if he/she considered it appropriate to do so, to require the governors to include his/her written comments on the proposals in the next governors' report to be prepared by the governors.
- 13.18 To determine and deal with all arrangements for the admission of pupils to community and voluntary controlled schools in accordance with the Council's policy, including authority to;-
- publicise information for parents of admission arrangements.
 - comply with parental preferences, with certain exceptions.
 - determine allocations of pupils to community and voluntary controlled primary and secondary schools, subject to the parental right of appeal.
- 13.19 To make arrangements to enable parents to appeal against decisions regarding admissions.
- 13.20 To appear or make written representations on behalf of the Authority in any appeal against a refusal to admit.
- 13.21 To respond to changes in pupil numbers by making appropriate accommodation available.
- 13.22 Subject to such determination being in accordance with an approved plan or policy, to determine whether to publish any statutory notices (other than in respect of closure of schools) and to take action on advertised proposals in light of any representations received and also to determine the Authority's decision in respect of school organisational proposals and school closure proposals in respect of which either there has been no objections or any objections received have been resolved.
- 13.23 To undertake any inspections, interviews, investigations, seizures, services of notices, notifications, authorisations, registrations and legal proceedings as are within the purview of the department under the Education Reform Act 1988, together with any regulations made thereunder, any amendments or additions thereto and to exercise all relevant powers of entry if provided.
- 13.24 To determine applications and provide, where applicable, milk, meals and refreshments in accordance with the Council's policy.
- 13.25 To act on behalf of the LEA in any consultations initiated by the governors of any school, in relation to the times of school sessions, and if he/she considered it appropriate to do so, to require the governors to include

- his/her written comments on the proposals in the next governors' report to be prepared by the governors.
- 13.26 To appoint sufficient education practitioners and governors in accordance with the arrangements who may be called upon to be required to serve as members on future independent Appeal Panels.
 - 13.27 To investigate complaints made under section 409 of the Education Act 1996
 - 13.28 To determine any matters relating to the Councils policy regarding charges and remissions and to authorise the recovery of any sums owed to the Council.
 - 13.29 To approve the acceptance of gifts on trust for education purposes.
 - 13.30 To determine, where necessary in consultation with the trustee, applications received for financial support from charitable trust funds where the Authority is either itself trustee, or where the fund is administered on behalf of trustees.
 - 13.31 To respond to changes in pupil numbers by making appropriate accommodation available.
 - 13.32 To monitor the curriculum in all maintained schools and report on it as necessary
 - 13.33 To set by agreement with schools, targets for pupil attainment.
 - 13.34 To prepare a written statement of action to be taken in light of the report following an inspection of a maintained school.
 - 13.35 To intervene to prevent the breakdown or continuing breakdown of discipline at a school, or where there is concern about standards of management.
 - 13.36 To ensure that the performance management of teachers and head teachers is carried out according to Welsh Government directions and regulations and to monitor and evaluate the provision and performance of schools.
 - 13.37 To investigate complaints made under Section 409 of the Education Act 1996.
 - 13.38 To make or approve arrangements for the provision of work experience for pupils in their last year of schooling.
 - 13.39 To manage and operate the Education Psychology Service.
 - 13.40 To arrange appeals against exclusions and redirect excluded pupils.

- 13.41 To make arrangements to encourage and assist pupils to take advantage of the provisions for medical and dental inspections and treatment made for them.
- 13.42 To ensure cleanliness of pupils and to serve a notice on parents requiring cleanliness where appropriate.
- 13.43 To manage all aspects of schools without delegated budgets.
- 13.44 To inspect and maintain schools for the purposes of a Local Education Authority function.
- 13.45 To authorise persons at educational establishments to exercise the power of removal of persons from school premises who are causing a nuisance or disturbance.
- 13.46 To authorise Officers to appear on behalf of the Local Education Authority in proceedings being conducted in the Magistrates Court by Section 547 of the Education Act 1996 or any re-enactment of that provision.
- 13.47 To consider any resolutions sent to him/her from an annual parents meeting and to respond accordingly.
- 13.48 To deal with the staffing matters of community voluntary controlled and community special schools where the decision is that of the LA (rather than the governing body).
- 13.49 To determine the school term and holiday dates including in service training days for any community, community special or voluntary controlled schools.
- 13.50 To exercise powers under the Education Acts in accordance with the Code of Practice, to identify, assess and arrange provision for pupils special educational needs, including the admission of pupils to out of county schools (including non maintained special schools and independent schools providing for pupils with special education needs) and transport where appropriate, in accordance with the Council's Transport Policies.
- 13.51 To provide aids for use by pupils with special needs
- 13.52 To authorise officers to represent the Education Authority in tribunal proceedings dealing with special educational needs.
- 13.53 To make arrangements for the provision of suitable education otherwise than in school, in accordance with Section 319 of the Education Act 1996.
- 13.54 To make arrangements for the provision of suitable education at school or otherwise for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not receive it unless such arrangements were made.

- 13.55 To recoup the costs of providing education for persons not belonging to the Council's own area.
- 13.56 To exercise the powers of the Education Authority, with the exception of initiating legal proceedings, under the Education Act 1996 and the Children Act 1989 in respect of school attendance orders, non school attendance and education supervision orders.
- 13.57 To ensure the provision of statutory youth services jointly with the Head of Facilities Assets and Housing. .
- 13.58 Jointly with the Statutory Director of Education to grant and revoke licences to children of compulsory school age regarding child performances in accordance with the Children and Young Persons Act 1963 and the Children's (Performance) Regulations 1968 and any statutory modification thereof.
- 13.59 To supervise, prohibit and/or restrict the employment of children of compulsory school age pursuant to the Education Act 1996.
- 13.60 To manage the provision of the youth support services in pursuance of the Learning and Skills Act 2000 in consultation with the Head of Facilities Assets and Housing.
- 13.61 To exercise those functions of the Council which relate to Children and Young People under the Crime and Disorder Act 1998 (as amended or re-enacted).
- 13.62 To give directions to admit a child to a specified school.
- 13.63 To undertake any inspections, interviews, investigations, seizures, services of notices, notifications, authorisations, registrations and legal proceedings as are within the purview of the department under the Education Reform Act 1988, together with any regulations made thereunder, any amendments or additions thereto and to exercise all relevant powers of entry if provided.
- 13.64 To exercise powers under the Education Act 2002 s.29(5) in respect of health and safety directions to governing bodies where the local authority is the employer.
- 13.65 To ensure all relevant Officers (and volunteers if relevant) are subject to the provisions (including any vetting and barring procedures) of the Safeguarding Vulnerable Groups Act 2006 and any subsequent amendment or regulations made under it.
- 13.66 To keep under review (and ensure relevant staff awareness) any safeguarding practices and procedures including registration (if required) with any Safeguarding Authorities and reporting matters on safeguarding to the Statutory Lead Director for Children and Young People and/or the Statutory Director of Social Services, where appropriate.

- 13.67 To maintain a Standing Advisory Council on Religious Education (SACRE) in accordance with the Councils Constitution.
- 13.68 To review and make Instruments of Government for maintained schools within the County where there is no disagreement with the draft Instrument.
- 13.69 To authorize persons at educational establishments to exercise the power of removal of persons from school premises who are causing a nuisance or disturbance
- 13.70 To determine questions as to who are to be considered parents of registered pupils.
- 13.71 The strategic and operational delivery and/or securing by the Council of personal social care services for children and young people including:
- appropriate contact and referral arrangements for service users and other agencies
 - family support services to “children in need”
 - child protection (safeguarding) services, including responsibilities under the United Nations Convention on the Rights of the Child.
 - domiciliary care for children and young people who are disabled
 - accommodation services for looked after children including fostering and residential care
 - the full range of services required of an adoption agency whether through any Regional Adoption Service, or not as the case may be
 - planning, commissioning contracting and performance management services
 - strategic planning in conjunction with partner agencies
 - the management of complaints and representation
 - Partnership working including a role in the Local Safeguarding Children Board
 - Ensuring the workforce needs of Children’s Services are identified and reflected in the workforce plans and that effective staffing structures are in place.
- 13.72 In particular, to exercise those functions of the Council which relate to personal social services for children and young people, under the appropriate Sections of the following Acts as amended or re-enacted having regard to any Statutory Guidance issued thereunder:
- Adoption & Children Act 2002
 - Adoption (intercountry Aspects) Act 1999
 - Anti Social Behaviour Act 2003
 - Care Standards Act 2000
 - Carers (Equal Opportunities) Act 2004
 - Carers (Recognition and Services) Act 1995
 - Carers Act 2000

Carers and Disabled Children Act 2000
Childcare Act 2006
Children & Young Persons Act 1969
Children (Leaving Care) Act 2000
Children Act 1989
Children Act 2004
Criminal Justice Act 1991
Data Protection Act 1998
Disabled Persons (Employment) Act 1958
Disabled Persons (Services, Consultation and Representation) Act 1986
National Health Service and Community Care Act 1990
Nationality, Immigration and Asylum Act 2002
Public Health (Control of Disease) Act 1984
Safeguarding of Vulnerable Groups Act 2006

13.73 The administration of all charges levied in respect of personal social services for children and young people including the waiving of charges.

13.74 The provision of financial assistance under sections 17 & 24 of the Children Act 1989 and the Children (Leaving Care) Act 2000.

13.75 In consultation with the Head of Legal, HR and Democratic Services to institute proceedings in a Court or other Tribunal under the following Acts as amended or re-enacted:

- Adoption and Children Act 2002
- Children Act 1989 Sections 25, 31, 34, 39, 43, 44, 45, 48(9), 50, 70, 94, 100, 102 and Schedule 2 Paragraph 19 and Schedule 3 Paragraph 6(3).

Any other function of the Council in relation to the provision of personal social services which involves an application to a Court or other Tribunal including the prosecution of offences or which requires the execution of any document having effect in law.

13.76 To respond at the formal stage on behalf of the Authority on complaints dealt with under proceedings established under the Children Act 1989

13.77 To agree the accommodation of children under the Children Act 1989 and the provision of support generally under Part 3 Children Act 1989.

13.78 To give the necessary consents to appropriate matters relating to children the subject of Care Orders to the Authority including the giving of consent for medical treatment and obtaining passports and holiday consent for children the subject of Care Orders.

13.79 To decide upon recommendations of the Foster Care and Adoption Panels.

13.80 To respond on behalf of the Authority at the appeal stage following independent reviews and complaints under the procedures established under the Children Act 1989

- 13.81 To make arrangements for the provision of suitable education at school or otherwise for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not receive it unless such arrangements were made.
- 13.82 To give consent to private law orders including residence orders and special guardianship where appropriate.
- 13.83 Power to exercise the functions and make decisions in relation to the Fostering Services for Children- Payment for Skills 2005 Policy in respect of:
- Fostering allowance rates
 - Festival, Birthday and Holiday allowances
 - Weekly residence order allowances
 - Freezing/unfreezing levels of allowances and fees to foster carers registered on the Foster Carers Register.
- 13.84 To make decisions on dispersal of groups and removal of persons under 16 to their place of residence under the Anti Social Behaviour, Crime and Policing Act 2015 /Anti Social Behaviour Act 2003 as appropriate.
- 13.85 Leadership and improvement of the well being of children as defined in s.25 (2) Children Act 2004
- 13.86 To keep the Statutory Director of Social Services apprised of key corporate decisions/actions which will impact or have possible implications for the Statutory Officer role.
- 13.87 To act as Senior Responsible Person for the purposes of the Care Standards Act 2000 and Lead Officer for child protection and safeguarding systems in accordance with 'Working Together' guidance.
- 13.88 To be the Lead Officer for the LSCB.
- 13.89 To be the Lead Officer for the Corporate Parenting Forum.
- 13.90 To engage in regional and national networks relating to Children's Services.
- 13.91 To report annually to Scrutiny and Council on the effectiveness of child protection procedures.
- 13.92 To have overall responsibility for the annual budget agreed for Children Services.
- 13.93 To develop the annual Service Business Plan and contribute to ACRF.
- 13.94 To develop and manage service risk registers and undertake any corporate service challenge process.

- 13.95 To commission and receive regular management information to enable strategic planning and operational management of services.
- 13.96 To ensure services are planned and delivered effectively across adults and children services and across children's services and education services.
- 13.97 To ensure that children in need and their families are engaged in shaping priorities and delivery of children's services.
- 13.98 To act as Lead Officer for specific health/social care integration projects affecting children and young people

14. To the Corporate Director: Economy and Public Realm

- 14.1 To act as an Authorising Officer under the Regulation of Investigatory Powers Act 2000

15. To the Head of Democratic Services

15.1 To act on a day to day basis as Head of Democratic Services and to ensure proactive support to the democratic process and elected members in accordance with the Constitution.

15.2 To manage the Council's services for Members and in connection with this to take all necessary steps to secure compliance with the Local Government Act 1972 Part VA (access to meetings and documents of the Council, its Committees and Sub-Committees).

15.3 To manage the Council's Democratic Services provision and in particular:

- Provide the Council with support and advice in relation to its meetings, Committees and members of those Committees
- Any joint committee which the Council is responsible for organising,
- In relation to the functions of the Authority's overview and scrutiny committees.

- 15.4 To promote the roles of the Authority's Overview and Scrutiny Committees.
- 15.5 To carry out duties as required under the Family Absence for Members of Local Authorities (Wales) Regulations 2013.
- 15.6 Any other functions prescribed by the Welsh Ministers to the Head of Democratic Services.

16 To the Head of Business Improvement and Modernisation

- 16.1 Ensuring underpinning work to enable production and delivery of effective children and young people's plan is carried out – including ongoing needs assessment, consultation, commissioning.

- 16.2 Ensuring statutory requirements and timescales for children and young people's planning are met
- 16.3 Ensuring effective management and administration of relevant funding streams.
- 16.4 Ensuring outcomes based performance management framework in place for Big Plan and children and young people elements to ensure the impact of partnership is measured.
 - 16.5 Ensuring annual completion of National Service Framework Self Assessment Audit Tool.
 - 16.6 Preparation for inspection.
 - 16.7 Ensuring effective reporting to LSB and appropriate Scrutiny Committee(s) on agreed joint programmes and projects.
 - 16.8 Ensuring the voice of children and young people is embedded in the preparation and implementation of the Big Plan and in monitoring impact.
 - 16.9 Ensuring corporate engagement and consultation strategies include listening to children and young people.
 - 16.10 Ensuring Equality Impact assessments are carried out.
 - 16.11 Ensuring Privacy Impact Assessments are carried out.
 - 16.12 To act as a member of the Council's Access to Information Panel.
 - 16.13 To act as the Council's Senior Information Risk Officer and reporting annually to the Council's Corporate Governance Committee.

Authority to accept or reject gifts, bequests or loans to the Council's Museum Service within the terms of the Policy

Authority to accept or reject gifts, bequests or loans to the Council's Museum Service within the terms of the Policy

16.14 To act on a day to day basis and be responsible for the operational and strategic delivery of services in the following areas:-

- Internal Audit
- Access to Information
- Records Management and Archives
- ICT services

- Business Transformation
- Modernisation Agenda
- Corporate Programme Office
- Performance Management
- Partnerships and Communities (including engagement)
- Equalities
- Information Security
- Service planning and strategic plans

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Report To: Cabinet

Date of Meeting: 26th April 2016

Lead Member / Officer: Councillor Julian Thompson-Hill / Richard Weigh, Head of Finance

Report Author: Steve Gadd, Chief Accountant

Title: Finance Report

1. What is the report about?

The report gives details of the council's revenue budget and savings as agreed for 2015/16. The report also provides a summary update of the Capital Plan as well as the Housing Revenue Account and Housing Capital Plan.

2. What is the reason for making this report?

The purpose of the report is to provide an update on the council's current financial position.

3. What are the Recommendations?

Members note the budgets set for 2015/16 and progress against the agreed budget strategy.

Members approve in principle the use of service underspends proposed by Heads of Service, subject to the Final Outturn position (see summary at Appendix 5).

It is recommended that the business cases relating to the 21st Century Schools are approved for recommendation to Full Council as follows;

- Approval of the combined Outline and Full Business Case for the Glasdir Schools development; and
- Approval of the Business Justification Case for Ysgol Carreg Emlyn.

4. Report details

The report provides a summary of the council's revenue budget for 2015/16 detailed in **Appendix 1**. The council's net revenue budget is £185m (£188m in 14/15). The position on service and corporate budgets is a forecast underspend of £1.276m (£0.585m under at the end of February). £326k of this movement relates to the use of the Specialist Placement Reserve to fund the Children's Service overspend. A further £160k relates to a change in the accounting treatment of the projected Environmental Services Trading Accounts. Further narrative around the reasons for variances and the risks and assumptions underlying them are outlined below.

Savings of £7.3m were agreed as part of the budget and a summary of the savings is shown as **Appendix 2**. £6.647m (91%) of the savings have already been achieved. As reported previously, the majority of the remaining 9% of savings will be achieved by 2016/17 at the latest.

5. How does the decision contribute to the Corporate Priorities?

Effective management of the council's revenue and capital budgets and delivery of the agreed budget strategy underpins activity in all areas, including corporate priorities.

6. What will it cost and how will it affect other services?

Significant service narratives are shown in the following paragraphs. A number of services are projected to underspend and proposals are included below as to how services are planning to carry forward and utilise these resources in the new financial year. These requests are summarised in Appendix 5 and it is recommended that Members authorise these plans in principle, although a final update will be provided in the Final Outturn report in case of any late movements in projections. It is important to have approval in principle as some proposals are time sensitive (for example extensions of employment contracts).

Children's Services – As noted throughout the year the Specialist Placement Reserve has been called upon in order to ensure that the service comes in within budget. The projected call upon the reserve is currently £307k (£326k last month). Changes to high costs placements can have a significant impact financially and this risk will continue into the new financial year.

Planning and Public Protection – The service is currently projected to underspend by £82k (£54k last month) largely due to the early implementation of agreed budget savings. The movement from last month is a result of legal costs relating to a planning application appeal that went against the Council being less than predicted. The service proposes to utilise the funds to help fund 3 fixed term posts to help deliver project work and maternity cover.

Highways and Environmental Services – A number of pressures still exist within the service both in 2015/16 and beyond relating to Parking, School Transport, and the North and Mid Wales Trunk Road Agency. As reported in detail in previous reports management action has been identified to help mitigate these particular risks and the effects have also been offset by a number of underspends elsewhere within the service. In addition to this management action the remaining Environmental Services trading services (Building Cleaning and the Catering service) have been brought into the main revenue accounts. This technical accounting adjustment has no effect on the running of the services but does mean that the projected surplus of £160k now has to appear in the service outturn instead of being transferred to the Environmental Services Balance account. The service is therefore projected to underspend by £165k (£37k overspend reported last month). The remaining £42k movement largely relates to lower than anticipated inter-authority recharge relating to Public Transport.

It is proposed that the service underspend within Highways and Environment be added to the Winter Maintenance / Severe Weather Reserve in order to help build resistance against future weather events and to help fund the effects of the severe wet weather at the end of December that has left the Council with a backlog of maintenance required on the road network.

Legal, HR & Democratic Services – The service is now projected to overspend by £53k (£66k overspend last month). The majority of the overspend relates to staff exit costs which forms part of a restructure which will help the service modernise and become more resilient in the coming years.

Finance, Assets & Housing - The service is now projected to underspend by £87k (underspend of £18k last month) which relates to staff vacancies, maximisation of grant expenditure and additional income relating to industrial units. The service has requested that the underspend be utilised in 16/17 for:

- Essential Health and Safety maintenance relating to the Agricultural Estates (£30k)
- Maintenance backlog relating to Industrial Estates (£40k)
- Projected restructure costs within the service (estimate of £17k)

Business Improvement and Modernisation – The service is now projected to underspend by £300k (£321k underspend last month). The majority of the savings relate to the early achievement of vacancy savings in preparation for the full year budget saving target of £100k for 16/17, reduced ICT consultancy costs and additional credits received on communications contracts. The service has requested to utilise the underspend to offset the costs of the planned service restructure within ICT, extend the temporary archivist role within Information Management and invest in staff training.

Communication, Marketing and Leisure – The service is currently projected to underspend by £146k (£55k underspend reported last month). The movement relates to improved income projections across all Leisure Centres and in particular the Nova Centre has out-performed the prudent projections for the first four months of operation. It is recommended that the underspend be utilised to help fund the delay in Outreach equipment procurement and the further investment in improvements and maintenance within Leisure Centres in order to help maintain the leisure provision within the County.

School Improvement and Inclusion – The service is currently projected to underspend by £13k (£43k underspend reported last month). The movement of £30k relates to an increase in Out Of County costs. It is hoped that the remaining underspend can be utilised in future years to help fund the additional service requirements resulting from the draft Additional Learning Needs and Education Tribunal Bill which sets out proposals for a new legislative system for supporting children and young people, aged 0-25, who have additional learning needs.

Schools - The latest projection for school balances is £1.322m (£1.320m last month), which is a reduction of £2.216m on the balances brought forward from

2014/15 (£3.538m). Monitoring reports have been submitted to finance detailing the risks and assumptions that have informed the projections and summaries of plans in place for using reserves and/or dealing with projected deficits. The non-delegated budget is now currently projected to underspend by £5k.

Economic and Business Development - The service is currently projected to underspend by £148k (£149k underspend last month). The underspend is due to a delay in project work within a number of areas as detailed in previous monitoring reports. There is no reduction in the number or scale of actions proposed in spending plans and costs are now expected to be incurred in the next financial year for which it is hoped the service will be able to carry forward appropriate funds. It can be confirmed that plans have been agreed to ensure full use of this underspend in 2016/17 which will maintain momentum with Economic Development and business support work and accelerate progress with achieving the Economic Development priorities within the Corporate Plan.

Corporate – It is currently projected that there will be an underspend on Corporate budgets of £388k (£374k underspend last month). The movement relates to lower than anticipated Audit Fees relating to Grant Certification work.

As highlighted over recent months, there has been a risk around the likelihood of further contributions being levied to service the council's obligations (along with most others in the UK) in respect of the former Mutual Municipal Insurance Company. Councils were mutual members of the company and have inherited liabilities upon its winding up. The liabilities relate to historical claims. This follows £393k that was paid in 2014/15. We have now received notification that we will be required to pay an additional amount of approximately £262k. Although this will not be payable until May 2016 we are required to recognise this as a provision within the 2015/16 accounts. It will be funded from the Insurance Fund reserve.

Other Service Risks / Assumptions – There remains a number of risks and assumptions and there still remains a risk that projections will change between now and outturn. Any known significant variations will be reported verbally to Cabinet at the meeting.

Corporate Plan cash reserves at the beginning of 2015/16 are £17.413m. Allowing for projected funding and expenditure during the year, the Corporate Plan reserve at the end of the year is estimated to be £2m.

The Strategic Investment Group (SIG) discussed the funding requirements of the Ruthin Primary 21st Century Schools projects on the 28th January. SIG made a recommendation to Cabinet that £4.8m contingency is set aside to support Glasdir schools and Ysgol Carreg Emlyn schemes, funded from the release of revenue budgets from within the project. These funds were approved by Cabinet on 16th February. SIG have now received and approved the latest business cases for these projects and have recommended that the business cases are considered and approved for recommendation by Cabinet

to Full Council for approval. The latest versions of the business cases are included at appendices 6 and 7.

A summary of the council's **Capital Plan** is enclosed as **Appendix 3**. The approved general capital plan is £45.3m with expenditure to date of £41.4m. Also included within Appendix 3 is the proposed expenditure of £24m in 2015/16 on the **Corporate Plan**. **Appendix 4** provides an update on the major projects included in the Capital Plan.

The **Housing Revenue Account (HRA)**. The latest revenue position assumes an increase in balances at year end of £198k compared to a budgeted increase of £168k. HRA balances are forecast to be £2.049m at the end of the year. The Housing Capital Plan forecast expenditure is £5.4m. Any slippage in the capital plan will be rolled forward into the Housing Capital Plan for 2016/17.

Treasury Management – At the end of February the council's borrowing totalled £190.165m at an average rate of 4.95%. Investment balances were £12m at an average rate of 0.61%.

7. What are the main conclusions of the Equality Impact Assessment (EqIA) undertaken on the decision?

A detailed impact assessment was produced as part of the budget setting process and was reported to Council in December 2014.

8. What consultations have been carried out with Scrutiny and others?

In addition to regular reports to the Corporate Governance Committee, the budget process was considered by CET, SLT, Cabinet Briefing and Council Briefing meetings. Specific proposals were reviewed by scrutiny committees and there was a public engagement exercise to consider the impact of budget proposals. The council consulted its partners through the joint Local Service Board and specific discussions took place with the Police. All members of staff were kept informed during the budget setting process and affected staff have been or will be fully consulted, in accordance with the council's HR policies and procedures. Trade Unions were consulted through the Local Joint Consultative Committee.

9. Chief Finance Officer Statement

It is important that services continue to manage budgets prudently and that any in-year surpluses are considered in the context of the medium-term financial position, particularly given the scale of budget reductions required over the coming two or three years.

10. What risks are there and is there anything we can do to reduce them?

This is the most challenging financial period the council has faced and failure to deliver the agreed budget strategy will put further pressure on services in

the current and future financial years. Effective budget monitoring and control will help ensure that the financial strategy is achieved.

11. Power to make the Decision

Local authorities are required under Section 151 of the Local Government Act 1972 to make arrangements for the proper administration of their financial affairs.

Appendix 1

DENBIGHSHIRE COUNTY COUNCIL REVENUE BUDGET 2015/16

Mar-16	Net Budget	Budget 2015/16			Projected Outturn							Variance
	2014/15	Expenditure	Income	Net	Expenditure	Income	Net	Expenditure	Income	Net	Net	Previous Report
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	%	£'000
Communication, Marketing & Leisure	5,727	10,701	-6,852	3,849	11,526	-7,823	3,703	825	-971	-146	-3.79%	-55
Customers & Education Support	2,454	7,261	-1,918	5,343	8,015	-2,672	5,343	754	-754	0	0.00%	0
School Improvement & Inclusion	4,555	16,898	-12,989	3,909	17,416	-13,520	3,896	518	-531	-13	-0.33%	-43
Business Improvement & Modernisation	3,734	5,734	-1,680	4,054	6,187	-2,433	3,754	453	-753	-300	-7.40%	-321
Legal, HR & Democratic Services	2,395	3,473	-1,061	2,412	3,614	-1,149	2,465	141	-88	53	2.20%	66
Finance & Assets	8,354	10,896	-4,353	6,543	10,612	-4,156	6,456	-284	197	-87	-1.33%	-18
Highways & Environmental Services	18,829	33,643	-15,441	18,202	34,289	-16,252	18,037	646	-811	-165	-0.91%	37
Planning & Public Protection	2,480	3,773	-1,434	2,339	3,983	-1,726	2,257	210	-292	-82	-3.51%	-54
Community Support Services	32,269	46,112	-14,332	31,780	47,280	-15,500	31,780	1,168	-1,168	0	0.00%	0
Economic & Business Development	1,421	875	-80	795	803	-156	647	-72	-76	-148	-18.62%	-149
Children's Services	8,419	9,189	-896	8,293	9,583	-1,290	8,293	394	-394	0	0.00%	326
Total Services	90,637	148,555	-61,036	87,519	153,308	-66,677	86,631	4,753	-5,641	-888	-1.01%	-211
Corporate	16,142	45,640	-29,015	16,625	45,252	-29,015	16,237	-388	0	-388	-2.33%	-374
Precepts & Levies	4,342	4,361	0	4,361	4,361	0	4,361	0	0	0	0.00%	0
Capital Financing	13,330	12,945	0	12,945	12,945	0	12,945	0	0	0	0.00%	0
Total Corporate	33,814	62,946	-29,015	33,931	62,558	-29,015	33,543	-388	0	-388	-1.14%	-374
Council Services & Corporate Budget	124,451	211,501	-90,051	121,450	215,866	-95,692	120,174	4,365	-5,641	-1,276	-1.05%	-585
Schools & Non-delegated School Budgets	63,731	73,806	-10,500	63,306	75,530	-10,013	65,517	1,724	487	2,211	3.49%	2,284
Total Council Budget	188,182	285,307	-100,551	184,756	291,396	-105,705	185,691	6,089	-5,154	935	0.51%	1,699
Housing Revenue Account	-163	13,441	-13,609	-168	13,545	-13,743	-198	104	-134	-30		-18

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Appendix 2 Agreed Savings 2015/16

Agreed Savings by Service Area	STATUS	2015/16 £'000
Highways & Environment		
Street Cleansing - reduce activity	Achieved	100
Increase Cemetery Charges	Achieved	50
Reduce Rights of Way activity	Achieved	71
Reduce Road Safety Programme	Achieved	50
Reduce Street Lighting Inspections	Achieved	5
Introduce Charges for Green Waste	Achieved	400
Remove or reduce public transport subsidy	Achieved	166
Highways general maintenance review	Achieved	125
Reduce grounds maintenance activity	Achieved	40
Rationalisation of Countryside Services	Achieved	65
Communication, Marketing & Leisure		
Reduce spend on recruitment advertising in newspapers	Achieved	30
Stop production of paper version of County Voice	Achieved	19
Leisure Centres - further increase income and efficiency	In Progress	118
Rhyl Pavilion - restructure and introduction of transaction fees	Achieved	62
Youth Services - changes to open access programme	Achieved	28
Youth Services - staffing structure	Achieved	46
Remove subsidy from Scala Prestatyn	Achieved	40
Rationalise Tourist Information Centres - inc. changes to opening hours	Achieved	20
Introduce charges for the use of the Drift Park water play area in Rhyl and reduce the level of Lifeguard Cover on the beaches from 2015/16	Achieved	48
Increase income recharge or transfer Denbigh Town Hall	Achieved	17
Library Service - modernisation programme (Stage 1 - delete vacant posts, reduce book fund)	Achieved	130
Library Service (Ruthin Craft Centre - reduce subsidy)	Achieved	10
Education Support		
Remove historic contingency budgets	Achieved	78
Premises Budget - stop facilities management service provided to schools	Achieved	70
Clothing Grants - end council support with the option to pay passed to schools	Achieved	4
Remission claims - end council support with the option to pay passed to schools	Achieved	34
Governor Support - change the way support is provided	Achieved	31
Schools Delegated Budgets		
Demography reduction to reflect fall in pupil numbers	Achieved	242
Use of Corporate Plan additional funding to meet 1 % protection target	Achieved	581
School Inclusion		
Review Additional Learning Needs - removal of external chair moderation	Achieved	3
Behaviour Support - property savings from moving Project 11	Achieved	3
Specialist equipment - reduce budget to match expenditure	Achieved	5
Review Education Social Worker Service	Achieved	120
Review Educational Psychology Service	Achieved	30
Review of Counselling Service	Achieved	100
Reduce Recoupment Budget to match expenditure	Achieved	140
School Improvement Services		
Regional Consortium Office costs - renegotiate costs	Achieved	30
School Library Service - stop the service	Achieved	45
Music Service - end the agreement with William Mathias	Achieved	103
School improvement discretionary subsidies - remove to match demand	Achieved	141
Outdoor pursuits SLA - involves transferring the cost to schools	Achieved	23
Customer Services		
Website Advertising - scope for additional income	Achieved	10
Rhyl One Stop Shop Review	Achieved	100
Finance & Assets		
Finance - modernisation and efficiency	Achieved	60
Finance - external funding team, removal of base budget	Achieved	65
Property - Office Accommodation Rationalisation	In Progress	100
Property - management restructure	Achieved	80
Reduce the Miscellaneous Property Portfolio	Achieved	20
Property School Facilities Management Agreement	Achieved	48

Agreed Savings by Service Area	STATUS	2015/16 £'000
Revenues & Benefits Commercial Partnership	Achieved	80
Corporate		
Capital Financing & PFI	Achieved	650
Energy Efficiency - result of lower consumption and price increases	Achieved	300
Removal of contingency budgets	Achieved	50
Corporate Complaints - provision to be considered as part of the wider corporate review of support/business services	Review	40
Business Improvement & Modernisation		
Community Safety Partnership - review contribution	Achieved	5
Information Management - service redesign	Achieved	50
Corporate Improvement Team (corporate review of support/business services)	Review	180
Corporate Project Team - increase external charges	Achieved	10
Partnerships & Communities Team	Achieved	30
Internal Audit	Achieved	75
Legal & Democratic Services		
Reduce the Number of Committee Meetings - saving on travel costs	Achieved	2
Reduction of Civics budget	Achieved	5
Strategic HR		
Not replacing Head of Service	Achieved	50
Staff Training & Development - greater use of e-learning etc	Achieved	15
Adult & Business Services		
PARIS - electronic Domiciliary Care Invoices	Achieved	37
Receivership	Achieved	13
Cefndy Healthcare	Achieved	71
Workforce Development	Achieved	75
Restructure of Locality Services	Achieved	100
Benefits & Welfare Advice Service Review	In Progress	200
Children & Family Services		
Staffing Budgets - realign to current requirement	Achieved	150
ICT Desktop Budget	Achieved	10
Young Carers - revised contribution to regional service	Achieved	6
Children with Disabilities - reduction to equipment budget to match spend	Achieved	10
Adoption support costs	Achieved	20
National Youth Advocacy Contract	Achieved	10
Child Protection Training	Achieved	10
Parental contributions for services provided for Children with Disabilities	Achieved	50
Planning & Public Protection		
Development Management - increase income revenue for pre application advice	Achieved	45
Public Protection - closure of Pest Control Service	Achieved	95
Pollution Control - review to consider minimum level of provision	Achieved	20
Trading Standards - stop providing consumer advice	Achieved	45
Housing & Community Development		
HRA Recharges - increase costs funded by the Housing Revenue Account	Achieved	270
Remove Town & Area Plan Budgets	Achieved	356
Reduce Core Project/Development Budget	Achieved	159
Reduce staffing budget - deletion of a vacant post	Achieved	42
Reduce non-staffing elements throughout the Economic & Business Development Budget	Achieved	43
Total Agreed Savings 2015/16		7,285

Summary:	£'000	%
Savings Achieved/Replaced	6,647	91
Savings In Progress/Being Reviewed	638	9
Savings Not Achieved or Deferred and not replaced	0	0
Total	7,285	

General Capital Plan

		2015/16	2016/17	2017/18	2018/19
		£000s	£000s	£000s	£000s
Capital Expenditure					
	Total Estimated Payments - General	20,923	11,337	171	171
	Total Estimated Payments - Corporate Plan	24,089	16,077	5,008	454
	Contingency	292	500	500	500
	Total	45,304	27,914	5,679	1,125
Capital Financing					
1	External Funding	14,899	10,098	7,303	5,055
2	Receipts and Reserves	13,243	10,603	658	
3	Prudential Borrowing	17,162	7,213	2,086	438
5	Unallocated Funding	(0)	0	(4,368)	(4,368)
	Total Capital Financing	45,304	27,914	5,679	1,125

Corporate Plan

Revised February 2016

		£000s	£000s	£000s	£000s
Approved Capital Expenditure					
	Cefndy Healthcare Investment	30	110		
	Extra Care	799			
included in above plan					
	Highways Maintenance and bridges	2,881	2,550		
	Feasibility Study - New Ruthin School	92	526		
	Feasibility Study - Carreg Emlyn	194	184		
	Llanfair/Pentrecelyn Area School	74	409		
	Rhyl High School	15,539	3,435	332	
	Ysgol Bro Dyfrdwy - Dee Valley West Review	4			
	Bodnant Community School	2,307	576	61	
	Ysgol Glan Clwyd	2,137	8,287	4,615	454
	Faith Based Secondary	32			
	Estimated Capital Expenditure	0	14,965	24,745	23,165
	Total Estimated Payments	24,089	31,042	29,753	23,619
Approved Capital Funding					
	External Funding	3,002	2,763	2,435	187
	Receipts and Reserves	9,934	7,351	658	
	Prudential Borrowing	11,153	5,963	1,915	267
	Estimated Capital Funding	0	7,507	9,682	17,166
	Receipts and Reserves	0	1,361	2,966	600
	Prudential Borrowing	0	6,097	12,097	5,399
	Total Estimated Funding	24,089	31,042	29,753	23,619

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Appendix 4 - Major Capital Projects Update March 2016

Rhyl Harbour Development

Total Budget	£10.784m
Expenditure to date	£10.731m
Estimated remaining spend in 2015/16	£ 0.040m
Future Years estimated spend	£ 0.013m
Funding	WG £2.755m; WEFO £5.950m; Sustrans £0.700m: RWE £155k; WREN £83k and DCC £1.141m
Comments	<p>Programme</p> <p>Work is on-going to rectify any remaining defects associated with works undertaken at the harbour, which includes a review of the current maintenance schedule for the bridge.</p> <p>The works to protect the base of the new quay wall are estimated to be complete by the end of April; the work was delayed due to the flood water in the harbour.</p>
Forecast In Year Expenditure 15/16	£0.335m

21st Century Schools Programme – Bodnant Community School Extension and Refurbishment

Total Budget	£3.581m
Expenditure to date	£2.400m
Estimated remaining spend in 15/16	£0.400m
Future Years estimated spend	£0.781m
Funding	WG £1.687m, DCC £1.894m
Comments	<p>Bodnant Community School</p> <p>This scheme is one of five projects within the Band A proposals for 21st Century Schools Programme.</p> <p>The project will build 7 classrooms, a new school hall and supporting facilities on the current Juniors site. This will allow the Infants pupils to move to the Juniors site and the school to operate on a single site. The Infants site will then become surplus to requirements.</p> <p>Further external works are being progressed and the installation of the internal provision is continuing.</p> <p>The project is on schedule to be handed over to the client in advance of the new school year in September 2016.</p>
Forecast In Year Expenditure 15/16	£2.307m

21st Century Schools Programme - Rhyl New School

Total Budget	£24.586m
Expenditure to date	£20.335m
Estimated remaining spend in 15/16	£ 0.974m
Future Years estimated spend	£ 3.277m
Funding	DCC £12.293m; WG £12.293m
Comments	<p>The project will provide a new school building for Rhyl High School to serve up to 1,200 pupils in mainstream education whilst also housing approximately 45 pupils from Ysgol Tir Morfa, the community special school in Rhyl.</p> <p>The school building and hard external spaces for the pupils were handed over on 14th March 2016, and following snagging works and the final installation of the ICT the pupils moved into the building as scheduled on 13th April.</p> <p>The elevated link to the Leisure Centre is completed and will be handed back at the beginning of May when the new pupil entrance to the Leisure Centre is complete and ready for use.</p> <p>The PE block is making good progress and is scheduled for handover in June. The external cladding works to the Leisure Centre continue to make progress.</p> <p>The old school building has been cleared and was handed over to the Contractor on 5th April for the second phase of the works. Asbestos surveys and removal will take place before the buildings are demolished and the new playing fields created in their place. Works will also be undertaken to the main entrance road and to the car parking on this site; there will inevitably be disruption to users on the site during this next phase, and arrangements have been made to minimise disruption and to keep the Leisure Centre customers and the school informed. The anticipated completion date of the project is August 2016. There is ongoing consultation with key stakeholders.</p>
Forecast In Year Expenditure 15/16	£15.539m

21st Century Schools Programme – Ysgol Glan Clwyd

Total Budget	£15.900m
Expenditure to date	£ 2.144m
Estimated remaining spend in 15/16	£ 0.400m
Future Years estimated spend	£13.356m
Funding	DCC £8.410m; WG £7.490m
Comments	<p>This scheme is one of five projects within the Band A proposals for 21st Century Schools Programme. The project will deliver an extended and refurbished Ysgol Glan Clwyd to accommodate a long term capacity of up to 1250 pupils via a new three storey extension, partial demolition of existing buildings and refurbishment of the retained buildings.</p> <p>The project will also see extensive landscaping, with creation of new outdoor hard & soft landscaped areas including a new sports field, extended and rationalised car park and coach parking.</p> <p>In association with Phase 1, work on the bulk muck shift is now complete. The pad foundations are in and the steel frame is now well underway including installation of the first precast concrete stairs. The contractor is hoping to commence installation of the metal deck flooring shortly.</p> <p>External drainage works are underway including replacement of drainage runs to the rear of the school. Further statutory connections have now also been undertaken.</p> <p>Works on the new visitor car park are now complete as planned up to the intermediate course of tarmac – final completion of this area will be in Phase 2 of the project in 2017 as planned; however in the interim this area will be opened up to site users to assist with onsite parking.</p> <p>Phase 1, the new build three storey extension is due for completion in December 2016 with Phase 2, the demolition and refurbishment of the retained buildings, being delivered in a number of stages from January 2017, with final completion by the end of September 2017.</p> <p>There is ongoing consultation with all key stakeholders including all users of the site. In</p>

	<p>addition, regular updates via newsletters are distributed locally.</p> <p>The project team are working with the school and wider community to engage with them to develop and deliver a number of community benefits. Most recently this includes Willmott Dixon sponsoring the St Asaph Mayoral Awards, donation of plumbing materials to Ysgol Esgob Morgan, taking on year 11 & 12 Ysgol Glan Clwyd pupils for work experience, and running a Women in Construction Event.</p>
Forecast In Year Expenditure 15/16	£2.137m

21st Century Schools Programme – Ruthin Primary Schools

Total Budget	£1.585m (Feasibility/Design)
Expenditure to date	£0.324m
Estimated remaining spend in 15/16	£0.142m
Future Years estimated spend	£1.119m (Feasibility/Design)
Funding	DCC £1.585m
Comments	<p>Denbighshire received permission to extend the scope of the 21st Century Schools Programme to include the three Ruthin primary school projects in September 2015. In January 2016, the Strategic Outline Case for the three projects was approved by the Welsh Government. The next stage in the Welsh Government approval process will be submitted in the coming months. On-going work has enabled firm project costs, including contingency funding, to be established for the new Rhos street/Penbarras schools and Carreg Emlyn. Subject to the necessary approvals, this will enable both schemes to proceed and to be operational from September 2017.</p> <p>A review is also taking place of the new school building for the new area school for Llanfair/Pentrecelyn. When the costs associated with a preferred site are confirmed, the proposal will be reviewed by the Strategic Investment Group.</p> <p>Rhos Street School and Ysgol Penbarras</p> <p>This project will deliver a new shared school building site for Rhos Street School and Ysgol Penbarras at Glasdir, Ruthin.</p> <p>A series of design consultation meetings have been</p>

	<p>facilitated by Wynne Construction to develop the concept design. Meetings have been held with the school staff working groups, pupils and a Ruthin members workshop. A community event is scheduled for mid-April.</p> <p>Following completion of the design consultation, it is expected that a planning application will be submitted in early May 2016.</p> <p>Ysgol Carreg Emlyn</p> <p>This project will deliver a new school building comprising 4 classrooms, a new school hall and supporting facilities. This will allow pupils to move from the two existing sites onto a single site. Both existing sites will then become surplus to requirements.</p> <p>Following a number of meetings with staff, governors and the community to inform and guide the design team, a planning application for the proposed scheme was submitted on 1st April 2016 for consideration.</p> <p>The target completion date for the new building is September 2017.</p> <p>Llanfair and Pentrecelyn</p> <p>A preferred site has now been identified. Negotiations are ongoing regarding the acquisition. The first design meeting with both schools was scheduled to take place in mid April with the design team.</p>
Forecast In Year Expenditure 15/16	£0.360m

West Rhyl Coastal Development Phase 3

Total Budget	£5.658m
Expenditure to date	£5.454m
Estimated remaining spend in 15/16	£0.192m
Future Years estimated spend	£0.012m
Funding	DCC £0.560m;WG/WEFO £4.648m; WG £0.198m; Town Plans/Town Council £0.217m; Other £0.035
Comments	<p>This coastal defence scheme is the final phase of works designed to protect 2,700 properties from coastal flooding.</p> <p>The coastal defence works are now operationally complete.</p> <p>The final account has been agreed with the main</p>

	<p>contractor.</p> <p>Anti-skid surfacing is 95% complete and snagging is currently taking place.</p> <p>Benches will be placed following the snagging of anti-skid surfacing.</p> <p>3 coastal protection shelters are currently being produced and lighting design finalised. The shelters will be installed within the scheme on the upper promenade.</p> <p>The Welsh Government have agreed to the additional funding requested for the scheme.</p> <p>The West Rhyl Coastal Defence Scheme has been shortlisted for an Institution of Civil Engineers Project Award in Wales for projects over £3m.</p>
Forecast In Year Expenditure 15/16	£2.626m

Appendix 5 - Requests for Carry Forwards

Service: Description of Request for Carry Forward	Specific Request £000	Service Total £000
Finance and Assets : Essential Health and Safety maintenance relating to the Agricultural Estates (£30k) Maintenance backlog relating to Industrial Estates Projected restructure costs within the service	30 40 17	87
Business Improvement and Modernisation Fund the costs of the planned service restructure within ICT which will help achieve agreed budget savings Extension of temporary archivist role within Information Management Extension of Strategis Planning and Corporate Information Support Transition funding to support loss of Audit income from external source Investment in staff training	216 33 32 14 5	300
Communication, Marketing and Leisure Procurement of outreach equipment which had been delayed Enhancements to on-line booking system within leisure centres to help cater for the significant increase in volume of visits Maintenance issues relating to wet changing areas at Denbigh and Ruthin Leisure Centres Maintenance and re-investment issues relating to Corwen and Llangollen Leisure Centres	43 20 60 23	146
Economic and Business Development Use of underspend requested to fund the delayed project expenditure within a number of agreed areas in order to ensure that there is no reduction in the number or scale of actions proposed in agreed spending plans.	148	148
School Improvement and Inclusion It is requested that any modest underspend is used to help fund the additional service requirements resulting from the draft Additional Learning Needs and Education Tribunal Bill which sets out proposals for a new legislative system for supporting children and young people, aged 0-25, who have additional learning needs	13	13
Planning and Public Protection Additional expenditure related to agreed rollout of new software system across the service. The service also wishes to utilise the funds to help fund 3 fixed term posts to help deliver project work and cover maternity absences.	5 77	82
Highways and Environment It is recommended that the service underspend within Highways and Environment be added to the Winter Maintenance / Severe Weather Reserve in order to help build resistance against future weather events and to help fund the effects of the severe wet weather at the end of December that has left the Council with a backlog of maintenance required on the road network.	165	165

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Executive Summary (1500 Words Maximum)

This combined outline and full business case presents a proposal to provide replacement school buildings and facilities for both Rhos Street School and Ysgol Pen Barras on a shared site within the town of Ruthin. The preferred option has been proposed following careful analysis of a wide range of options for the Ruthin area, as contained within the Economic Case. The overall project estimate is approximately £10.5million.

The scheme would provide new school buildings and facilities for each school with an as built full time capacity of 270 full time pupils for Ysgol Pen Barras and 180 full time pupils for Rhos Street School. The new facilities have been identified as a suitable alternative provision for pupils of Ysgol Rhewl which will close in September 2017 with existing pupils transferring to either Ysgol Pen Barras or Rhos Street School, subject to parental preference. Further information relating to the school organisation proposal for Ysgol Rhewl can be found [here](#).

The project would result in the following benefits which are in line with Denbighshire's strategic investment objectives and those of the 21st Century Schools Programme;

- There would be an overall reduction in surplus places within the area with the removal of 82 full time places (closure of Ysgol Rhewl);
- The project would lead to a reduction in maintenance backlog of an estimated £700k;
- The project would enable the removal of temporary and detached classrooms leading to an annual revenue saving of £47k per annum.
- The project would deliver permanent learning environments for all pupils. Currently over 60% of pupil places at Ysgol Pen Barras are provided via mobile classrooms;
- The project would improve the condition and suitability of the learning environment for all pupils and staff. The current condition and suitability of Rhos Street School is 'B' and Ysgol Pen Barras 'C'. On completion of the project it is expected the learning environment at both schools will be rated 'A';
- The project is aiming for BREEAM 'Excellent' and for the overall energy efficiency of the scheme to achieve an EPC rating of 'A' on completion.

Strategic Case Summary

The overall strategic case as outlined in the SOC remains valid. In summary, the project will deliver on the key investment, business and educational strategies and deliver high level and programme wide benefits. Project specific benefits criteria have also been established, analysis of the options against the benefits criteria demonstrates that the preferred option will best contribute to delivering the critical success factors for the project.

Economic Case Summary

TBC

Commercial Case Summary

The procurement for the project has been undertaken via the North Wales Schools and Public Buildings Contractor Framework.

Given the initial estimated construction value of the project (£7.9m) the project fell within Lot 2 of the framework. Denbighshire engaged with the market over this project at an early stage and following contractor's feedback a two stage design and build with early contractual involvement was identified as the recommended procurement route. Following a rigorous mini competition process a contract award has been provided to Wynne Construction Ltd. They have been appointed for the Design stage with break clauses prior to the construction stage.

Financial Case Summary

In January 2015 a report was submitted to Denbighshire's Cabinet recommending approval of £8.8million from the Council's own resources to demonstrate the commitment to taking the project forward through detailed design. The recommendation was approved within the budget and approved at Full Council in February 2015. Updated project costs have been provided in early 2016 which have identified budgetary pressures. The cost difference in the budget estimates are as a result of a number of factors however relate mainly to the acquisition of land and highway access to the site.

As a consequence of these pressures, DCC Strategic Investment Group January 2016 considered increasing the project contingency budget for the scheme. This recommendation was consequently approved at Cabinet and Full Council in February 2016. These costs are to be met by DCC and do not form part of Welsh Government funding. This funding element will be met by cash reserves, prudential borrowing and savings received as wider school organisation proposal.

Management Case Summary

In terms of the management of the projects the Council's Modernising Education Programme Board will provide the strategic leadership for the overall programme moving forward. As this project is part of three projects considered as part of the Strategic Outline Case a Ruthin Primary Review Project Board, chaired by the Chief Executive has been established to assist in the project establishment stage for all these projects.

Each project has an identified Project Sponsor and Project Manager to ensure clear leadership and direction throughout the lifecycle of the project. Details of the project management structures are contained within the management case.

Strategic Case (1000 Words Maximum)

The overall strategic case for the project as described in the Strategic Outline Case remains valid. To reconfirm in line with the detail in the SOP and SOC, satisfying the potential scope for this investment will deliver the following high level programme wide strategic benefits;

- 1. Investment Objective 1:** Learning environments for children and young people aged from 3 to 19 that will enable successful implementation of strategies for school improvement and better educational outcomes;
- 2. Investment Objective 2:** Greater economy through better use of resources to improve efficiency and cost-effectiveness of the education estate and public provision;
- 3. Investment Objective 3:** A sustainable education system with all schools meeting a 21st Century Schools Standard, and reducing recurrent costs and carbon footprint.

Guided by these overarching strategic objectives, a number of benefits criteria have been developed for the project against which to assess the options developed to address the business need. Based on an appraisal of the options against these investment objectives, a preferred option is proposed that will best contribute to delivering against these investment objectives, critical success factors and project specific benefits.

Appraisal of options available against the criteria- value for money assessment to moderate the appraisal from an affordability perspective plus an initial assessment of risk attached to each option. **Appendix XX and Appendix XX contain the Benefits Register and the Benefits Realisation Plan.** Further information relation to the benefit appraisal is contained within the economic case.

In summary the benefits criteria includes;

- Supporting the effective delivery of the curriculum;
- Raising attainment;
- Improve overall building condition and suitability;
- Improve the energy efficiency of the school estate;
- Strategic fit to meet demand and supply of places.

These benchmarks have been used to identify specific measurable benefits against which the preferred option can be assessed.

Business Strategies

The Council has a 5 year Corporate Plan, approved by elected members in October 2012, which identifies 7 priority areas for Council activity and action which contextualises national and regional policy developments for Denbighshire.

Specifically within this plan there is a priority work stream for :-

- Improving performance in education and the quality of our school buildings

This priority includes the following intended outcomes:-

- We will invest significantly to improve school buildings and facilities and provide improved learning environments for pupils
- We will continue to review school provision across the county to ensure that we provide the right number of school places, of the right type, in the right location.

The Corporate Plan states that the programme will be funded through the use of reserves, balances and by selling assets with the rest being generated through prudential borrowing. The affordability of this plan has been reviewed and reconfirmed following the outcome of the Ruthin Area Review with Full Council approving the budget as part of the overall budget setting process in February 2015. In February 2016 Full Council again reviewed and reconfirmed the affordability of the project following a reassessment of the budget to take into account budgetary pressures which have arisen since 2015. Further detail regarding budget and cashflow is contained within the financial case of this document.

Other Organisational Strategies

These corporate priorities are further supported by service delivery plans and the establishment of a number of Corporate Programmes. These include;

- Economic ambition
- Modernisation

Which are supplemented by

- Modernising Education

Delivery of projects within the 21st Century Schools Programme will also contribute to the development of the Economic Ambition Programme via the investment in the economy and the development of appropriate community benefits. Further information relating to community benefits can be found within the commercial case.

Of particular relevance to this proposed project is the 21st Century Schools Programme. The Council believes that the Programme, through effectively addressing issues around surplus and deficit places, will lead to a reduction in the number of schools maintained whilst focusing resources on remaining schools to provide an estate that is modern, efficient and effective for delivery of a modern curriculum. In the delivery of the programme a collaborative approach is taken with the school improvement service to ensure that any change to the learning environment at least maintains or will improve the existing level of attainment and learner experience.

In November 2012 Denbighshire's Cabinet approved the commencement of a review of primary schools in the Ruthin area. Overall educational standards within the Ruthin area are good, however there are a number of issues that were identified that could potentially impact on the ability of schools to sustain and improve the quality of education provision in the future. Issues identified included;

- Condition and Suitability of School Buildings and Facilities;
- Surplus Places;
- Provision of Mobile Classrooms;
- Headteacher recruitment.

During the Summer of 2013 Denbighshire's Cabinet approved 6 main recommendations which would address the issues outlined above and lead to significant investment in the overall school estate in the Ruthin Area. All 6 recommendations can be found in the SOC, the recommendation for the Ruthin Town area was as follows;

- *Further detailed feasibility works to be undertaken prior to the confirmation of any formal recommendations for Rhos Street School, Ysgol Pen Barras, Ysgol Borthyn and Ysgol Rhewl.*

Feasibility works regarding the long list of options was undertaken during the 2013/2014 period. Preliminary site surveys had been undertaken in 2013 at the outset of the Ruthin Review. Cabinet approved further comprehensive exploration of options relating to the town schools in 2014. This detailed period of feasibility focused on a long list of options in the context of the existing sites, as follows;

1. *1 x 315 new build on the Glasdir site;*
2. *Refurbishment of the existing site to accommodate a 1 x 210 school;*
3. *1 x 210 new build at the existing site;*
4. *A 525 pupil capacity shared site development on the Glasdir site;*
5. *Refurbishment and extension of Ysgol Rhewl*

Proposed solutions arising for Rhos Street School , Ysgol Pen Barras and Ysgol Rhewl were as follows;

- A. Do Nothing: Maintain Status Quo
- B. Do Minimum: Clear Maintenance Backlog- Remedial Repair
- C. Do Intermediate: Shared Site (Preferred)
- D. Do 'more than' Intermediate: New build at Glasdir and Remodel/Refurb Existing Site
- E. Do Maximum: Big Bang- 3 new builds (YPB/RSS/YRH)

Please see the economic case for detailed analysis of these options. Following the assessment of these options the preferred way forward would be to develop a shared site which would enable the relocation of Rhos Street School and Ysgol

Pen Barras with displaced pupils from Ysgol Rhewl transferring to the new site in September 2017.

With regard to the other schools, namely Ysgol Borthyn and Ysgol Rhewl it was agreed that Ysgol Borthyn would be retained to provide the town and surrounding areas with English medium, faith based (Church in Wales) primary provision.

Feasibility works undertaken with regard to Ysgol Rhewl demonstrated that that significant investment would be required to improve the overall condition and suitability of the facilities. In the context of the review, and other criteria such as the overall level of surplus places and the proximity to the new development for Rhos Street School and Ysgol Pen Barras Cabinet approved the proposal to close Ysgol Rhewl as of September 2017 (to coincide with the opening of the new school development) with existing pupils transferring to either Rhos Street School or Ysgol Pen Barras dependent on parental preference. Further information relating to the statutory proposal and process relating to Ysgol Rhewl can be found [here](#).

Welsh in Education Strategic Plan

The Council recognises the importance of bilingualism in 21st Century Wales and has adopted a long term aspiration that all children and young people in the County will leave full-time education being competent and confident in using both Welsh and English languages. The Council recognises that this is a long term aspirational aim that will not be achieved for a number of years.

The Council's Welsh in Education Strategic Plan which covers the period 2014-2017 reaffirms the Council's commitment to increasing the number of pupils receiving their education through the medium of Welsh. Ysgol Pen Barras is a Category 1 Welsh medium school with 216 full time pupils on roll (as of January 2016 PLASC). Ysgol Pen Barras was established in response to the growth in demand for Welsh medium primary education. The permanent building (located adjacent to Rhos Street School) has an overall capacity of 92 full time places with the current site utilising a number of mobile classrooms to provide an overall capacity of 252. This project will provide, 21st century, fit for purpose permanent learning environments for the staff and pupils of Ysgol Pen Barras.

Economic Case (3000 Words Maximum)

In accordance with the 21st century schools and education funding programme business case guidance document and the requirements of HM Treasury's Green Book, this section of the business case documents the range of options that have been considered in response to the potential scope identified within the SOC.

This combined OBC/FBC seeks approval for the identified 'preferred' option to deliver a new shared site development for both Rhos Street School and Ysgol Pen Barras.

Critical Success Factors and Key Drivers

The Ruthin area faces a number of distinct challenges, these challenges have been applied as 'key drivers' for the Ruthin area review and have driven the rationale for the proposal and are aligned with the critical success factors and investment objective. The key drivers and the solutions offered by this project are displayed in the table below;

Reference	Key Driver	Solution Offered (preferred)
1	Reduction in surplus places	The project would align pupil place planning with the physical capacity of the new build facilities. There would be a reduction in 82 surplus places with the related proposal to close Ysgol Rhewl as of August 2017 with pupils transferring to either Rhos Street School or Ysgol Pen Barras.
2	Condition and suitability of school sites	The project would provide new, fit for purpose 21 st century school facilities for all pupils. The overall condition and suitability of both schools would be improved with the expected condition and suitability rating to be 'A'. Pupils from Ysgol Rhewl would also experience an improvement in the learning environment based on the current condition and suitability of the facilities at Ysgol Rhewl.
3	Removal of mobile classrooms	The project would result in the removal of 5 mobile classrooms.

		These mobile classrooms currently provide over 60% of the total pupil places at Ysgol Pen Barras. The removal of the mobile classrooms would also result in an annual revenue saving of £47k.
4	Efficiency and effectiveness of the school estate	The project will achieve an 'Excellent' BREEAM rating and an EPC energy rating of 'A'.

The critical success factors as outline in the SOC remain valid and are displayed in the table below;

Reference	Critical Success Factors
CSF1	Investment in educational attainment and achievement
CSF2	Removal of mobile classrooms and detached teaching areas and resource areas
CSF3	Reduce the ever growing maintenance backlog
CSF4	Meet demand for school places
CSF5	Increase the efficiency and effectiveness of the school estate
CSF6	Improve the learning environment to meet 21 st century school standards and allow for the delivery of a fluid and innovative 21 st century curriculum

SOC Long List

Within the SOC a long list of options was developed in response to the review of primary educational provision in the Ruthin area. Each of these long listed options was initially assessed against the project and programme investment objectives identified within the SOC.

The long list of options are displayed in the table below;

Reference	Summary Description	Option Type	Short List
1	Do Nothing- Maintain the status quo	Comparator	Discounted
2	Do Minimum- Clear maintenance backlog and undertake remedial repairs	Less Ambitious	Carried
3	Do Intermediate- New build Glasdir and remodel and refurbishment of the existing site	Less Ambitious	Carried
4	Do Maximum- New build school facilities for Rhos Street School and Ysgol Pen Barras on a shared site	Preferred	Carried
5	'Big Bang'- 3 new build schools for Rhos Street School, Ysgol	More Ambitious	Discounted

	Pen Barras and Ysgol Rhewl	
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Appendix XX contains the detailed analysis of the above long list of options as contained within the SOC. For the purpose of this business case and subsequent economic appraisal a shortlist of options from the above long list has been developed. This re-assessment was undertaken to challenge assumptions made as part of the long list of options. These areas of challenge include;

- Practicality
- Buildability
- Value for money
- Latest construction market
- Costs of options (initial feasibility 2014)
- Areas of inefficiency or in original long list of options

The key considerations that have influenced the short list and the reasons for discounting various options within the long list are provided below;

Option 1- Do Nothing: Maintain Status Quo

This option does not meet the minimum standards for the project or the critical success factors for the project. The option is contrary to DCC and WG policy with regard to removing mobile accommodation from the school estate.

This option would have an adverse impact on the educational delivery within the learning environment in the short term.

Outcome: Discounted

Option 2- Do Minimum: Clear Maintenance Backlog

This option does not meet all of the critical success factors for the project although it would result in a minimal capital outlay. This option is contrary to DCC and WG policy with regard to removing mobile accommodation from the school estate.

This option would lead to some improvement in the learning environment and reduce the maintenance backlog however the facilities and condition would not be reflective of a 21st century standard with many issues remaining.

Outcome: Carried Forward (Comparator)

Option 3- Do Intermediate: 1 x New Build at the Glasdir Site and 1 x Refurbishment of Existing Site

This option meets or partially meets the majority of the critical success factors for the project, however there would be a number of issues that would remain on the existing site such as areas falling below the minimum recommendations set out in BB99, traffic and access to the site and consequently does not lend itself to providing good value for money.

Outcome: Carried Forward (Less Ambitious)

Option 4- Do Maximum: Shared Site New Build

This option meets all of the critical success criteria and would deliver significant improvements to the learning environment and would lead to greater efficiency and effectiveness of the school estate.

Outcome: Carried Forward (Preferred)

Option 5- 'Big Bang': 3 x New Builds Ysgol Rhewl, Glasdir and Existing Site

This option meets a number of the critical success factors, mainly relating to the overall improvement in the learning environment and removal of mobile accommodation. This option would not deliver certain benefits such as an improvement in the efficiency and effectiveness of the overall school estate. In September 2015 Denbighshire County Councils' Cabinet determined the proposal to close Ysgol Rhewl as of September 2017. This option would not provide good value for money and would require a significant capital outlay.

Outcome: Discounted

The table below provides an assessment of these options against the critical success factors for the project and provides

Option Reference	CSF1	CSF2	CSF3	CSF4	CSF5	CSF6	Outcome and Key Findings
1	X	X	X	X	X	X	Discounted: Option 1 would not meet any of the critical success factors. Issues on the current site would worsen in the short term having an adverse impact on the learning environment and consequently levels of attainment. Only advantage to this option is no capital outlay required. Represents poor value for money. This option would also be contrary to the Council's policy to remove mobile classrooms.
2	✓	X	✓	X	X	X	Carried: Option 2 is limited in scope to deliver against the critical success factors however would remain affordable within the capital funding envelope.
3	✓	✓	✓	✓	X	X	Carried: This option meets some of the critical success factors however issues would still remain with a refurbishment not reflecting a 21 st century school standard.
4	✓	✓	✓	✓	✓	✓	Carried (Preferred): This option

							meets all of the critical success factors for the project and remains affordable within the capital funding envelope.
5	✓	✓	✓	X	X	X	Discounted: Although this options meets a number of the critical success factors it does not provide good value for money nor lead to a rationalisation of the school estate leading to greater effectiveness and efficiency. The option would require significant capital outlay and would become unaffordable within the capital funding envelope.

The following options have been shortlisted and taken forward for the purpose of this appraisal;

- Option 1- Do Minimum: Clear Maintenance Backlog
- Option2 – Do Intermediate: 1 x New Build and 1 x Refurbishment of Existing Site
- Option 3 – Do Maximum: Shared Site New Development (Preferred)

In detail, the above short-listed are;

Option 1: Do Minimum- Clear Maintenance Backlog

This option provides the benchmark for Value for Money and is based upon the following parameters:

Scope: Minimum- address current remedial maintenance issues at the existing site to address the existing maintenance backlog issues

Solution: Maintenance backlog and remedial repairs to be undertaken at the existing site

Service Delivery: Strategic Partnership

Implementation: Phased (school would be required to remain open)

Funding: Public

General Comments: This is not a realistic option however the option provides a comparator. Addressing the maintenance backlog would be a 'firefighting' exercise and would have a minimal impact on the overall condition and suitability of the existing site. Mobile accommodation would also remain.

Option 2: Do Intermediate- 1 x New Build and 1 x Refurbishment of Existing Site

This option provides an outline of a less ambitious version of the preferred option.

Scope: 1 x new build school building and facilities for Ysgol Pen Barras and a refurbishment and remodel of the existing site for Rhos Street School.

Solution: New build and refurbishment

Service Delivery: Strategic Partnership

Implementation: Phased (Ysgol Pen Barras would be required to decant to the new site prior to any refurbishment works at the existing site)

Funding: Public

General Comments: Although this option would result in an improvement to the overall learning environment, fundamental issues at the existing site would still remain which would not provide good value for money. Due to the phased nature of this option it poses a greater deal of disruption to both staff and pupils who would remain on the site whilst significant works were undertaken.

Economic Appraisal

This section provides a detailed overview of the main costs and benefits associated with each of the shortlisted options. It indicates how they were identified and the main sources and assumptions associated with these.

Estimating Benefits

The project benefits identified fell into the following main categories;

Benefit Type	Description
Quantifiable Benefit (QB)	Measurable- for example, £s or numbers of transactions etc
Cash Releasing Benefit (CRB)	These are financial benefits- for example, avoided spend, reduced cost etc
Non-cash releasing benefit (non-CRB)	These are economic benefits- for example opportunity cost of staff time etc
Non-quantifiable benefit (non-qb)	Non-measurable- for example, quality improvements such as well-being, improved morale etc

A full register of the project benefits, benefits management and realisation strategy can be found in [Appendix XX](#). The management and monitoring of benefits is conducted via VERTO a project and programme management system utilised by Denbighshire County Council. Further information regarding project management and governance can be found in the management case.

Estimating Costs

Costs for each of the shortlisted options have been estimated in collaboration within the project team and technical project leads. The costs have been identified by elements within each of the options in terms of m2 costs for the respective proportions of the new build and refurbishment options inclusive of surveys, FF&E, ICT, professional fees and contingencies. Costs for the do minimum option are based on the existing maintenance backlog with related necessary costs.

The table below provides an outline of the costs for the shortlisted 3 options;

Project Benefits

The full Benefits Register and Benefits Realisation Plan are included in **Appendix XX and Appendix XX** respectively. The benefits register and realisation plan is administered and monitored via 'VERTO', an electronic project management system utilised by Denbighshire County Council.

Cost per Benefit Point Analysis

TBC

Risk Appraisal

The risk appraisal has been undertaken and involved the following distinct elements;

- Identifying all the possible business and service risks associated with each option
- Assessing the impact and probability for each option
- Calculating a risk score

The range of scales used to quantify risk utilises the risk measurement tool within VERTO, a project management system used by DCC to monitor and report on projects.

The risk register and risk management plan is managed within the VERTO system, **Appendix XX** contains the project management documentation for the risk register and management plan.

Commercial Case (1000 Words Maximum)

Method of Procurement

This section outlines the proposed deal in relation to the preferred option as outlined in the economic case. The preferred procurement route for the preferred option was Design and Build.

However, given the nature of the shared site approach, an initial concept design works had been undertaken 'in-house' with an outline design summarising the general working principles that should be carried through the detailed design stage. This design provided a baseline design for the tendering exercise.

Procurement of the project was via the North Wales Schools and Public Buildings Contractor Framework (NWSPBCF). The Framework sets out clear procedures via mini-tender exercises for authorities to follow in procuring teams for specific projects. The Framework was developed and set up following an OJEU compliant procurement exercise that included PQQ and ITT stages to procure a limited number of main contractors to a set number of Lots under the Framework.

Given the anticipated initial project construction value of £7.9m the project falls within Lot 2 of the framework for projects valued £7.5M and £15M. Under the guidelines set out within the Framework for call off via mini-tender exercises for individual projects a number of procurement approaches are possible ranging from Early Contractor Involvement (ECI), through degrees of Design and Build to Full Design or Novation.

An appraisal of these options was undertaken based on an assessment of a number of priorities that included: programme, price certainty, quality, risk, complexity and management.

The conclusion reached given the nature, scale and ambition of the project was to adopt a two stage tender approach. A report was provided to the Modernising Education Board in March 2015 recommending this approach which was subsequently approved by the Board.

Following approval concept design work was undertaken 'in-house' utilising Denbighshire's Design and Construction Team in preparation for the mini-tender exercise. The mini-tender exercise was conducted using the guidelines set out in the Framework and was issued on the 19th of January 2016 to all contractors within Lot 2 of the Framework. This mini-tender exercise was based on a 70% Quality / 30% price ratio.

In addition, an explicit and clear evaluation criteria document was issued to the Contractors to accompany the mini-tender to ensure the evaluation process was clear and transparent. The mini-tender submission were returned on the 10th of February 2016. All were scored by an evaluation panel according to the guidance in the evaluation criteria issued. In addition, interviews were held with contractors who submitted a tender to present their written responses and answer any questions or provide clarification that arose out of their written responses.

The project, as expressed within the mini-tender has been structured into phases: Phase 1- Concept Design, Phase 2- Detailed Design and preparation of Contract Sum and Phase 3- Construction. The forms of contract proposed for the project are the JCT Pre-Construction Services Agreement (General Contractor) 2011 for Phases 1 & 2 and the JCT Design and Build Contract 2011 for Phase 3. Breakout clauses have been inserted within the pre-construction services agreement such that progression beyond phases 1 and 2 shall be at the sole option and discretion of the employer and only following formal instructions.

The mini-tender process and evaluation exercise was facilitated via the Proactis portal and guided by the County's Procurement Service. As a result of the evaluation of the written tender responses with moderation at interview, a successful contractor, in this case Wynne Construction Ltd. was notified of their success via formal correspondence on February 24th 2016.

Required Services

The required products and services in relation to the preferred way forward were defined briefly as follows;

- Appointment of a lead contractor with;
 - A successful recent track record of designing and constructing innovative primary schools;
 - Experience of using 'partnering-ethos' arrangements;
 - Ability to provide and lead a team of appropriate technical specialists (education consultants, ICT and Energy specialists et al);
 - Understanding of emerging education and economic trends both in a local and national context;
 - A sound reputation for maximising use of local suppliers within the construction supply chain;
 - A history of delivering significant community benefits through their construction ventures;
 - Technical ability to lead a complex design and build project to replace the existing school buildings including design, construction, demolition and reinstatement/re-landscaping works

Negotiated Deal and Contractual Arrangements

As set out above, the project will use the JCT Pre-Construction Services Agreement (General Contractor) 2011 for Phases 1 and 2 with breakout clauses at the end of each phase. At the end of Phase 2, subject to final approval of the Full Business Case, the intention will be to let a JCT Design and Build Contractor 2011 for delivery of Phase 3- Construction.

The final decision to enter into a formal contract for Phase 3 is scheduled to be taken by Denbighshire's Cabinet in July 2016 in accordance with the Councils Financial Regulations. The decision will be made following an assessment of the submitted works information by the Contractor.

Financial Implications of Deal

Under the proposed contractual arrangements and procurement approach the Contractor has initially been appointed for a fixed fee to undertake the Phase 1 and 2 design for the project and prepare a contract sum for agreement. A breakout clause at the end of Phase 1 limits the Client's exposure to financial risk. The contract sum will be developed in conjunction with the Clients cost advisors using an open book and transparent approach with the aim of agreeing a contract sum within the construction budget. It is then the intention to appoint the Contractor to undertake the construction works for the agreed fixed price contract sum.

Risk Transfer Arrangements

The general principle adopted is that risks should be passed to 'the party best able to manage them', subject to value for money considerations. The final allocation of risk within the project will be determined as part of the negotiation with the successful contractor as the project develops. This will involve discussions via dedicated Risk Workshops between Denbighshire and Wynne

Construction whereby project risks are allocated to the party best able to manage them and allocation of risk sums to deal with any residual risks remaining. The risk register will remain a 'live' document as the project continues to develop, risks will be under constant review, with the ownership, likelihood, impact and potential cost associated reviewed; it is anticipated that the level of risk will reduce as the design process progresses. **The outline risk register and risk management plan for the identified preferred option is provided in Appendix XX and XX.**

Community Benefits

The delivery of community benefits is a key component in the framework approach for the region. The priorities, as set out below, have been approved by the 6 North Wales authorities Cabinets (December 2012 through February 2013). The community benefits approach is core (we will evaluate the targeted recruitment and training element) with a target of 78 week apprenticeships/training/work experience/ or employment of disadvantaged person per £1m contract spend) this will vary between projects but it is the overall target for the framework.

As part of the mini-tender exercise the commitment of the contractor to community benefits was rigorously examined. In particular the contractors were required to outline how they would maximise potential community benefits as part of this project. The contractors' proposals for their community benefit strategy as submitted during the tender exercise are attached in **Appendix XX.**

CONTRACT: CB's to be further developed and agreed etc etc

The progression of these community benefits will be measured during the project in accordance with the toolkit and reported on annually to the Welsh Government.

Financial Case (1000 Words Maximum)

Funding Sources

In January 2015 a report was submitted to Denbighshire's Cabinet recommending approval of £8.8million from the Council's own resources to demonstrate the commitment to taking the project forward through detailed design. The recommendation was approved within the budget and approved at Full Council in February 2015.

Following an assessment of project costs prior to tender stage pressures had been identified which required review of the budget. The cost difference in the budget estimates are a result of a number of factors associated with the project. These factors are set out and detailed as follows;

- **Land Agreement:** At the outset of the project it was intended that DCC and Welsh Government would exchange two parcels of land at the Glasdir site. Over the past 12 months DCC and WG have been in discussion regarding the land agreement, which is linked to a historical Joint Venture

agreement (JV). DCC will now be required to purchase the additional land required. An independent valuer (Legat Owen) valued the overall parcel of land at £1.01million however subject to the terms of the JV agreement the overall net cost of the land is reduced to £550k including associated fees.

- Access Road: As part of the land negotiations there is a requirement for the provision of an access road to the school site from the northern link road. This access road could potential form part of a development on the remaining WG owned land in the future. It has been agreed in the terms that the cost of this infrastructure will be met on a 50 / 50 funding basis by DCC and WG (these costs will be outside of 21st century schools funding). The initial cost for the access road is estimated at £300k (DCC £150k contribution).

- Flood Alleviation Works: Robust Flood Consequence Assessments and Hydraulic Modelling has been carried out as part of the pre-construction works. The school site sits outside of the flood zone however FCA are required as part of the planning process. The FCA work has demonstrated there will be a requirement for a small bund on land adjacent to the northern link road as part of the development. This contributes to the overall flood alleviation strategy for the Glasdir area. The estimated cost for the bund is £40k).

- Construction and Contingency: Following the return of the tender submissions there has been an increase in the overall estimated construction costs.

As a consequence of these pressures and those for Ysgol Carreg Emlyn, Strategic Investment Group January 2016 considered increasing the project budgets for these two schemes to provide an additional £4.8million in contingencies to meet additional costs arising. This was recommended for approval and subsequently approved by Cabinet and Full Council in February 2016.

Appendix XX Capital Programme Spreadsheet from Full Council.

The estimated summary spend profile and funding sources are below;

	13/14	14/15	15/16	16/17	17/18	18/19	Totals
Total		£56,184	£87,264	£3,416,960	£6,698,785	£262,687	£10,521,880
WG				£2,511,166	£1,699,769	£229,757	£4,440,692
DCC		£56,184	£87,264	£905,794	£4,999,016	£32,930	£6,081,188

***Note: The above is based on the current best understanding of the programme and includes elements (land purchase, access road) that are not eligible for WG funding)**

This has enabled the design stages to progress in parallel with the Welsh Government Business Case process so as to inform the business case development in a timely manner and place the project in a good position to proceed without delay within the County's overall 21st Century Schools Band A Programme given formal approval from the Welsh Government.

COMPLETED TEMPLATE (ON SEPARATE SHEET) NEEDS TO BE INCLUDED AS APPENDIX AS PART OF FINANCIAL CASE

PAYMENT STREAM/CASH FLOW

The capital cost of the project is expected to be £10.5million over the expected lifetime of the project. Funding for the project will be in partnership with the Welsh Government. The revised Strategic Outline Programme which included the Ruthin projects was based on a 50 / 50 match funding basis by DCC and Welsh Government as part of the overall envelope for 21st Century Schools Funding.

At this stage it is proposed that the increased resources required to deliver this project would be met from DCC, which includes land purchase costs and highway infrastructure costs, which impacts on the overall split between WG and DCC funding. The DCC funding element will be funded by cash reserves, prudential borrowing and savings and capital receipts received as part of wider school organisation.

DETAIL ON CASHFLOW

In January and February 2016 SIG, Cabinet and Full Council approved the affordability of the scheme in the context of emerging budgetary pressures. Estimated scheme costs and contingencies were presented at £11.5million. During the interim of this business case and the approval of additional funding by the Council in February there has been cost certainty for some elements of the scheme, such as land purchase costs, which have led to the revision of the scheme estimate to £10.5million.

This combined business case was presented to Denbighshire County Council's Strategic Investment Group (SIG) on the 29th of March 2016. The group reviewed the business case, financial affordability and to ensure it continued to align with the approved Council Capital Plan. SIG approved the recommendation for the business case to be referred to Cabinet for further approval.

SECTION SUBJECT TO CABINET AND FULL COUNCIL APPROVAL OF BUSINESS CASE

Preferred Option Costs

The detailed costs associated with the construction element of the preferred option have been developed as part of progressing Phase 1- outline design of the project, equivalent to RIBA Stage C for the project.

The proposed capital expenditure will increase the overall value of the Council's asset estate by replacing aged buildings with new structures. Consequently the balance sheet will show an increase in total asset value.

Management Case (1000 Words Maximum)

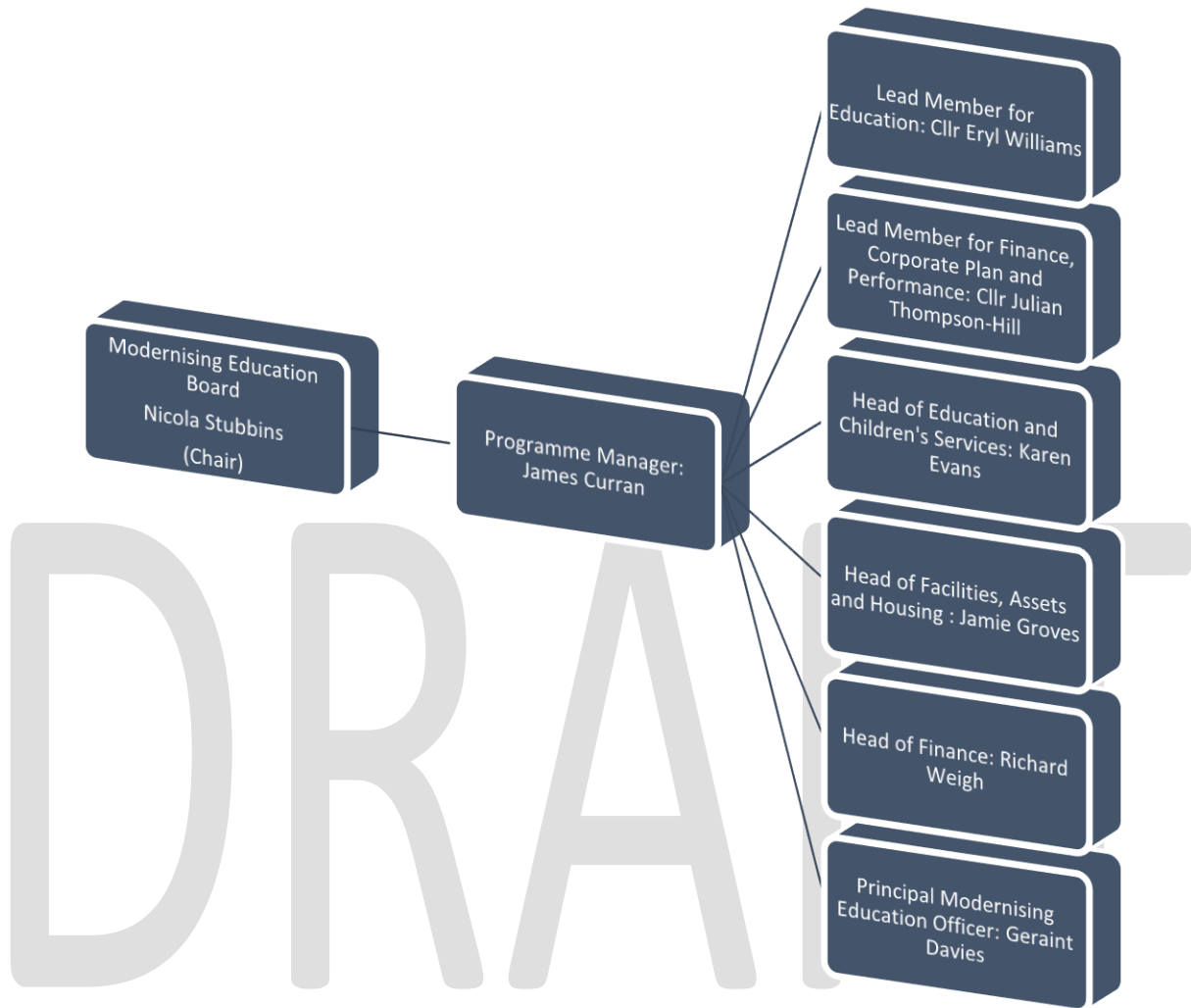
Programme Management

The scheme is an integral part of the Denbighshire's 21st Century Schools Programme which comprises a portfolio of projects through which Denbighshire will deliver the necessary changes to ensure that the strategic aims of the Welsh Government's 21st Century Schools Programme are fully met. Denbighshire's Strategic Outline Programme (SOP) was agreed by the Welsh Government in December 2011.

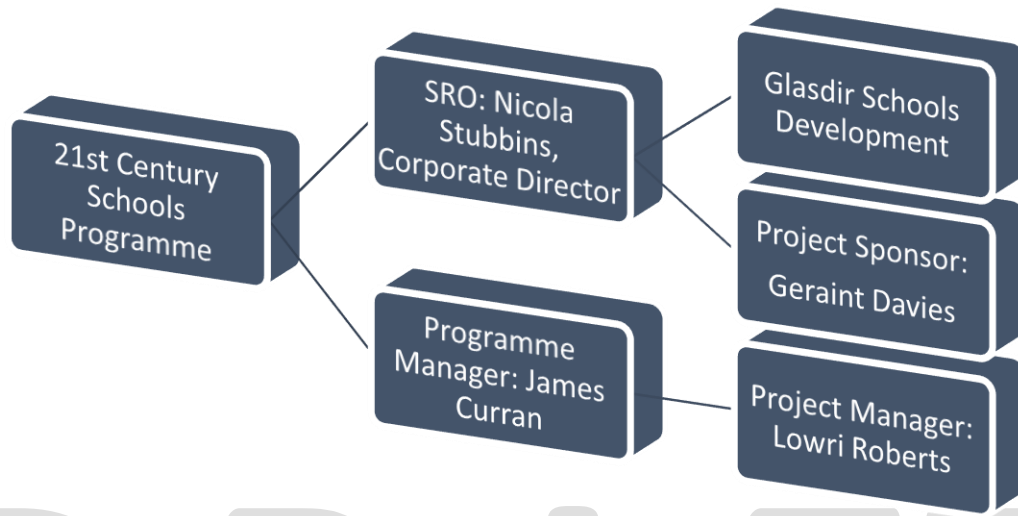
The project management arrangements sit within the context of Corporate Programme Management. DCC's Programme Management Strategy ensures that all project development and delivery is undertaken in concert with the Council's strategic vision and politically supported aspirations and priorities. The key principles of DCC's approach to Programme Management includes;

- Programme ownership at Corporate Executive level by a nominated Senior Responsible Owner
- A Programme Board with clearly defined Terms of Reference defining it's;
 - Purpose
 - Scope
 - Remit
 - Membership
 - Tenure
- Programme Board membership comprising relevant Cabinet members, executive officers and service heads
- A clear focus at strategic, corporate level on (and ultimate responsibility for) the realisation of identified Programme Outcomes and the Council's visions and priorities

The Councils' Modernising Education strategy is governed via the Modernising Education Programme Board. This board has responsibility to oversee the 21st Century Schools Programme and the key projects therein. The Programme reporting responsibilities and membership at Modernising Education Board level are shown below:



The operational link between Programmes and Projects is made by Executive Officers / Heads of Service / Programme Manager from the Programme Board being nominated Project Sponsors. The actual operational (service) programme reporting responsibilities for projects and strand activity are:



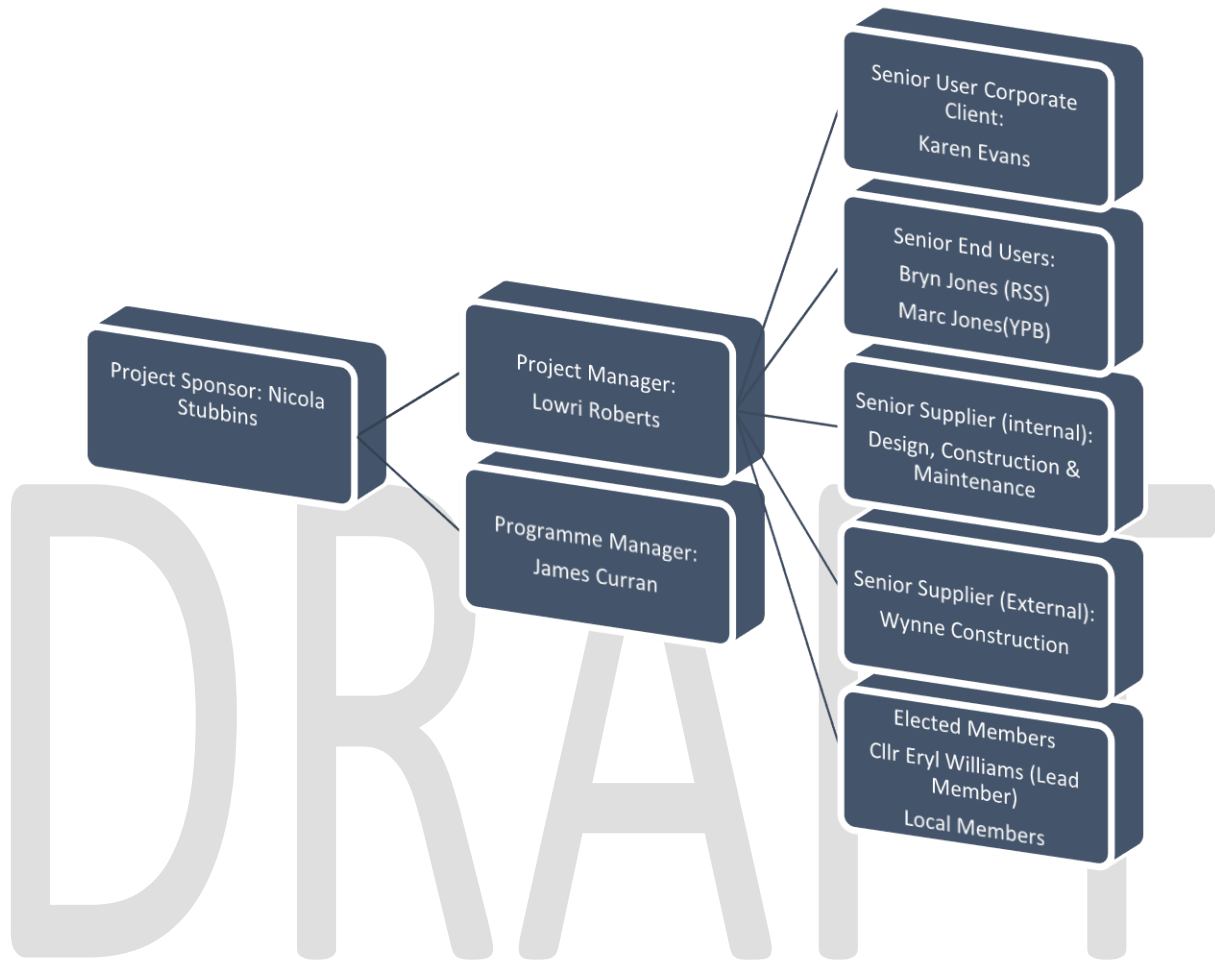
Project Management

Denbighshire County Council has developed and implemented a corporate project management methodology, based on Prince 2 methodology, which ensures that projects are properly led, planned, resourced, monitored and controlled. The methodology has a prescribed structure of governance, structure and reporting for projects tailored according to magnitude, scope and complexity to enable successful and efficient project delivery.

A Project Board has been established to oversee the development and progress of the project. The Project Team reports to, and advises the project board and is responsible for the development, planning and delivery of the project. The membership of the team is dynamic and evolves over time with some roles increasing or diminishing in profile as the project progresses through its sequential stages. The team is led and coordinated by the Project Manager.

Similarly to the programme board, the project board is supported as appropriate by advisers in key areas. Where external advisers are to work on projects consideration will be given to the role of the local authority managers to supervise such work and provide line management as appropriate.

The outline reporting arrangements for the project are as indicated below:



It is the intention for the project board to meet at key milestones during the project development and delivery where key stage sign off is required before progress to the next stage, this will include at design stage and pre-contract. Additional boards will be called as and when required.

The schools will be represented by Mr Bryn Jones (Headteacher, Rhos Street School) and Mr Marc Lloyd-Jones (Headteacher, Ysgol Pen Barras)

Further specialist roles and advice will be provided by DCC internal design, construction and maintenance department covering areas including design advice, CDMC, QS and contract administration.

Local political representation will be via the local elected members for the area where the schools are to be located (Ruthin), in this case there are 3 local members.

The external senior supplier, as described in the commercial section, will be Wynne Construction Ltd (and their appointed design team) and they will be represented and play a role in the Project Board arrangements as required.

There is also included the option for Welsh Government representation at the Project Board as deemed required.

Key Milestones

The list below details the key milestones within the design process and key approval and review stages anticipated:

{programme TBC}

Risk Management

The strategy, framework and plans for dealing with the management of risk are described in the Risk Management Plan in **Appendix XX**. In addition there is a DCC risk register for the preferred option.

The DCC risk register is a County specific register that rolls up key general risks, in addition, as referred to in the Commercial Case is the risk profile developed with the main contractor that allocates specific risks to the party best able to deal plus an accompanying risk value.

These risk registers and management plan detail which party is responsible for the management of each risk and the required counter measures as required.

All of these documents will be reviewed and updated as the design develops and specific risks are retired or mitigated.

Benefits Realisation

The strategy, framework and plan for dealing with the management and delivery of benefits are described in the Benefits Realisation Plan **in Appendix XX**.

In addition there is a Benefits Register for the preferred option and a Benefits Realisation Plan. In addition, there is also a document summarising the outcomes and benefits anticipated from the project based on an approved Welsh Government template.

These documents set out who is responsible for the delivery of specific benefits, how and when they will be delivered and the required counter measures, as required.

Gateway Reviews

For individual projects within Denbighshire a stage review process has been established for all projects. This process allows for relevant professional views to emerge on individual projects prior to moving forward to the next formal stage.

A stage review, via the Strategic Investment Group for this project was undertaken prior to submission of this document.

Further gateway reviews linked to project board approval are planned for key stages in the development of the design and pre-contract stage.

The Council will discuss further proposed engagement with the Welsh Government Programme and Project Management Team regarding securing external gateway reviews of the project as appropriate.

Contingency Plans

In the event that this project fails, the County will have to maintain the service within the existing facilities however they will not meet the aspirations of both the County and WG to provide facilities fit for purpose and suitable in which to deliver a 21st century curriculum.

Post Occupancy Evaluation

Post Occupancy Evaluation provides a structured review of the process of delivering a capital project as well as a review of operational, functional and strategic performance of the building following occupation. This is a recognised way of providing feedback on the performance of the project through a buildings lifecycle from the initial concept to occupation and beyond.

It is envisaged that both a pre and post occupancy evaluation will occur. The pre-occupancy evaluation will enable detail on the issues around the performance of the existing site to be captured and fed into and influence the design process. The post occupancy evaluation will occur after a period of operational use- between 6-12 months- and will again capture feedback from all users on how the new set-up is functioning and to measure the actual outcomes against the objectives.

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Ysgol Carreg Emlyn – Business Justification Case

1. Executive Summary

This Business Justification Case is to seek the approval of the Welsh Government for £1,395,763 as a contribution towards a £4,941,720 investment to build a new school building in the village of Clocaenog for Ysgol Carreg Emlyn.

The project will provide a new school of 95 Full Time capacity in the village of Clocaenog.

This project forms part of Denbighshire County Council's Strategic Outline Programme for 21st Century Schools funding.

The new area school of Ysgol Carreg Emlyn was established on 1st September 2014. The new school was formed to replace the previous schools of Ysgol Clocaenog and Ysgol Cyffylliog and is operating on the two existing school sites in Clocaenog and Cyffylliog. Both Clocaenog and Cyffylliog were category C condition schools. Ysgol Clocaenog had no surplus places and projected to be oversubscribed by 33% by 2018. Ysgol Cyffylliog had over 40% surplus places. The amalgamation of the two schools allowed for better use of the available pupil places in the area and designating Cyffylliog for the foundation phase and Clocaenog for key stage 2 increased the accessibility to the available places. The amalgamation generated an annual revenue saving of £45k.

The investment will provide the school with buildings and facilities in line with the Welsh Government's 21st Century Schools standard and will provide a high quality educational provision. Both of the existing sites have deficiencies in facilities as neither have a hall and this is a barrier to curriculum delivery. The Clocaenog site has two classrooms of different sizes. The smallest is only 30m² and this restricts the ability of the school to respond to pupil fluctuations and maintain current classroom configurations. The ancillary space in Clocaenog is provided by a mobile classroom which functions as office, staff room, small group room, and is also used for assemblies. In Clocaenog, school dinners are prepared in a nearby Church hall and transported to the school to be consumed in the classrooms.

The investment will enable the area school to move to a new single site in Clocaenog resulting in the closure of the existing sites in Clocaenog and Cyffylliog, the creation of sufficient school places and deliver a more efficient education provision in the area.

2. Strategic Context

This section provides an overview of the context within which the investment will be made.

The Strategic Outline Programme documented the need for change in the existing pattern of delivering teaching and learning throughout Denbighshire. The current provision can be considered to provide too many places in the wrong location and faces an increasing risk of not being able to meet parental preference for Welsh medium education.

The overall aims of Denbighshire's 21st Century Schools Programme reflect the overall national programme objectives:

Aim 1 - Learning environments for children and young people aged from 3 to 19 that will enable the successful implementation of strategies for school improvement and better educational outcomes

Aim 2 - Greater economy through better use of resources to improve the efficiency and cost-effectiveness of the education estate and public service provision

Aim 3 - A sustainable education system with all schools meeting a 21st Century Schools Standard, and reducing the recurrent costs and carbon footprint

Business needs / Problems with the status quo

Clocaenog Site:

Site Issues: The school site is located at the junction of the two main routes through the small village of Clocaenog. The school yard and main building are separated from the rest of the school grounds by a stream which runs through the site. The stream is fenced off and a bridge leads to the remainder of the grounds which slope steeply up to the boundary fence with the adjoining field. At the top of the slope an area has been levelled to enable the siting of a mobile classroom. Adjacent to the school there is a community play area and field accommodating a pitch which is used by the school.



The shortcomings of the site include the mobile classroom which is used for administration by the teaching staff and secretary, a staffroom, and for one to one teaching, music lessons and assembly. Access to the mobile is by steep ramps and steps. There is no onsite catering or dining facility. Food is cooked in the kitchen of the Community Hall and then transported down the lane to the School. Food is served from a trolley and pupils eat their meal at the desks they work at. Dirty plates etc are taken back to the Hall to be washed. The main hard play area for the site has a significant slope which restricts the types of activities that pupils can participate.

Highways: There is no dedicated car parking provision.

Potential for Development: It is difficult to envisage a solution for development of this site to accommodate more pupils. Any proposal would need to deal with the potential flood risk and the accessibility issues of gaining access to the raised areas to the rear of the site.

Condition	C
Suitability	B
Deficiencies	Car Parking, Staff Areas, Public Areas, Accessibility

Cyffylliog Site:

Site: The school consists of the original school building, little changed since construction - other than improved toilets, with associated walled yard area and outbuildings. Classroom and circulation areas are simply laid out, light and airy with no significant issues. Very small kitchen with little space to be able to upgrade or improve the cooking equipment. Limited food storage facilities and limited dining facilities.



Highways: There is no dedicated car parking provision.

Potential for Development: There is little scope to develop the site to cater for 105 pupils. To provide the accommodation recommended by BB99 would require an increase in the size of the built accommodation by a factor of three. This would be an over-development of the site and would detract from external areas.

Condition	C
Suitability	B
Deficiencies	Accessibility, Staff Areas, Car Parking, Public Areas

Current demand for places

The table below shows the pupil number over the past 5 years and the current demand for places at the school:

Full Time pupil numbers – January PLASC					
2011	2012	2013	2014	2015	2016
53	59	57	58	63	71

Currently the school has 71 full time pupils and 15 part time pupils. Current projections indicate that the school will have 81 full time pupils by January 2018:

Full Time pupil numbers – Projections			
2017	2018	2019	2020
79	81	87	89

Proposed solutions

The initial options considered were as follows:-

- A.) Do Nothing: Maintain Status Quo
- B.) Do Minimum: Clear Maintenance Backlog- Remedial Repair
- C.) Do More Than Minimum: New 80 FTE School (replacement of existing)
- D.) Do Intermediate: New 95 FTE School (Preferred)
- E.) Do Maximum: Build a new 105 FTE school with attached Community Centre.

These are explored further in Section 3 – Available Options

Proposed scope

The proposed new building located in the village of Clocaenog will deliver a primary school with capacity for 95 full-time pupils & 14 part-time pupils. The project will provide a total of four classrooms for the delivery of mixed year classes (Nursery & Reception, Year 1 & 2, Years 3 & 4 and Years 5 & 6) and additional areas including a hall, kitchen, community room, staff room, administration office, head teachers office, toilets and storage.

Project Impact

Nearby provision - In November 2012, Denbighshire's Cabinet approved the commencement of a review of primary school provision in the Ruthin area. The review encompassed eleven primary schools in the area and six recommendations were implemented as a consequence of the review. The nearest alternative provision is Ysgol Pen Barras which is located 4.8 miles away in the town of Ruthin. This school is subject to a separate business case to relocate it to a new site.

Welsh Medium – The Council's Welsh in Education Strategic Plan which covers the period 2014 – 17 reaffirms the Council's commitment to increasing the number of pupils receiving their education through the medium of Welsh. This proposal supports the outcome of the strategic plan.

Play areas / pre-school and after school care – The new school building will create suitable play areas which will enhance both pre-school and after school care.

SEN Provision – The new school building will deliver small group rooms which will be used for providing appropriate support for individuals or groups of pupils.

Investment objectives for the procurement

The investment is driven by the following objectives:

- To increase and improve the permanent capacity for Ysgol Carreg Emlyn to provide 95 full-time pupil places and 14 part-time nursery places to be utilised from September 2017 onwards;
- The provision of distinct Foundation Phase and Key Stage 2 learning environments tailored to meet the needs of the Foundation Phase curriculum and the Key Stage 2 curriculum to be utilised from September 2017;
- The provision of improved classroom and ancillary areas for Ysgol Carreg Emlyn by September 2017.
- Improve the condition of the school, from a category C (Clocaenog site) & category C (Cyffylliog site) school to a category A school by September 2017;
- The reduction in the overall maintenance backlog by £269,050 by September 2017;
- To facilitate the removal of mobile accommodation from the Clocaenog site by September 2017;
- The authority will be able to declare both existing sites as surplus following the move to a single site in September 2017 and subject to consultation re-invest the proceeds from the site into the Modernising Education Programme;
- To achieve greater efficiency and economy of the overall school estate.

- Increase the energy efficiency and reduce the carbon footprint.

Benefits

The Council believes this proposal represents the best opportunity to safeguard and sustain educational standards for the future and provide a platform for improvement through significant investment in facilities.

This proposal demonstrates the Council's commitment to sustaining and developing further standards of attainment and learning opportunities for all children in order for them to fulfil their potential.

The main benefits associated with the investment are:-

The main quantitative benefits associated with the investment are:

- Improved school building and facilities;

The project will deliver new classrooms, distinct Foundation Phase and Key Stage 2 learning environments, outdoor classrooms, resource space, small group rooms, and ancillary areas including a new hall, reception, head teacher's office and staff room.

The new school building will be more energy efficient, reduce the maintenance backlog and ensure compliance with DDA legislation.

- An improvement in the performance of the school;

There is a clear link between new and improved school buildings and improved performance as highlighted by Estyn. The provision of distinct Foundation Phase and Key Stage 2 learning environments, outdoor classrooms and appropriate resource space will have a positive impact on the learning environment enabling staff and pupils to achieve their potential.

The main qualitative benefits associated with the investment are:

- Improved educational environment for pupils and staff;

Pupils and staff will benefit from an improved learning environment. The provision of specific facilities to deliver the Foundation Phase curriculum and the Key Stage 2 curriculum, along with the skills and expertise of a larger cohort of staff will create learning environment for pupils and staff to thrive in.

- Improved morale of pupils and staff;

The improved learning environment, along with the increased number of staff and pupils within each cohort is likely to have a positive impact on the morale of both children and staff within the school.

- A larger cohort of staff on one site able to specialise and develop expertise in a variety of areas;

Bringing together the staff from both sites will create a larger cohort of staff on one site who will use their skills and expertise for the benefit of the pupils. Having a larger cohort of staff will enable teachers and support staff to specialise in certain areas, aiding in their professional development, which will in turn benefit the pupils.

The main cash releasing benefits of the investment are:

- Reduction in the maintenance backlog of £269k;

The project will deliver an extended and refurbished school with no maintenance backlog and will therefore assist in reducing the Council's overall schools maintenance backlog.

- Potential capital receipt of £350k from the sale of both sites;

Following consultation with the local community over the future use of the school site, should no alternative proposal arise, the Council would seek the maximum capital receipt for the site. The capital receipt generated would be retained within the overall Modernising Education Programme and used to fund improvements to other schools in the County.

- Reduction in transport costs of £39k;

The project will remove the need to transport pupils between the existing sites as the foundation phase is located in Cyffylliog and key stage 2 in Clocaenog.

The main non-cash releasing benefits of the investment are:

- Improved cost per pupil funding;

The new school will have a lower cost per pupil as it will provide a more efficient education system that reduces expenditure of building, site and energy expenses allowing resources to be redirected towards improving the education provision for pupils within the County.

- A more energy efficient building;

The new school will be far more energy efficient than the current two sites, which will reduce the financial cost of running the school and contribute towards the Council's carbon reduction commitment.

- Improved education and ancillary facilities

The new school will have capacity for 95 full time places, once provision is consolidated on to one new site. The new building will have modern purpose built classrooms with access to external areas and suitable ancillary facilities to deliver the curriculum.

- Removal of mobile accommodation;

The savings released from removing the mobile accommodation will remain within education and used to fund prudential borrowing which will contribute towards the Council's match funding of the 21st Century Schools programme.

Risks

The tables below provide a summary of the key business and service risks that might affect any option for the delivery of this service. The tables below also highlight whether the risks are more prevalent during the design, build and operational phases of the project.

Business Risks

Risk	Phase	Description	Mitigation
Changes in demand	General	The risk that pupil numbers at the school will be significantly higher or lower than projected;	The Council is working closely with the Governing Body and the Head teacher to ensure that current and prospective parents are kept informed of the developments.
Financial viability	General	The risk that the costs associated with the project will be significantly higher than anticipated.	The Council's Quality Surveyors have updated and recalculated costs associated with the project to ensure they are as accurate as possible.
Failure to proceed	General	The risk that the project fails to proceed due to lack of capital funding or planning permission;	The Council is committed to funding the project should funding from the Welsh Government not be secured.
Procurement	Design	Delay or additional cost arising from the procurement route.	Procurement route will follow existing standard procedures and key milestones articulated in the overall project plan.
Design	Design	Delay or poor quality outputs as a consequence of a poorly chosen or badly briefed team.	Early involvement of Head teacher & Governing Body to ensure that design requirements are included as appropriate.
Planning permission	Design	Delay or refusal of consent for the scheme.	The Council is committed to submitting a planning application.
Tender exceeds budget	Design	Cost inflation between the approval of the business justification and tendering.	Costs have been revised for preferred option with this BJC. Project will proceed at risk prior to BJC approval to avoid costs which may be associated with delays.
Contract delays	Build	Site problems, contractor bankruptcy, design changes and disruption from environmental factors, including weather.	Will be managed within the risk register.

Service Risks

Risk	Phase	Description	Mitigation
Design	Design	Design does not meet the needs of the school.	The Council is working closely with the Head teacher and Governing Body to ensure that the design meets the needs of the school.
Disruption	Build	Disruption to the school from the building works impacts on the quality of education.	The work will be located on a separate site and scheduled to ensure minimal disruption to pupils and to the quality of education provided.
Quality	Operational	The quality of the building provided impacts on the delivery of education	The Council is working closely with the Head teacher to ensure that the design meets the needs of the school.
Output	Operational	The output provided does not meet the needs of the School.	The Council is working closely with the Head teacher to ensure that the design meets the needs of the school.
Timescales	Build	Contractor unable to deliver within the agreed timescales.	Involvement with the appointed contractor in the management of the project.
Efficiency of new building	Operational	Improved energy efficiencies are not realised.	Involvement of energy efficiency officer in the design phase.

Community Benefits

The project will be awarded on price / quality and will include an assessment of community benefits. Specific targets regarding Placements, work experience, employment, local spend are currently being developed.

The progression of these community benefits will be measured during the project in accordance with the toolkit and reported on annually to the Welsh Government.

3. Available Options

The following options have been considered for the project:

a) Retain as a split site school (Do Nothing)

Description	This would mean retaining both school sites and operating a split site school with no changes or improvements to existing facilities.
Main Advantages	This option would require no capital funding.
Main Disadvantages	This option would not address any of the issues associated with both school sites – condition of school buildings, maintenance backlog, mobile accommodation and lack of suitable facilities. Would not result in any savings or increase the efficiency and effectiveness of the school estate. This option would not improve the learning environments for pupils.
Opportunities	This option would create an opportunity to retain a school site in Cyffylliog.
Threats	The long term sustainability of the school would be threatened by a new build in Ruthin as parental support and confidence would be lost and could impact on pupil numbers in the future.

b) Retain and refurbish as a split site school (Do Minimum)

Description	This would mean retaining both school sites and operating a split school site. The existing school sites would be refurbished to provide improved learning environments.
Main Advantages	This option would address the maintenance backlog at both sites and would improve the learning environments on both sites.
Main Disadvantages	This option would involve significant capital expenditure. This option would not deliver significant efficiencies and deficiencies in facilities would remain.
Opportunities	This option would create an opportunity to retain a school site in Cyffylliog.
Threats	The long term sustainability of the school would be threatened by a new build in Ruthin as parental support and confidence would be lost and could impact on pupil numbers in the future.

c) Build a new school for 80 full time pupils (Replacement of existing).

Description	A new school would be built in the village of Clocaenog with the same capacity as the existing school and with suitable facilities. Both existing sites would then be declared surplus.
Main Advantages	This option would address the condition of the existing buildings, reduce the maintenance backlog, improve facilities and would provide a 21 st century learning environment.

	<p>Moving from two to one site would have a number of advantages in terms of cost savings and efficiencies including reduced running costs, improved energy efficiency and the need for fewer members of staff.</p> <p>This would have a positive impact on the learning environment as pupils would have access to improved facilities including a suitable hall space, and a larger team of staff on site.</p>
Main Disadvantages	This option would involve significant capital expenditure. The school would have insufficient capacity to respond to projected future demand.
Opportunities	An opportunity to provide a 21 st century learning environment which would result in improved educational experiences for pupils and should have a positive impact on standards. Both existing sites could be declared surplus and there would be an opportunity for a capital receipt from the sales of the site.
Threats	Pupils living within the catchment area of the school could be refused a place in the new school due to insufficient capacity.

d) Build a new school for 95 full time pupils (Preferred)

Description	A new school would be built in the village of Clocaenog with an increased capacity compared to the existing school and with suitable facilities. Both existing sites would then be declared surplus.
Main Advantages	<p>This option would address the condition of the existing buildings, reduce the maintenance backlog, improve facilities and would provide a 21st century learning environment.</p> <p>Moving from two to one site would have a number of advantages in terms of cost savings and efficiencies including reduced running costs, improved energy efficiency and the need for fewer members of staff.</p> <p>This would have a positive impact on the learning environment as pupils would have access to improved facilities including a suitable hall space, and a larger team of staff on site.</p>
Main Disadvantages	This option would involve significant capital expenditure.
Opportunities	<p>An opportunity to provide a 21st century learning environment which would result in improved educational experiences for pupils and should have a positive impact on standards. The size of the school following construction would provide additional capacity to meet any future increase in pupil numbers.</p> <p>Both sites could be declared surplus and there would be an opportunity for a capital receipt from the sales of the site.</p>
Threats	The size of the school following construction would result in a number of surplus places.

e) Do maximum: Build a new school for 105 full time pupils with attached Community Centre

Description	A new school would be built in the village of Clocaenog with an increased capacity compared to the existing school and with suitable facilities. Both existing sites would then be declared surplus.
Main Advantages	<p>This option would address the condition of the existing buildings, reduce the maintenance backlog, improve facilities and would provide a 21st century learning environment.</p> <p>Moving from two to one site would have a number of advantages in terms of cost savings and efficiencies including reduced running costs, improved energy efficiency and the need for fewer members of staff.</p> <p>This would have a positive impact on the learning environment as pupils would have access to improved facilities including a suitable hall space, and a larger team of staff on site.</p>
Main Disadvantages	Would require greater capital spend over the allocated budget. Would be more than the school and community needs.
Opportunities	<p>An opportunity to provide a 21st century learning environment which would result in improved educational experiences for pupils and should have a positive impact on standards. The size of the school following construction would provide additional capacity to meet any future increase in pupil numbers.</p> <p>Both sites could be declared surplus and there would be an opportunity for a capital receipt from the sales of the site.</p>
Threats	The size of the school following construction would result in a number of surplus places. This investment could potentially put other projects within the Modernising Education Programme at risk. Would be more than the community needs and could undermine the future sustainability of community owned facilities within the wider area.

Key Drivers

The Ruthin area faces a number of distinct challenges, these challenge have been applied as key drivers for the Ruthin review. These key drivers and the solutions offered by the proposals are as follows;

- **Sufficient school places:** The proposal would align pupil place planning with the physical capacity of any new build facility. Pupil projections for Ysgol Carreg Emlyn show an increase in pupil numbers. The proposal would lead to ensuring sufficient school places to respond to future demand.
- **Condition of School Sites:** The proposal would provide fit for purpose 21st century school facilities for all pupils to replace the current school building and facilities at Clocaenog and Cyffylliog which are both graded C (Poor).
- **Use of Temporary accommodation:** The proposal would remove the use of temporary accommodation which functions as ancillary space on the Clocaenog site.

- **School estate efficiency:** The proposal would rationalise the current arrangement of school sites, this would lead to a reduction in general running costs and lead to greater energy efficiency and reduction in the carbon footprint. There would be a potential capital receipt for the council from the sale of the existing sites totalling £350k (based on current market value estimations).

The table below provides a summary of whether each of the five options meets the above investment objectives:

Option		Description	Does this meet key drivers?	Does this meet investment objectives?	Conclusion
A.	Maintain Status Quo	Current provision to be maintained.	No	No	Discounted
B.	Do Minimum	Undertake all remedial maintenance and essential repairs to fabric of buildings.	No	No	Discounted
C.	Do more than the minimum.	Relocation of Ysgol Carreg Emlyn on to a new single site building with same capacity as current school sites.	Partial	Yes	Discounted
D.	Do intermediate	Relocation of Ysgol Carreg Emlyn on to a new single site building with sufficient capacity to meet future demand.	All	Yes	Preferred
E.	Do Maximum	Relocation of Ysgol Carreg Emlyn on to a new single site to a combined school and community centre.	Partial	Partial	Discounted

A VFM investment appraisal for options B, C, D and E is included as Appendix A.

Preferred Option

**The Value for money options appraisal is based on the cost estimates received when submitting the 21st Century Schools bid.*

Value for Money (Draft – Work in progress).

Option A involves no capital expenditure but does not meet any of the investment objectives.

Option B would involve a capital expenditure of £269,000. However it would only meet 3 of the 9 investment objectives set out in Section 2. Option B would result in an annual revenue saving of approximately £xxxxxx. Over the life of the building (30 years) this would result in a cumulative Net Present Value (NPV) of £xxxxxx.

Option C would involve a capital expenditure of £4,xxx and would meet 8 of the 9 investment objectives set out in Section 2. Option C would result in an annual revenue saving of approximately £xxxxxx during the first two years and a saving of approximately £xxxxxx each year thereafter. Over the life of the building (30 years) this would result in a cumulative Net Present Value (NPV) of £xxxxxx.

Option D would involve a capital expenditure of £4,941,720 and would meet all of the investment objectives set out in Section 2. Option D would result in an annual revenue saving of approximately £xxxxxx during the first two years and a saving of approximately £xxxxxx each year thereafter. Over the life of the building (30 years) this would result in a cumulative Net Present Value (NPV) of £xxxxxx.

Option E would involve a capital expenditure of £5xxxxxxx and would meet all of the investment objectives set out in Section 2. Option E would result in an annual revenue saving of approximately £53,000 during the first two years and a saving of approximately £31,000 each year thereafter. Over the life of the building (30 years) this would result in a cumulative Net Present Value (NPV) of £xxxxxxx.

Options C, D & E would both result in similar revenue savings over the life of the building, however option E would require a higher capital investment at the start of the project. Option C meets 8 out of the 9 investment objectives.

As a result, the authority has identified Option D as the option that delivers all the objectives and optimises value for money.

Description of the preferred option

Option D will comprise:

- Four classrooms
- Hall
- Kitchen
- Staff room
- Head teacher's office
- Administration office
- Small group / ALN rooms
- Library / resource space
- Community room
- Toilets

- Storage

Upon completion, Option D will provide:-

- A 21st Century learning environment for pupils with the capacity for 95 full-time pupils and 14 part-time nursery places;
- The provision of distinct Foundation Phase and Key Stage 2 learning environments;
- A school building of Category A condition;
- A school building with no maintenance backlog;

As a result of the project, the authority will also be able to:-

- Declare both the Clocaenog and Cyffylliog sites as surplus following the move to a single site in September 2017;
- Remove mobile accommodation from the Clocaenog site;

4. Procurement route

Due to the somewhat complex nature of this project (especially in relation to land acquisition, drainage and highways considerations etc.) the Carreg Emlyn project will be managed by the in-house design team up to RIBA Stage 3 and submission to the planning authority.

It is envisaged that the tendering process going forward from RIBA Stage 3 will utilise a single stage Design and Build procurement route, where the planning information will be passed onto the successful contractor to develop the detailed design.

The National Procurement Service (NPS) framework will be used for Mechanical, Electrical and Structural advisory support.

Given the size and scale of this project it is expected to attract SME main contractors, and similar subcontractors are likely to be employed through the supply chain.

Innovative construction methods and approaches to sustainable design, construction and building operation will be explored during the design stages and where necessary incorporated to meet any BREEAM and WG funding requirements.

Suppliers will be exclusively from the private sector. Local suppliers will be encouraged where possible in conjunction with sustainability, BREEAM requirements and the public procurement regulations.

All potential contractors will be requested at the PQQ stage to provide details and examples of how their organisation benefits the local community through added value (e.g. supply chain management, meet the buyer events, community benefits, employment and training opportunities etc.).

5. Funding and Affordability

This section considers the financial implications of the preferred option on the financial position of the authority.

Capital and revenue costs of the proposed investment

The total capital costs associated with the preferred option is £4,941,720 including all fees and a contingency allowance. The cost profile for the expenditure for the lifespan of the project is attached in Appendix A, in relation the project plan is attached in Appendix B.

At this stage the project costs do not include whole life costs for the building and future maintenance requirements and no formal cost has been established regarding future maintenance liabilities for the site.

The identification of this site has enabled a clearer indication to emerge of site specific works and an understanding of works required to facilitate this project including the provision of sewerage treatment, surface water attenuation and the requirement for additional land, increased fees and risk allowance and contingency. The findings of this work have identified a range of additional costs which may be required to be met beyond the initial construction costs identified purely for the school building and as a consequence the cost of the project has increased by £2.1m from £2.8m to £4.9m. Denbighshire County's Council's Strategic Investment Group re-assessed the project based on the revised costs and to assess whether the proposal should still be progressed. The findings of this review recommended that additional contingency funding be allocated to cover the emerging additional pressures for land purchase costs, external works and increased construction costs. This has subsequently been supported by Cabinet and Full Council.

How the investment will be funded

It is intended that a significant element of the funding for this project will come from Denbighshire County Council's internal capital resources and from a capital allocation from the Welsh Government.

The authority proposes to utilise finance earmarked for the 21st Century Schools Programme which includes savings generated from this and other school reorganisation proposals progressed by Denbighshire. A letter received by DCC which indicated that a possible £1,395,763 from the 21st Century Schools programme would be invested in the Ysgol Carreg Emlyn is attached as Appendix C.

The table below demonstrates the change in cash flow plan for the project:

Initial Estimates								
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	Total
DCC	£5,062	£25,386	£378,044	£468,000	£519,271			£1,395,763
WG				£596,121	£728,348	£71,294		£1,395,763
Total	£5,062	£25,386	£378,044	£1,064,121	£1,247,619	£71,294	£0	£2,791,526

Current Estimates								
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	Total
DCC	£5,062	£25,385	£193,991	£1,243,459	£1,818,315	£259,539		£3,545,957
WG				£596,121	£728,348	£71,294		£1,395,763
Total	£5,062	£25,385	£193,991	£1,839,580	£2,546,663	£330,833	£0	£4,941,720

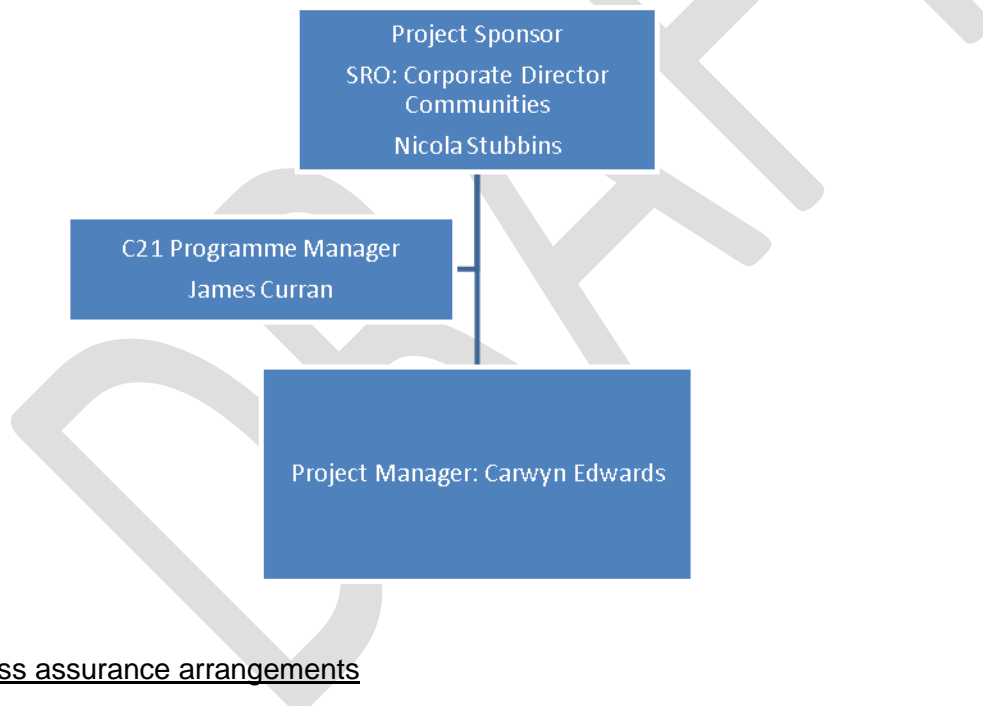
6. Management Arrangements

Project management arrangements

Denbighshire County Council has developed and implemented a corporate project management methodology, based on Prince 2 methodology, which ensures that projects are properly led, planned, resourced, monitored and controlled. The methodology has a prescribed structure of governance, structure and reporting for projects tailored according to magnitude, scope and complexity to enable successful and efficient project delivery.

A Project Board has been established to oversee the development and progress of the project. The Project Team reports to, and advises the project board and is responsible for the development, planning and delivery of the project. The membership of the team is dynamic and evolves over time with some roles increasing or diminishing in profile as the project progresses through its sequential stages. The team is led and coordinated by the Project Manager

The assigned Project Manager will report directly to the Project Sponsor in matters relating to this project. The progress of the project will be monitored via the work of the Modernising Education Programme Board and will also be monitored corporately via the Corporate Project Register which is reviewed by the Council's Corporate Executive Team.



Business assurance arrangements

Within the overall project management arrangements, project assurance will be provided to the project stakeholders to demonstrate that the project is being conducted appropriately and properly.

To support this, the wider Programme Management arrangements will provide the Business Assurance role by monitoring the progress of projects. This will enable the key areas of outputs; timely completion; risks; issues and assumptions; estimates; costs and benefits; resources and scope to be continuously monitored throughout the life of the project.

Benefits realisation monitoring

In line with the Council's Project Management methodology, a Benefits Review Plan will be developed by the project manager and monitored through the life of the project. Upon completion of the project, the Benefits Review Plan will be transferred from the project manager to the Programme Manager for 21st Century Schools.

Risk management

Denbighshire County Council's Risk Management Policy sets out the objectives and principles of our risk management framework and is designed to ensure that sound risk management practices are in place, including processes to identify, assess and manage risk on an on-going basis.

The project will have its own Risk Register which will be maintained by the Project Manager using Verto project management software. This is a critical element of the overall Programme Risk Strategy.

Post project evaluation

In order to assess the extent to which the project has delivered in line with the investment objectives, the authority will carry out a post project evaluation.

As part of the overall 21st Century Schools Programme, the authority intends to develop its own post project evaluation plan based on the project evaluation framework detailed in the Capital Investment Manual. This plan will be used to conduct the post project evaluation for this project.

Contingency Plans

In the event that this project fails, the County will have to maintain the service within the existing facilities however they will not meet the aspirations of both the County and WG to provide facilities fit for purpose and suitable in which to deliver a 21st century curriculum.

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Appendix B

Programme to be added

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Cabinet Forward Work Plan

Meeting	Item (description / title)		Purpose of report	Cabinet Decision required (yes/no)	Author – Lead member and contact officer
24 May	1	Finance Report	To update Cabinet on the current financial position of the Council	Tbc	Councillor Julian Thompson-Hill / Richard Weigh
	2	Future of Adult Provider Services	To consider the future of adult provider services.	Yes	Cllr Bobby Feeley / Phil Gilroy / Holly Evans
	3	Former North Wales Hospital, Denbigh - Compulsory Purchase Order	Authorisation to take possession of the site	Yes	Councillor David Smith / Graham Boase / Gareth Roberts
	4	Reactive Maintenance Framework	To approve the maintenance framework	Yes	Councillor Julian Thompson Hill / Elaine Rizzi
	5	Items from Scrutiny Committees	To consider any issues raised by Scrutiny for Cabinet's attention	Tbc	Scrutiny Coordinator
28 June	1	Finance Report	To update Cabinet on the current financial position of the Council	Tbc	Councillor Julian Thompson-Hill / Richard Weigh
	2	Corporate Plan Performance Report 2015/16 Q4	To consider progress against the Corporate Plan	Tbc	Cllr Julian Thompson-Hill / Liz Grieve
	3	Items from Scrutiny Committees	To consider any issues	Tbc	Scrutiny Coordinator

Cabinet Forward Work Plan

Meeting	Item (description / title)		Purpose of report	Cabinet Decision required (yes/no)	Author – Lead member and contact officer
			raised by Scrutiny for Cabinet's attention		
26 July	1	Finance Report	To update Cabinet on the current financial position of the Council	Tbc	Councillor Julian Thompson-Hill / Richard Weigh
	2	Items from Scrutiny Committees	To consider any issues raised by Scrutiny for Cabinet's attention	Tbc	Scrutiny Coordinator
27 Sept	1	Finance Report	To update Cabinet on the current financial position of the Council	Tbc	Councillor Julian Thompson-Hill / Richard Weigh
	2	Items from Scrutiny Committees	To consider any issues raised by Scrutiny for Cabinet's attention	Tbc	Scrutiny Coordinator
25 Oct	1	Finance Report	To update Cabinet on the current financial position of the Council	Tbc	Councillor Julian Thompson-Hill / Richard Weigh
	2	Items from Scrutiny Committees	To consider any issues raised by Scrutiny for Cabinet's attention	Tbc	Scrutiny Coordinator

Cabinet Forward Work Plan

Note for officers – Cabinet Report Deadlines

<i>Meeting</i>	<i>Deadline</i>	<i>Meeting</i>	<i>Deadline</i>	<i>Meeting</i>	<i>Deadline</i>
<i>May</i>	<i>10 May</i>	<i>June</i>	<i>14 June</i>	<i>July</i>	<i>12 July</i>

Updated 08/04/16 - KEJ

Cabinet Forward Work Programme.doc

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