

Public Document Pack



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22 September 2017

Dear Councillor

NOTICE IS HEREBY GIVEN THAT a meeting of the **CABINET** will be held at these offices (Council Chamber) on Monday 2 October 2017 at 11.05 am or upon the rising of the preceding Cabinet meeting, whichever is the later, when the following business will be transacted.

Members of the public who require further information are asked to contact Kate Batty-Smith on (01304) 872303 or by e-mail at kate.batty-smith@dover.gov.uk.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kate Batty-Smith', written over a horizontal line.

Chief Executive

Cabinet Membership:

P A Watkins	Leader of the Council
M D Conolly	Deputy Leader of the Council
T J Bartlett	Portfolio Holder for Property Management and Public Protection
P M Beresford	Portfolio Holder for Housing, Health and Wellbeing
N J Collor	Portfolio Holder for Access and Licensing
N S Kenton	Portfolio Holder for Environment, Waste and Planning
K E Morris	Portfolio Holder for Skills, Training, Tourism, Voluntary Services and Community Safety

AGENDA

1 **APOLOGIES**

To receive any apologies for absence.

2 **DECLARATIONS OF INTEREST** (Page 5)

To receive any declarations of interest from Members in respect of business to be transacted on the agenda.

3 **RECORD OF DECISIONS** (Pages 6-26)

The Decisions of the meetings of the Cabinet held on 4 and 11 September 2017 numbered CAB 38 to CAB 63 (inclusive) are attached.

4 **NOTICE OF FORTHCOMING KEY DECISIONS** (Pages 27-30)

The Notice of Forthcoming Key Decisions is included in the agenda to enable the Cabinet to identify future agenda items of public interest that should be subject to pre-Cabinet scrutiny.

ISSUES ARISING FROM OVERVIEW AND SCRUTINY OR OTHER COMMITTEES

To consider any issues arising from Overview and Scrutiny or other Committees not specifically detailed elsewhere on the agenda.

5 **PERFORMANCE REPORT - FIRST QUARTER 2017/18**

To consider the recommendations of the Scrutiny (Policy and Performance) Committee (to follow).

6 **EK SERVICES' FACE-TO-FACE SERVICE PROVISION AT DEAL AREA OFFICE**

To consider the recommendations from the Scrutiny (Policy and Performance) Committee (to follow).

7 **CAR PARK RESURFACING WORKS**

To consider the recommendations of the Scrutiny (Policy and Performance) Committee (to follow).

8 **DOVER LEISURE CENTRE**

To consider the recommendations from the Scrutiny (Policy and Performance) Committee (to follow).

9 **PETITION - FUTURE OF DOVER TOWN CENTRE**

To consider the recommendations from the Scrutiny (Policy and Performance) Committee (to follow).

10 **DOVER DISTRICT COUNCIL LOCAL DEVELOPMENT SCHEME**

To consider the recommendations from the Scrutiny (Community and Regeneration) Committee (to follow).

11 **REGENERATION UPDATE - DOVER WATERFRONT AND TOWN CENTRE REGENERATION**

To consider the recommendations from the Scrutiny (Community and Regeneration) Committee (to follow).

EXECUTIVE - KEY DECISIONS

- 12 **REVISED PRIVATE SECTOR HOUSING ENFORCEMENT POLICY** (Pages 31-92)

To consider the attached report of the Director of Finance, Housing and Community.

Responsibility: Portfolio Holder for Housing, Health and Wellbeing

- 13 **ESSENTIAL WORKS TO DEAL PIER** (Pages 93-96)

To consider the attached report of the Director of Environment and Corporate Assets.

Responsibility: Portfolio Holder for Property Management and Public Protection

EXECUTIVE - NON-KEY DECISIONS

- 14 **EK SERVICES STRATEGIC SERVICE DELIVERY OPTIONS AND POTENTIAL FOR CONTRACTING OUT OF CERTAIN FUNCTIONS** (Pages 97-130)

To consider the attached report of the Director of EK Shared Services.

Responsibility: Portfolio Holder for Corporate Resources and Performance

Appendices B, B1 and D of the report are included in the private part of the agenda as they contain information which is exempt under paragraph 3 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)) of Part 1 of Schedule 12A of the Local Government Act 1972.

- 15 **EXCLUSION OF THE PRESS AND PUBLIC** (Page 131)

The recommendation is attached.

MATTERS WHICH THE MANAGEMENT TEAM SUGGESTS SHOULD BE CONSIDERED IN PRIVATE AS THE REPORT CONTAINS EXEMPT INFORMATION AS DEFINED WITHIN PART 1 OF SCHEDULE 12A OF THE LOCAL GOVERNMENT ACT 1972 AS INDICATED AND IN RESPECT OF WHICH THE PROPER OFFICER CONSIDERS THAT THE PUBLIC INTEREST IN MAINTAINING THE EXEMPTION OUTWEIGHS THE PUBLIC INTEREST IN DISCLOSING THE INFORMATION

EXECUTIVE - KEY DECISIONS

- 16 **PITCHED ROOFING AND ASSOCIATED WORKS CONTRACT** (Pages 132-138)

To consider the attached report of the Director of Property Services, East Kent Housing.

Responsibility: Portfolio Holder for Housing, Health and Wellbeing

17 **MODULAR INTERIM HOUSING** (Pages 139-148)

To consider the attached report of the Director of Finance, Housing and Community.

Responsibility: Portfolio Holder for Housing, Health and Wellbeing

18 **EXEMPT APPENDICES (EK SERVICES STRATEGIC SERVICE DELIVERY OPTIONS AND POTENTIAL FOR CONTRACTING OUT OF CERTAIN FUNCTIONS)** (Pages 149-164)

Appendices B, B1 and D of the report at Agenda Item 14 are attached.

Access to Meetings and Information

- Members of the public are welcome to attend meetings of the Council, its Committees and Sub-Committees. You may remain present throughout them except during the consideration of exempt or confidential information.
- All meetings are held at the Council Offices, Whitfield unless otherwise indicated on the front page of the agenda. There is disabled access via the Council Chamber entrance and a disabled toilet is available in the foyer. In addition, there is a PA system and hearing loop within the Council Chamber.
- Agenda papers are published five clear working days before the meeting. Alternatively, a limited supply of agendas will be available at the meeting, free of charge, and all agendas, reports and minutes can be viewed and downloaded from our website www.dover.gov.uk. Minutes will be published on our website as soon as practicably possible after each meeting. All agenda papers and minutes are available for public inspection for a period of six years from the date of the meeting.
- If you require any further information about the contents of this agenda or your right to gain access to information held by the Council please contact Kate Batty-Smith, Democratic Support Officer, telephone: (01304) 872303 or email: kate.batty-smith@dover.gov.uk for details.

Large print copies of this agenda can be supplied on request.

Declarations of Interest

Disclosable Pecuniary Interest (DPI)

Where a Member has a new or registered DPI in a matter under consideration they must disclose that they have an interest and, unless the Monitoring Officer has agreed in advance that the DPI is a 'Sensitive Interest', explain the nature of that interest at the meeting. The Member must withdraw from the meeting at the commencement of the consideration of any matter in which they have declared a DPI and must not participate in any discussion of, or vote taken on, the matter unless they have been granted a dispensation permitting them to do so. If during the consideration of any item a Member becomes aware that they have a DPI in the matter they should declare the interest immediately and, subject to any dispensations, withdraw from the meeting.

Other Significant Interest (OSI)

Where a Member is declaring an OSI they must also disclose the interest and explain the nature of the interest at the meeting. The Member must withdraw from the meeting at the commencement of the consideration of any matter in which they have declared a OSI and must not participate in any discussion of, or vote taken on, the matter unless they have been granted a dispensation to do so or the meeting is one at which members of the public are permitted to speak for the purpose of making representations, answering questions or giving evidence relating to the matter. In the latter case, the Member may only participate on the same basis as a member of the public and cannot participate in any discussion of, or vote taken on, the matter and must withdraw from the meeting in accordance with the Council's procedure rules.

Voluntary Announcement of Other Interests (VAOI)

Where a Member does not have either a DPI or OSI but is of the opinion that for transparency reasons alone s/he should make an announcement in respect of a matter under consideration, they can make a VAOI. A Member declaring a VAOI may still remain at the meeting and vote on the matter under consideration.

Note to the Code:

Situations in which a Member may wish to make a VAOI include membership of outside bodies that have made representations on agenda items; where a Member knows a person involved, but does not have a close association with that person; or where an item would affect the well-being of a Member, relative, close associate, employer, etc. but not his/her financial position. It should be emphasised that an effect on the financial position of a Member, relative, close associate, employer, etc OR an application made by a Member, relative, close associate, employer, etc would both probably constitute either an OSI or in some cases a DPI.

Record of the decisions of the meeting of the **CABINET** held at the Council Offices, Whitfield on Monday, 4 September 2017 at 11.05 am.

Present:

Chairman: Councillor P A Watkins

Councillors: M D Conolly
T J Bartlett
P M Beresford
N J Collor
K E Morris

Also Present: Councillor S F Bannister
Councillor P M Brivio
Councillor M R Eddy
Councillor B Gardner
Councillor S J Jones

Officers: Chief Executive
Director of Environment and Corporate Assets
Director of Finance, Housing and Community
Director of Governance
Director of EK Shared Services
Head of Community and Engagement
Head of Inward Investment
Head of Parks and Open Spaces
Director of Property Services, EK Housing
Assistant Director, EK Services
Asset Investment Manager, EK Housing
Community Development Manager
Policy and Projects Manager
Senior Planner (Policy)
Democratic Support Officer

The formal decisions of the executive are detailed in the following schedule.

Record of Decisions: Executive Functions

Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 38 4.9.17 Open Key Decisions No Call-in to apply Yes Implementation Date 12 September 2017	<u>APOLOGIES</u> It was noted that an apology for absence had been received from Councillor N S Kenton.	None.	To note any apologies for absence.	

Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 39 4.9.17 Open Key Decisions No Call-in to apply Yes	<u>DECLARATIONS OF INTEREST</u> It was noted that there were no declarations of interest.	None.	To note any declarations of interest.	

Implementation Date 12 September 2017				
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Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 40 4.9.17 Open Key Decisions No Call-in to apply Yes Implementation Date 12 September 2017	<u>RECORD OF DECISIONS</u> It was agreed that the decisions of the meeting of the Cabinet held on 3 July 2017 be approved.	None.	Cabinet is required to approve the Record of Decisions of the Cabinet meeting held on 3 July 2017.	

Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 41 4.9.17 Open Key Decisions No	<u>NOTICE OF FORTHCOMING KEY DECISIONS</u> It was agreed that there were no forthcoming Key Decisions identified for pre-Cabinet scrutiny at this stage.	None.	Cabinet is requested to identify any Key Decisions that it considers would be beneficial to refer to one of the	

Call-in to apply Yes Implementation Date 12 September 2017			Scrutiny Committees before the matter comes before Cabinet for formal decision.	
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Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 42 4.9.17 Open Key Decisions Yes ∞ Call-in to apply Yes Implementation Date 12 September 2017	<u>REVISION OF PRIVATE SECTOR HOUSING ASSISTANCE POLICY</u> It was agreed that the Scrutiny (Community and Regeneration) Committee's endorsement of Cabinet decision CAB 26, made at its meeting held on 12 July 2017 (Minute No 33), be acknowledged and that Cabinet decision CAB 26 be reaffirmed.	None.	The Scrutiny (Community and Regeneration) Committee, at its meeting held on 12 July 2017, endorsed Cabinet decision CAB 26 of 3 July 2017.	

Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 43 4.9.17 Open Key Decisions	<u>DEVELOPMENT OF NEW AFFORDABLE HOUSING - FOXBOROUGH LANE, WOODNESBOROUGH</u> It was agreed that the Scrutiny (Community and Regeneration) Committee's endorsement of Cabinet decision CAB 25, made at its	None.	The Scrutiny (Community and Regeneration) Committee, at its meeting held on 12	

<p>Yes</p> <p>Call-in to apply Yes</p> <p>Implementation Date 12 September 2017</p>	<p>meeting held on 12 July 2017 (Minute No 34), be acknowledged and that Cabinet decision CAB 25 be reaffirmed.</p>		<p>July 2017, endorsed Cabinet decision CAB 34 of 3 July 2017.</p>	
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Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
<p>CAB 44 4.9.17 Open</p> <p>Key Decisions No</p> <p>Call-in to apply Yes</p> <p>Implementation Date 12 September 2017</p>	<p><u>AYLESHAM VILLAGE EXPANSION - RETAIL UNITS, THIRD PARTY LAND AND POST DEVELOPMENT IMPROVEMENTS</u></p> <p>It was agreed that the Scrutiny (Community and Regeneration) Committee's endorsement of Cabinet decision CAB 29, made at its meeting held on 12 July 2017 (Minute No 35), be acknowledged and that Cabinet decision CAB 29 be reaffirmed.</p>	<p>None.</p>	<p>The Scrutiny (Community and Regeneration) Committee, at its meeting held on 12 July 2017, endorsed Cabinet decision CAB 29 of 3 July 2017.</p>	

Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
<p>CAB 45 4.9.17 Open</p>	<p><u>DEVELOPMENT OF NEW AFFORDABLE HOUSING ON LAND AT NEW DOVER ROAD, CAPEL-LE-FERNE</u></p>	<p>None.</p>	<p>The Scrutiny (Community and Regeneration)</p>	

Key Decisions Yes Call-in to apply Yes Implementation Date 12 September 2017	It was agreed that the Scrutiny (Community and Regeneration) Committee's endorsement of Cabinet decision CAB 33, made at its meeting held on 12 July 2017 (Minute No 37), be acknowledged and that Cabinet decision CAB 33 be reaffirmed.		Committee, at its meeting held on 12 July 2017, endorsed Cabinet decision CAB 33 of 3 July 2017.	
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Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 46 4.9.17 Open Key Decisions No Call-in to apply Yes Implementation Date 12 September 2017	<u>ORDER OF BUSINESS</u> It was agreed that the order of business be varied in order to consider Agenda Item 13 (EK Services' Face-to-Face Service Provision at Deal Area Office) with Agenda Item 9 (Closure of Area Offices).	None.	To enable the Scrutiny recommendations to be considered with the substantive agenda item.	

Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 47	<u>EK SERVICES' FACE-TO-FACE SERVICE PROVISION/CLOSURE OF</u>	None.	At its meeting held	

<p>4.9.17 Open</p> <p>Key Decisions Yes</p> <p>Call-in to apply Yes</p> <p>Implementation Date 12 September 2017</p> <p>2</p>	<p><u>AREA OFFICES</u></p> <p>It was agreed:</p> <p>(a) That the Scrutiny (Policy and Performance) Committee's endorsement of Cabinet decision CAB 24 (b), made at its meeting held on 11 July 2017 (Minute No 41), be acknowledged.</p> <p>(b) That the Scrutiny (Policy and Performance) Committee's recommendation (b) be approved, noting that the further detail requested on Aylesham and Sandwich has been included in the report to Cabinet.</p> <p>(c) That the Scrutiny (Policy and Performance) Committee's recommendation (c) be rejected.</p> <p>(d) That the additional information and data provided be noted.</p> <p>(e) That the withdrawal of face-to-face customer services at Deal Library, Aylesham and Sandwich be approved, noting that a District Council footprint will be maintained via the provision of a dedicated telephone line. 'Webchat' will be included as part of the on-line service provision for specified services and home visits will be available to vulnerable persons who are unable to access services through any other means.</p> <p>(f) That the Director of EK Shared Services be requested to determine the final date of closure, in consultation with the Director of Finance, Housing and Community and the Portfolio Holder for Corporate Resources and Performance.</p>		<p>on 3 July 2017, Cabinet considered a report proposing the closure of the Council's customer service desks at Aylesham, Deal and Sandwich (CAB 24). Cabinet agreed that the Aylesham and Sandwich desks should be closed, but deferred a decision on Deal pending more information.</p> <p>The Scrutiny (Policy and Performance) Committee considered Cabinet decision CAB 24, and recommended that the closure of the Aylesham and Sandwich desks should also be deferred pending more information. The Committee also recommended that it should consider the report</p>	
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			prior to it going to Cabinet.	
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Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
<p>CAB 48 4.9.17 Open</p> <p>Key Decisions No</p> <p>Call-in to apply Yes</p> <p>Implementation Date 12 September 2017</p>	<p><u>OUTSOURCING OF REVENUES, BENEFITS, DEBT RECOVERY AND CUSTOMER SERVICES FUNCTIONS (REVISION OF DELEGATIONS TO THE EAST KENT SERVICES COMMITTEE)</u></p> <p>It was agreed:</p> <p>(a) That the Scrutiny (Policy and Performance) Committee's endorsement of Cabinet decision CAB 28, made at its meeting held on 11 July 2017 (Minute No 42), be acknowledged.</p> <p>(b) That the Scrutiny (Policy and Performance) Committee's recommendation (iii), made at its meeting held on 11 July 2017 (Minute No 42), be rejected, as follows:</p> <p>That the Cabinet be requested to grant pre-decision scrutiny on the report and the relevant Portfolio Holder be requested to attend the meeting of the Scrutiny (Policy and Performance) Committee where the report is considered.</p> <p>(c) That Cabinet decision CAB 28 be reaffirmed.</p>	<p>To accept the Scrutiny Committee's recommendations.</p>	<p>The Scrutiny (Policy and Performance) Committee, at its meeting held on 11 July 2017, endorsed Cabinet decision CAB 28 of 3 July 2017 and made an additional recommendation.</p>	


Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 49	<u>REGENT CINEMA UPDATE</u>	None.	The Scrutiny	

<p>4.9.17 Open</p> <p>Key Decisions No</p> <p>Call-in to apply Yes</p> <p>Implementation Date 12 September 2017</p> <p>14</p>	<p>It was agreed:</p> <p>(a) That the Scrutiny (Policy and Performance) Committee's recommendations (i) and (ii), made at its meeting held on 3 August 2017 (Minute No 4), be approved, subject to (i) being amended as follows:</p> <p>(i) That the Leader of the Council chair and attempt to facilitate a meeting between the owners of the Regent Cinema and representatives of the Reopen the Regent Group and the Deal Society.</p> <p>(ii) That the Cabinet encourage the owners of the Regent Cinema to have regular contact with the ward Councillors for Deal and local community groups.</p> <p>(b) That the Scrutiny (Policy and Performance) Committee's recommendation (iii) be rejected as it is considered that the information requested on a Compulsory Purchase Order has already been provided and that a further report is therefore unnecessary.</p> <p>(c) That the Scrutiny (Policy and Performance) Committee's recommendation (iv) be rejected since the Council currently has no plans to pursue a Compulsory Purchase Order.</p> <p>(d) That the Scrutiny (Policy and Performance) Committee's recommendation (v) be approved, noting that the Director of Finance, Housing and Community has requested an update on business rates.</p> <p>(e) That the Scrutiny (Policy and Performance) Committee's recommendations (vi) and (vii) be approved, noting that these requests can be taken forward by Officers at the meeting</p>		<p>(Policy and Performance) Committee, at its meeting held on 3 August 2017, received an update on the Regent Cinema and made several recommendations to Cabinet.</p>	
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15	<p>convened between the owners, the Reopen the Regent Group and the Deal Society.</p> <p>(f) That the Scrutiny (Policy and Performance) Committee's recommendation (viii) be rejected since the covenant cannot be changed by the Council.</p> <p>(g) That the Scrutiny (Policy and Performance) Committee's recommendation (ix) be rejected since the history of the site and how it came to be in the Council's ownership is well known and publicly available.</p> <p>(h) That the Scrutiny (Policy and Performance) Committee's recommendation (x) be approved, albeit that the Council is likely to rely on a legal mechanism rather than a covenant. Should any transfer or sale of land take place, the relevant Portfolio Holder would be consulted.</p>			
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Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 50 4.9.17 Open Key Decisions Yes Call-in to apply Yes Implementation	<u>DOVER DISTRICT COUNCIL LOCAL DEVELOPMENT SCHEME</u> It was agreed that the revised Local Development Scheme, as set out at Appendix 1 to the report, be approved and brought into force.	None.	The Local Development Scheme (LDS) sets out the Council's timetable for the production, consultation and adoption of key planning documents that will form part of the	

Date 12 September 2017			District's Local Plan. The revised LDS supersedes the previous one published in March 2017 and takes account of changes resulting from the Dover Waterfront Area Action Plan, the District Local Plan and a number of Conservation Area Character Appraisals.	
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 Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 51 4.9.17 Open Key Decisions Yes Call-in to apply Yes Implementation Date 12 September 2017	<u>OPEN GOLF CHAMPIONSHIP 2020</u> It was agreed: <ul style="list-style-type: none"> (a) That the work being undertaken with partners to secure the return of the Open Golf Championship be welcomed. (b) That the establishment of the governance arrangements be approved. (c) That the Head of Inward Investment be authorised, in consultation with the Leader of the Council and the Director of Finance, Housing and Community, to use the funds in the Events reserve, as required, to fund Dover District council's contribution to achieve the return of the Open Golf Championship. 	None.	The Open Golf Championship was last held at the Royal St George's Golf Club at Sandwich in 2011. It has been confirmed that The Open will return to Sandwich in 2020, and Cabinet is requested to approve the work being done to ensure a	

			successful championship, and the funding and governance arrangements.	
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Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 52 4.9.17 Open Key Decisions Yes Call-in to apply Yes Implementation Date 12 September 2017	<u>EAST KENT GROWTH FRAMEWORK</u> It was agreed: (a) That the draft East Kent Growth Framework, as set out at Appendix 1 to the report, be approved. (b) That the Chief Executive be authorised, in consultation with the Leader of the Council, to make any further changes or additions that may be required by Cabinet or which are of an editorial nature.	None.	The East Kent Growth Framework is an economic strategy for east Kent which sets out the region's infrastructure requirements and ambitions. The Framework has been reviewed and updated, and will provide the evidence base for funding and investment from government departments and other bodies.	

Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or
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<p>CAB 53 4.9.17 Open</p> <p>Key Decisions Yes</p> <p>Call-in to apply Yes</p> <p>Implementation Date 12 September 2017</p>	<p><u>DOVER DISTRICT EVENTS POLICY</u></p> <p>It was agreed:</p> <p>(a) That the updated Dover District Events Policy, Hire Agreement and Permission to Use documents be approved.</p> <p>(b) That the Director of Environment and Corporate Assets be authorised, in consultation with the Portfolio Holder for Property Management and Public Protection, to approve minor alterations to the Dover District Events Policy, the Hire Agreement and Permission to Use documents.</p>	<p>None.</p>	<p>The Dover District Events Policy has been updated and minor changes are presented to Cabinet for approval. The Hire Agreement and Permission to Use documents have been revised to simplify the process for event organisers wishing to hire the Council's land.</p>	<p>consultees (if any)</p>
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Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
<p>CAB 54 4.9.17 Open</p> <p>Key Decisions No</p> <p>Call-in to apply Yes</p> <p>Implementation Date 12 September</p>	<p><u>CAR PARK RESURFACING WORKS</u></p> <p>It was agreed:</p> <p>(a) That the proposed works to various car parks set out in the report be noted.</p> <p>(b) That the allocation of £240,000 included within the approved Medium-Term Financial Plan, to enable the proposed works to car parks to proceed, be approved.</p>	<p>None.</p>	<p>It is recognised that some of the District's car parks require complete resurfacing. Cabinet is requested to approve the works and the allocation of funding for these.</p>	

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Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 55 4.9.17 Open Key Decisions No Call-in to apply Yes Implementation Date 12 September 2017	<u>PERFORMANCE REPORT - FIRST QUARTER 2017/18</u> It was agreed that the Council's Performance Report and Actions for the First Quarter 2017/18 be noted.	None.	Monitoring the Council's performance against key objectives is essential to the achievement of those aims and objectives. The Performance Report provides a summary of the Council's performance for the three months to 30 June 2017.	

Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 56 4.9.17 Open Key Decisions No Call-in to apply	<u>EXCLUSION OF THE PRESS AND PUBLIC</u> That, in accordance with the provisions of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, the press and the public be excluded during consideration of the following items of business on the grounds that they involves the likely disclosure of exempt information as defined in paragraph 3 of Schedule 12A of the Local Government Act 1972.	None.		

Yes				
Implementation Date 12 September 2017				

Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 57 4.9.17 Exempt Key Decisions Yes Call-in to apply Yes Implementation Date 12 September 2017	<u>FLAT ROOFING AND ASSOCIATED WORKS CONTRACT</u> It was agreed: (a) That the award of the new Flat Roofing and Associated Works contract to Armour Contracts Limited be approved, subject to the 30-day notice period required by Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003. (b) That the Head of Strategic Housing be authorised to have the functions of having regard to observations in relation to proposals to award a long-term agreement as required by Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 and confirming the award of the contract or reporting further to Cabinet, as he considers appropriate.	None.	Following a procurement exercise, carried out on behalf of Dover District Council, for the replacement of flat roofing and associated works to the Council's social housing, eleven tender submissions were received. The new contract will run from 3 November 2017 to 31 March 2020.	

Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
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<p>CAB 58 4.9.17 Exempt</p> <p>Key Decisions Yes</p> <p>Call-in to apply Yes</p> <p>Implementation Date 12 September 2017</p> <p>21</p>	<p><u>REPLACEMENT UPVC WINDOWS AND DOORS AND ASSOCIATED WORKS CONTRACT</u></p> <p>It was agreed:</p> <p>(a) That the award of the new replacement uPVC Windows and Doors and Associated Works contract to Specialist Building Products Limited (t/a Wrekin Windows) be approved, subject to the 30-day notice period required by Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.</p> <p>(b) That the Head of Strategic Housing be authorised to have the functions of having regard to observations in relation to proposals to award a long-term agreement as required by Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 and confirming the award of the contract or reporting further to Cabinet, as he considers appropriate.</p>	<p>None.</p>	<p>Following a procurement exercise, carried out on behalf of Dover District Council, for the replacement of windows, doors and associated works to the Council's social housing, six tender submissions were received. The new contract will run from 3 November 2017 to 31 March 2020.</p>	
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The meeting ended at 12.14 pm

Public Document Pack

Record of the decisions of the special meeting of the **CABINET** held at the Council Offices, Whitfield on Monday, 11 September 2017 at 12.00 pm

Present:

Chairman: Councillor P A Watkins

Councillors: M D Conolly
T J Bartlett
P M Beresford
K E Morris

Also Present: Councillor S F Bannister
Councillor P M Brivio
Councillor S S Chandler
Councillor P Walker

Officers: Chief Executive
Director of Environment and Corporate Assets
Director of Finance, Housing and Community
Director of EK Shared Services
Solicitor to the Council
Mr Chris Marriott (The Sports Consultancy)
Mr Richard Thompson (Hadron Consulting)
Commercial Solicitor
Head of Finance
Principal Infrastructure and Delivery Officer
Principal Leisure Officer
PR and Marketing Officer
Democratic Support Officer

The formal decisions of the executive are detailed in the following schedule.

Record of Decisions: Executive Functions

Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 59 11.9.17 Open Key Decisions No Call-in to apply Yes Implementation Date 19 September 2017	<u>APOLOGIES</u> It was noted that apologies for absence had been received from Councillors N J Collor and N S Kenton.	None.	To note any apologies for absence.	

Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 60 11.9.17 Open Key Decisions No Call-in to apply Yes	<u>DECLARATIONS OF INTEREST</u> It was noted that there were no declarations of interest.	None.	To note any declarations of interest.	

Implementation Date 19 September 2017				
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Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 61 11.9.17 Open Key Decisions Yes Call-in to apply Yes N Implementation Date 19 September 2017	<u>BUSINESS RATES DISCRETIONARY POLICY 2017</u> It was agreed: (a) That the Business Rates Discretionary Policy 2017, and the criteria for allocating the additional Revaluation relief, be approved. (b) That the administration of the other reliefs under Section 47 of the Local Government Finance Act be approved.	None.	The Government has provided additional funding of £300 million to local authorities in order for them to provide discretionary relief to businesses facing increases in their business rates as a result of the Government's revaluation of business rates.	

Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
CAB 62 11.9.17 Open Key Decisions No	<u>EXCLUSION OF THE PRESS AND PUBLIC</u> That, in accordance with the provisions of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, the press and the public be excluded during consideration of the following item of business on the grounds that it involves the likely	None.		

<p>Call-in to apply Yes</p> <p>Implementation Date 19 September 2017</p>	<p>disclosure of exempt information as defined in paragraph 3 of Schedule 12A of the Local Government Act 1972.</p>			
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Decision Status	Record of Decision	Alternative options considered and rejected (if any)	Reasons for Decision	Conflicts of interest (if any) declared by decision maker(s) or consultees (if any)
<p>CAB 63 11.9.17 Exempt</p> <p>Key Decisions Yes</p> <p>Call-in to apply Yes</p> <p>Implementation Date 19 September 2017</p>	<p><u>DOVER LEISURE CENTRE</u></p> <p>It was agreed:</p> <p>(a) That the appointment of BAM as the building contractor, following completion of the Second Stage of the tender process, be approved.</p> <p>(b) That the appointment of Places for People as the leisure management operator, following the completion of the tender process, be approved.</p> <p>(c) That the award of funding from Sport England, and permission to enter into the Lottery Funding Agreement, be approved.</p> <p>(d) That the Solicitor to the Council be authorised to:</p> <p>(i) serve a notice under Section 25 of the Landlord and Tenant Act 1954 on Your Leisure Kent Limited opposing renewal of the lease of Dover Leisure Centre on the ground that the Council intends to demolish the premises.</p> <p>(ii) take any other action necessary to secure recovery of</p>	<p>To not make additional recommendations.</p>	<p>At its meeting held on 20 September 2016, Cabinet approved the construction of a new leisure centre at Whitfield, and the demolition of the old one in Dover (CAB 50).</p> <p>Following work on the design, and the appointment of BAM as the preferred contractor for the pre-construction phase, Cabinet is required to agree the appointment of the building contractor to</p>	

	<p>possession of the premises.</p> <p>(e) That the Director of Environment and Corporate Assets be authorised, in consultation with the Portfolio Holders for Property Management & Public Protection and Corporate Resources & Performance, to finalise the terms of the contracts.</p> <p>(f) That the new facility be named Dover District Leisure Centre.</p> <p>(g) That officers and consultants be thanked for their hard work, and the members of the Dover Leisure Centre Project Advisory Group be thanked for their helpful and constructive input.</p>		<p>progress construction and the appointment of the management operator. It is also requested to agree that the necessary action be taken to recover possession of the existing leisure centre premises.</p>	
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The meeting ended at 12.19 pm.



Notice of Forthcoming Key Decisions

[This updated version of the Notice supersedes all other versions issued in previous months]

Publication Date: 1 September 2017

Notice of Forthcoming Key Decisions which will be made on behalf of the Council

Key Decisions 2017/18	Item	Date of meeting at which decision will be taken by Cabinet (unless specified otherwise)
1	Neighbourhood Plans	June 2013 and ongoing (see entry)
2	Dover Town Centre Regeneration: To consider progress on the Compulsory Purchase Order and any issues arising which may go beyond the scope of the resolutions incorporated in Minute CAB 87	8 September 2014/24 April 2015/7 March 2016 and as necessary
3	Approval to develop detailed plans for replacement of Dover Leisure Centre	25 July/20 September and 15 December 2016 (special Cabinet meetings) and 11 September 2017 (special Cabinet meeting)
4	Statutory Brownfield Register	Decision to be taken by the Head of Regeneration and Development – December 2017
5	Review of Tenancy Strategy and Tenancy Policy	2 October/6 November 2017
6	Review of Local Plan	1 March 2017 and dates to be confirmed
7	Property Acquisitions	Ongoing (decisions to be taken by Portfolio Holder for Corporate Resources and Performance)
8	Approval for public consultation on draft South Barracks Conservation Area Appraisal	3 July 2017 and 6 November 2017
9	To consider the results of public consultation on the Waterloo Crescent Conservation Area Appraisal and approve public consultation on proposed boundary extensions	8 May 2017
10	To consider the results of public consultation on the extension of the Nelson Street Conservation Area boundary and the introduction of an Article 4 Direction	8 May and 6 November 2017
11	Approval to cease providing a face-to-face customer service function at Aylesham, Deal and Sandwich area offices	3 July and 4 September 2017
12	Approval of revisions to the 2012 Housing Assistance Policy	3 July 2017
13	Approval of amended Dover District Council Events Policy and Land Hire Agreement	4 September 2017

Key Decisions 2017/18	Item	Date of meeting at which decision will be taken by Cabinet (unless specified otherwise)
14	Approval to release funding and carry out regular beach maintenance works between Oldstairs Bay and Sandwich Bay	12 June 2017
15	Local Plan Review – Engagement Strategy	8 May 2017
16	Appointment of contractor to carry out building extension and repair works at Kearsney Abbey and Russell Gardens as part of the Heritage Lottery Funded ‘Parks for People’ project	Decision to be taken by the Portfolio Holder for Property Management and Public Protection – July/August 2017
17	Appointment of contractor to carry out landscape and watercourse restoration works at Kearsney Abbey and Russell Gardens as part of DDC’s Heritage Lottery Funded ‘Parks for People’ project	Decision to be taken by the Portfolio Holder for Property Management and Public Protection – July/August 2017
18	To approve the policy on civil penalties and rent repayment orders for private landlords	2 October 2017
19	To seek approval for wet and dryside improvements to Tides Leisure and Indoor Tennis Centre, Deal	4 December 2017
20	Dover Waterfront Masterplan Area Action Plan	4 December 2017/15 January 2018 and dates to be confirmed
21	Planning Enforcement Plan	6 November 2017 and dates to be confirmed
22	Representations on the Thanet District Council Local Plan	5 March 2018
23	Fit-out of Aylesham retail units and related funding	3 July 2017
24	Project approval for development of land at Foxborough Close, Woodnesborough to provide affordable housing	3 July 2017
25	Approval of project to deliver new modular homes to provide temporary housing for homeless households	2 October 2017
26	To consider a revised East Kent Growth Framework	4 September 2017
27	The Open Golf Championship 2020	4 September 2017
28	Local Development Scheme	4 September 2017
29	To seek approval for public consultation on the draft Sandwich Walled Town Conservation Area Appraisal	5 March 2018 and date to be confirmed
30	Approval of contracts for works to Middle Street Car Park, Union Road Car Park and general maintenance work to remaining car parks.	4 September 2017

Key Decisions 2017/18	Item	Date of meeting at which decision will be taken by Cabinet (unless specified otherwise)
31	Approval to carry out works to area adjacent to River Dour and garages to the rear of Dolphin House, Dover	2 October 2017
32	Approval to carry out urgent repairs to Deal Pier	2 October 2017
33	Award of replacement pitched roofing contract 2017-2020	2 October/6 November 2017
34	Future and funding of Inspire Fund	15 January 2018

- Note: (1) Key Decisions which are shaded have already been taken and do not appear in this updated version of the Notice of Forthcoming Key Decisions.
- (2) The Council's Corporate Management Team reserves the right to vary the dates set for consultation deadline(s) and for the submission of reports to Cabinet and Council in respect of Key Decisions included within this version of the notice. Members of the public can find out whether any alterations have been made by looking at the Council's website (www.dover.gov.uk).

Subject:	REVISED PRIVATE SECTOR HOUSING ENFORCEMENT POLICY
Meeting and Date:	Cabinet - 2 October 2017
Report of:	Mike Davis, Director of Finance, Housing and Community
Portfolio Holder:	Councillor Mike Conolly, Portfolio Holder for Housing, Health and Wellbeing
Decision Type:	Key Decision
Classification:	Unrestricted

Purpose of the report: To take advantage of new enforcement powers with the aim of improving the quality of the privately rented housing stock and tackling rogue landlords.

Recommendation: Cabinet is recommended to approve revisions to the Private Sector Housing Enforcement Policy.

1. Summary

- 1.1 At its meeting on 2 December 2013 Cabinet approved a corporate Enforcement Policy and the Private Sector Housing Enforcement Policy. On 7 March 2016 Cabinet approved amendments to the Private Sector Housing Policy to take account of new regulations made in 2015.
- 1.2 The Housing and Planning Act 2016 introduced new powers for local authorities to tackle rogue landlords. These new powers include;
- Civil penalties of up to £30,000
 - Extension of Rent Repayment Order
 - Banning orders for most prolific offenders
 - Database of rogue landlords/property agents
 - Tougher fit and proper person test for landlords of licensed properties
 - Sharing data on tenancy deposit schemes with local authorities.
- 1.3 The use of most of these powers will be discretionary but there is an expectation that local housing authorities will cooperate with DCLG in maintaining and updating the database of rogue landlords and letting agents. Given the relatively small number of rogue landlords operating in the district we anticipate that the new powers would be used in a relatively small number of cases, probably less than 5 per annum. However, we believe they could be effective additional tools, which would allow the Council to take more immediate action and have a deterrent effect while also providing some financial benefits.
- 1.4 In order to be able to impose financial penalties the Council is required to have a policy for determining when to issue a penalty notice and the amount of penalty to be charged. It is therefore recommended that the current Private Sector Housing Enforcement Policy is amended to allow the use of the new powers relating to civil penalties and Rent Repayment Orders.
- 1.5 The civil penalties power effectively gives local authorities an alternative to prosecution for offences committed under the Housing Act 2004, including all HMO

offences. Local authorities now have a choice over whether to prosecute or impose a penalty with a maximum fine of £30,000. The benefit of imposing fines is that the Council will be able to retain the money recovered, which is not currently the case with fines imposed in the magistrates' court.

2. Introduction and Background

2.1 As part of the Governments policy to improve the private rented sector and to tackle rogue landlords, The Housing and Planning Act 2016 has introduced a number of discretionary new powers with the following commencement dates.

- 6th April 2017 – (made by Regulations) extension to Rent Repayment Orders (RRO) and Financial Penalty (FP) as enforcement options.
- 1st October 2017 (this date may be delayed due to election) – Landlord Banning Order, Banning Order Offences and Database of Rogue Landlords

2.2 While the powers relating to fixed penalties and Rent Repayment Orders are discretionary in terms of when they are used the government has issued guidance on how they should be used.

2.3 Instead of prosecuting a landlord in the Magistrates Court, the Council can now issue a **Financial Penalty Notice (FP)** to a landlord who commits one of a number of housing related offences. A FP can be served for the following: for the failure of a landlord to comply with an improvement notice requiring works, for HMO or property licensing offences, this includes the failure to licence a licensable property or; when licenced, a failure to comply with the conditions, including controlling numbers of tenants. In a HMO a (FP) can be issued to a landlord who fails to comply with an overcrowding notice or does not manage the property properly so that there are breaches of the HMO Management Regulations. There is no provision for a FP in the case of offences of Prohibition Orders.

2.4 This new power effectively gives local authorities an alternative to prosecution for offences committed under the Housing Act 2004, including all HMO offences. Local authorities now have a choice over whether to prosecute or impose a penalty with a maximum fine of £30,000. The benefit of imposing fines is that the Council will be able to retain the money recovered, which is not currently the case with fines imposed in the magistrates' court.

2.5 It is anticipated that from October 2017, a FP can be issued to a landlord who breaches the requirements of a Banning Order.

2.6 On 6th April 2017, the power to apply for a **Rent Repayment Order (RRO)** was extended. An application has to be made to the **First Tier (Property) Tribunal (FTT)** for an RRO to be made. A RRO can now be made in respect of a number of 2004 Housing Act offences, including the failure of a landlord to comply with an improvement notice or a prohibition order. Additionally it includes offences linked to poor tenancy management including using violence to secure entry to a property and offences of illegal eviction and harassment of the tenant. A RRO would require the landlord to repay 12 months rent to the tenant or to the Council in the case of Housing Benefit being paid.

2.7 It is envisaged that from October 2017 a RRO application can be made to a FTT for a landlord who breaches the requirements of a Banning Order.

- 2.8 The statutory guidance issued under Schedule 9 of the Housing and Planning Act 2016 requires local housing authorities to have regard to the guidance in exercising of their function in respect of civil penalties as an alternative to prosecution. The guidance states that it expects the maximum amount to be reserved for the very worst offenders with the actual amount levied reflecting the severity of the offence and any previous record of offending.
- 2.9 The recommended policy for the Council in determining its approach in setting its financial penalty is set out at Annex 1; entitled “Determining the Penalty”. This proposes a process for determining the approach and appropriate level of FP which will ensure consistency, transparency and a fair treatment for all parties. The process takes account of the requirements of the 2016 Act and the statutory guidance issued by the Secretary of State in relation to making applications for Rent Repayment Orders and Financial Penalties (referred to as Civil Penalties within the guidance). Annex 2 is the proposed revised Private Sector Housing Enforcement Policy 2017 which includes this new provision.
- 2.10 The decision whether to prosecute or impose a FP will be considered for each offence. It is recommended that prosecution will be the preferred option for the higher banded offences and offences that the LHA determine fall at the threshold where it is proportionate to look to seek further redress ultimately through recording of a prosecution on the Rogue Landlord Database and banning through an application for a Banning Order. Reference will be made to Table 1. This approach will meet the Government’s aim of clamping down heavily on a criminal landlord or letting agents.

Table 1: Banding the Offence to Determining the Action (using scoring matrix)

Band 1				Band 2				Band 3				Band 4			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Caution															
Financial Penalty – Rent Repayment Order optional															
			Financial Penalty and Rent Repayment Order Register on Rogue Landlord Database (2 FP within 12M period)												
							Prosecution and Rent Repayment Order Banning Order Offence – register on Database								
										Consider -application to Ban Landlord					

- 2.11 The process for determining the penalty involves a five stage consideration. These take into account the statutory guidance, in that the FP should reflect: the severity of the offence, the culpability and track record of the offender, the harm caused to the tenant, punishment of the offender, deterring both the offender and others from committing similar offences and any financial benefit the offender has from offending.

Stage1: Banding the offence. The initial FP band is decided following the assessment of two factors;

- Culpability of the landlord; and
- The level of harm that the offence has had.

Stage 2: Amending the penalty band based on aggravating factors.

Stage 3: Amending the penalty band based on mitigating factors.

Stage 4: A Penalty Review; to ensure it is proportionate and reflects the landlord’s ability to pay.

Stage 5: Totality Principle. To ensure the total penalty is just and proportionate to the offending behaviour in the case of multiple offences or where a RRO is to be applied for.

2.12 The five stage process enables the Council to determine a penalty score and FP amount. Table 2 provides details on the four Bands and Penalty Scores.

Table 2: Financial Penalty Banding and Penalty Scores

Penalty Band	Band 1				Band 2				Band 3				Band 4			
Penalty Score	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Financial Penalty	£250	£500	£750	£1000	£2000	£4000	£6000	£8000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000

After Council officers have calculated the level of the FP, this will then be checked by the Private Sector Housing manager or in his absence a more senior manager within the Housing service prior to being passed for processing. A checklist will be completed and kept on file in line with the Council’s retention policy.

2.13 It is felt that the FTT is best placed to determine the RRO award to either the Council or tenant following a respective application. On this basis, “Determining the Penalty”, Appendix 1, looks for the Council to apply to the FTT for the maximum rent repayment based on the rent paid over the relevant period in each case and to permit the FTT to determine the sum of the RRO.

3.0 Identification of Options

3.1 Option 1. Not to implement a Financial Penalty Notice scheme or have a policy on Rent Repayment Orders and therefore leave the current enforcement policy unchanged.

3.2 Option 2. Implement a Financial Penalty Notice scheme and policy on Rent Repayment Orders in accordance with legislation and government guidance and set out in the proposed revised Private Sector Housing Enforcement Strategy.

3.3 Option 3. To make alternative or additional amendments to the enforcement policy and/or the charging policy recommended in the report.

4.0 Evaluation of Options

4.1 Option 1. This is not considered appropriate as the new powers are intended to encourage a greater level of compliance thereby improving the quality and safety of homes as well as meeting a government expectation that housing authorities will use the powers to “clamp down on rogue landlords”.

4.2 Option 2. This is the preferred option. While the process for determining fixed penalty notices may appear complex it is important that we have regard to government guidance and implement a scheme which is fair and proportionate so as to minimise as far as possible the risk of challenge. The ability to use the new powers will give the Council more options for tackling rogue landlords and improving housing standards and the occasional use of the powers should also have a deterrent effect.

- 4.3 Option 3. The recommended revisions to the enforcement policy and charges have been developed in accordance with government guidance and officers believe they provide the best approach to implementing the new powers in a fair and proportionate way.

5.0 Resource Implications

- 5.1 There will be an increase in staff workload as a result of the need to serve penalty charge notices and apply for rent repayment orders but we are not seeking any increase in the number of staff at this time.
- 5.2 As these are new powers there isn't any comparable data we can use to estimate potential income. There aren't large numbers of rogue landlords operating in the district and consequently we anticipate that the number of penalty notices issued will be relatively low, probably around 2 or 3 per annum. If we assume that the penalty sum is most likely to be in the lower banding ranges (Bands 1 & 2), the income is unlikely to exceed £15,000 per annum.
- 5.3 The benefit of using civil penalties is that the income can be retained by the Council unlike fines imposed by the magistrate's court. This is subject to the income being used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

6 Corporate Implications

- 6.1 If option 2 is approved, then the new provisions contained in the Housing and Planning Act 2016 will need to be delegated to Director of Finance, Housing and Community, Head of Strategic Housing and Private Sector Housing Manager.
- 6.2 Comment from the Director of Finance (linked to the MTFP): Accountancy have been consulted and have no further comments to add. (DL)
- 6.3 Comment from the Solicitor to the Council: The solicitor to the Council has been consulted in the preparation of this report and has no further comments to make.
- 6.4 Comment from the Equalities Officer: This report does not specifically highlight any equalities implications however, in discharging their responsibilities members are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>

7 Appendices

Annex 1: Determining the Penalty

Annex 2: Revised Private Sector Housing Enforcement Policy 2017

8. Background Papers

- i. Civil penalties under the Housing and Planning Act 2016. Guidance for Local Housing Authorities
- ii. Rent repayment orders under the Housing and Planning Act 2016. Guidance for Local Housing.
- iii. Housing and Planning Act 2016

- iv. Corporate Enforcement Policy
- v. Private Sector Housing Enforcement Policy

Contact Officer: Robin Kennedy, Private Sector Housing Manager, Extn 2221.

Housing and Planning Act 2016 and Housing Act 2004

Determining the Penalty for Offences under the Housing Act 2004

The authority to issue a Financial Penalty and Rent Repayment Order came into force on April 6 2017 following the making of the ‘The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017’ (SI 2017 No. 367) and ‘The Housing and Planning Act 2016 (Commencement No. 5, Transitional Provisions and Savings) Regulations 2017’. These provisions are contained in Part 2 Chapter 4 and Part 5 of the Housing and Planning Act 2016.

Introduction

Financial Penalty (FP)

The new powers to issue a Financial Penalty came into force on April 6 2017 under Chapter 4 and schedule 9 of the Housing and Planning Act 2016 (“2016 Act”). A FP can be issued to a landlord (includes other responsible persons) who commits one of the following Housing Act 2004 (“2004 Act”) offences.

- Section 30 – not comply with an improvement notice
- Section 72 (1) – not licence a house in multiple occupation
- Section 72 (2) – licensed HMO that is overcrowded
- Section 72 (3) – not comply with HMO licence conditions
- Section 95 (1) – not licence a private rented property (non-mandatory HMO)
- Section 95 (2) – not comply with a private rented property licence condition.

- Section 139 – overcrowding notice for HMO
- Section 234 – non-compliance a HMO Management Regulation

A new offence is created by section 21(1) of the 2016 Act; the breach of a Banning Order. The option to issue a FP is available. This power will not be available until later in 2017 with the current proposed commencement date; 1st October 2017.

The new section 249A of the Housing Act 2004 (“2004 Act”) allows the Local Housing Authority (LHA) to issue a FP limiting the maximum penalty at £30,000.

Rent Repayment Orders (RRO)

Rent Repayment Orders can already be applied for by a LHA or tenant under sections 73 and 96 of the 2004 Act for the following offences;

- Offence of failing to license an HMO under section 72 (1) of the 2004 Act;
- Offence of failing to license a licensable house under section 95(1), Part 3 of the 2004 Act.

∞ A tenant can only make an application where the LHA had either secured a conviction *or* following a successful RRO award.

Part 2, Chapter 4 of the 2016 Act widened the option to make an application to the First Tier Tribunal (FTT) for a RRO. This came into force on April 6 2017. An application for a RRO can be made, within 12 month period, by a LHA or tenant against a landlord who commits one of the following Housing Act 2004 (“2004 Act”) offences (whether or not convicted) (*application for RRO - in addition to issuing a FP).

- Failure to comply with an Improvement Notice under section 30*,
- Failure to comply with a Prohibition Order under section 32(1),
- Offence of failing to license an HMO under section 72 (1)*,
- Offence of failing to license a licensable house under section 95(1) Part 3*,
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977

A new offence is created by section 21(1) of the 2016 Act; the breach of Banning Order. The option to apply for a RRO is available. This power will not be available until later in 2017 with the current proposed commencement date; 1st October 2017.

Financial Penalties as an alternative to taking a prosecution.

The Government have introduced the FP as part of its campaign to clamp down heavily on criminal landlords; Ministers have made it very clear that they expected this power to be used robustly and they are not a lighter option to a prosecution. LHA have been given the authority to both determine whether to prosecute and the level of FP to impose; at up to £30,000. The level of penalty in the Magistrates Court is now unlimited for all offences where a FP could also be issued. All monies collected following the issue of a FP can be retained by the LHA to further its statutory functions in relation to private housing enforcement work.

The 2016 Act has also introduced the “Landlord Banning Order” (LBO) for the most serious and prolific offenders and the “Rogue Landlord Database” (RLD) of rogue landlords and property agents convicted of certain offences. Both elements are scheduled to come into force on 1 October 2017. Whilst a landlord issued with a FP* can be placed on the RLD (* requiring two FP within a 12 month period) a FP will not be a “Banning Order Offence” and so the issuing of a FP will preclude a LHA from seeking to apply to a FTT for a LBO.

The legislation does not permit LHA to both issue a FP and prosecute for the same offence. If a person has been convicted or is currently being prosecuted, the LHA cannot also impose a FP in respect of the same offence. Similarly, if a FP has been imposed, a person cannot then be prosecuted of an offence for the same conduct. A LHA must determine which route to follow

The Statutory Guidance says that a prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. The first of five stages of ‘Setting the Penalty’ offers a means of Banding the Offence based on the seriousness of the offence, culpability of the landlord and impact on tenant and community. The five stages allow a wide consideration of the appropriateness of the penalty chosen including the means, and the table below acts as a guide. As part of reviewing whether to prosecute the LHA should consider the scope for working together with other LHA where a landlord has committed breaches in more than one local authority area.

The decision whether to prosecute will be considered for each offence, but the Council will regard prosecution as the preferred option for the higher banded offences and offences that the LHA determine fall at the threshold where it is proportionate to look to seek further redress, ultimately through the RLD and BO procedures. This approach will meet the Government’s aim of clamping down heavily on a criminal landlord or letting agents.

Banding the Offence to Determining the Action (using scoring matrix)

Band 1				Band 2				Band 3				Band 4			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Caution															
Financial Penalty – Rent Repayment Order optional															
				Financial Penalty and Rent Repayment Order Register on Rogue Landlord Database (2 FP within 12M period)											
								Prosecution and Rent Repayment Order Banning Order Offence – register on Database							
										Consider -application to Ban Landlord					

40

Setting the Financial Penalty (FP) for a Landlord.

A Local Authority must determine the level of FP that can be awarded against a landlord. Dover District Council has agreed this five stage process to provide a framework to assist with “*determining the level of fine*” which will ensure consistency, transparency and a fair assessment for all parties.

The process has taken into account the following documents;

1. The statutory guidance issued by the Secretary of State under;
 - Section 41 (4) of the 2016 Act relating to making applications for Rent Repayment Orders.
 - Article 12 of the new schedule 13A in the 2004 Act.
2. The Code for Crown Prosecutors which gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions.

3. Dover Districts Council Enforcement Policy (incorporating the Private Sector Housing Enforcement Policy)

Principles in the Statutory Guidance for Financial Penalties.

This explains that the FP should; reflect the severity of the offence, the culpability and track record of the offender, the harm caused to the tenant, the punishment of the offender, to deter the offender from repeating the offence, to deter others from committing similar offences and to remove any financial benefit the offender has from offending.

The five Stages in ‘Determining the Level of Financial Penalty’.

Stage 1: Banding the offence. The initial FP band is decided following the assessment of two factors. The scores are multiplied to give a penalty score which sits in one of four penalty bands;

- Culpability of the landlord; and
- The level of harm that the offence has had.

Stage 2: Amending the penalty band based on aggravating factors.

Stage 3: Amending the penalty band based on mitigating factors.

Stage 4: A Penalty Review. To review the penalty to ensure it is proportionate and reflects the landlord’s ability to pay.

Stage 5: Totality Principle. A consideration of whether the enforcement action is against one or multiple offences, whether recent related offences have been committed and ensuring the total penalties are just and proportionate to the offending behaviour

Stage1: Banding the level of Offence, (there are two factors to assess)

Banding the Offence

<p>Factor 1. Culpability of Landlord (seriousness of offence and culpability)</p> <p>To consider as part of assessment</p> <ul style="list-style-type: none"> • the scale and scope of the offences, • what length of time did the offence continue for or repeat over? • what was the legislation being breached? • to what extent was the offence premeditated or planned, • whether the landlord knew, or ought to have known, that they were not complying with the law, • the steps taken to ensure compliance. • whether the landlord has previous relevant unspent housing offence related convictions (source National Landlord database), • the likelihood of the offence being continued, repeated or escalated. • the responsibilities the landlord had with ensuring compliance in comparison with other parties 	<p>Assessment: The landlord is to be assessed against four levels (low, moderate, high or significant) of culpability:</p> <p>Significant - Where the offender deliberately or intentionally breached, or flagrantly disregarded, the law.</p> <p>High – Landlord had actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken.</p> <p>Moderate - Offence committed through act or omission which a landlord exercising reasonable care would not commit</p> <p>Low - Offence committed with little fault, for example, because: Significant efforts were made to address the risk although they were inadequate on this occasion There was no warning/circumstance indicating a risk Failings were minor and occurred as an isolated incident</p>
<p>Factor 2 Level of Harm (for tenant, community)</p> <p>To consider as part of assessment</p> <ul style="list-style-type: none"> • Circumstances or vulnerabilities or actual discrimination against the tenant or tenants. (age, illness, language, ability to communicate, young children, disabilities or in relation to any protected characteristic (Equalities Act 2010) • Tenant’s views about the impact that the offence has had on them. • The extent to which other people in the community have been affected, for 	<p>Assessment: The landlord is to be assessed against four levels (low, moderate, high or significant) of harm or consequence:</p> <p align="center">Significant.</p> <ul style="list-style-type: none"> ▪ Serious adverse effect(s) on individual(s) and/or having a widespread impact ▪ Significant risk of an adverse effect on individual(s) – including where persons are vulnerable ▪ Significant disregard of Regulator or legitimate industry role with significant deceit

<p>example, because of anti-social behaviour, excessive noise and damage to adjoining properties.</p> <ul style="list-style-type: none"> • was more than one other household affected, • The level of actual or potential physiological or physical impact on tenant(s) and third parties? • What regulation, legislation, statutory guidance or industry practice governed the circumstances of the offence? • has the level of trust been breached and have landlord actions impacted on sector? 	<p style="text-align: center;">High</p> <ul style="list-style-type: none"> ▪ Adverse effect on individual(s) (not amounting to significant) ▪ High risk of an adverse effect on individual(s) or high risk of serious adverse effect, some vulnerabilities. ▪ Regulator and/or legitimate industry substantially undermined by offender's activities ▪ Consumer/tenant misled
	<p style="text-align: center;">Moderate</p> <ul style="list-style-type: none"> ▪ Moderate risk of an adverse effect on individual(s) (not amounting to low risk) ▪ Public misled but little or no risk of actual adverse effect on individual(s)
	<p style="text-align: center;">Low</p> <ul style="list-style-type: none"> ▪ Low risk of an adverse effect on individual(s) ▪ Public misled but little or no risk of actual adverse effect on individual(s)

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Scoring matrix to determine the level of fine.

Scoring Matrix for Financial Penalty					
FACTORS					
Level of Culpability (seriousness of offence)	Significant	4	8	12	16
	High	3	6	9	12
	Moderate	2	4	6	8
	Low	1	2	3	4
Level of Harm		Low	Moderate	High	Significant

Financial Penalty Banding and Penalty Scores

Penalty Band	Band 1				Band 2				Band 3				Band 4			
Penalty Score	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Financial Penalty	£250	£500	£750	£1000	£2000	£4000	£6000	£8000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000

Stage 2: Amending the penalty band based on aggravating factors.

Objective: to consider aggravating factors of the offence that may influence the FP. A significant aggravating factor may allow the FP to be increased by a FP point.

➤ Example aggravating factors:

- Previous convictions, having regard to;
 - a) The nature of the offence to which the conviction relates and its relevance to the current offence; and
 - b) The time that has elapsed since the conviction (is conviction spent)?
- Motivated by financial gain, profited from activities.
- Deliberate planned concealment of activity resulting in offence and obstructive nature of landlord towards investigation
- Established evidence of longer term impact on the (wider) community as a consequence of activities.
- Role within the private rented sector and familiarity with responsibilities and current level of responsibility with managing and letting private rented properties.
- Refusal to accept offer of, or respond to LHA advice regarding responsibilities, warnings of breach or learned experience from past action or involvement of LHA or other Regulatory Body.
- Any further factor that can be deemed of sufficiently aggravating nature that is not covered above or within the culpability and harm banding factors.

Stage 3: Amending the penalty band based on mitigating factors

Objective: to consider any mitigating factors and whether they are relevant to the offence. A significant mitigating factor may allow the FP to be decreased by a FP point.

Example mitigating factors:

- No evidence of previous convictions or no relevant/recent convictions
- Voluntarily steps taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property and compliance with legislation, statutory standards and industry standards
- Self-reporting, co-operation and acceptance of responsibility
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment where linked to the commission of the offence.
- Age and/or lack of maturity where it affects the responsibility of the offender
- Any further factor that can be deemed of sufficiently mitigating nature that is not covered above or within the culpability and harm banding factors.

Stage 4: A review of the financial penalty to ensure that the case can be made and that the chosen approach is proportionate:

Step 1: to check that the provisional assessment of the proposed FP meets the aims of the Crown Prosecutions sentencing code:

- Punishment of offender
- Reduction of/stopping crime
- Deterrent offender or for other potential offenders
- Reform of offender
- Protection of public
- Reparation by offender to victim(s)
- Reparation by offender to community
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

Step 2: to check that the proposed FP is proportionate and will have an appropriate impact.

Local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty by making an adjustment to the financial penalty band. The general presumption should be that a FP should not be revised downwards simply because an offender has (or claims to have) a low income. Similarly, if a landlord with a large portfolio was assessed to warrant a low FP, the FP might require adjustment to have sufficient impact, and to conform to sentencing principles.

Part 6, Schedule 16 of the Crime and Courts Act 2013 permits the value of any assets owned by the landlords, e.g. rental property portfolio, to be taken into account when making an assessment and setting the level of penalty. The FP is meant to have an economic impact on the landlord, removing reward for criminal activities and acting as a deterrent to bad practice.

In setting a financial penalty, the LHA may conclude that the offender is able to pay any financial penalty imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the LHA such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. Where the LHA is not satisfied that it has been given sufficient reliable information, the LHA will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case which may include the inference that the offender can pay any financial penalty.

Process: The offender will be asked to submit relevant information as part of the process and the request for financial information will be incorporated into the notes on the "notice of intended action", the first step with issuing a FP notice.

Stage Five: Totality principle

Objective: Where the offender is being considered to be issued with more than one financial penalty, the LHA should consider the Sentencing Council guidance “Offences Taken into Consideration and Totality - Definitive Guideline”. Where separate financial penalties are imposed the LHA must be careful to ensure that there is no double-counting. Section 249A of the 2004 Act (amended) states that ‘only one financial penalty under this section may be imposed on a person in respect of the same conduct’. The 2016 Act does permit the LHA to issue a FP and also apply for a RRO. Where the FP is issued the FTT must award the maximum RRO.

“The total financial penalty is inevitably cumulative”. The LHA should determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the LHA. The LHA should add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the LHA should consider how to reach just and proportionate financial penalties. There are a number of ways in which this can be achieved.

Examples:

- where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind (management offences or breach of conditions), especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
- Where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalties for each of the offences. The LHA should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the LHA should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.
- Where a LHA has determined that it will apply for a RRO within the 12 month deadline the FP should be reviewed to ensure the total penalty is proportionate as guided by Stage 4. The FP may be adjusted accordingly knowing that, *if successful*, the RRO award will be the maximum.

Setting the Rent Repayment Order (RRO) for a Landlord.

A tenant or a LHA may individually apply to a FTT for a RRO award in respect of their rent payments within 12 months of an offence. Under section 73 (7)(iii) and section 96 (7)(iii) of the 2004 Act and section 42 (2)(b) of the 2016 Act; the LHA is required to stipulate, in the notice of intended proceedings, how much the order for repayment of rent is. The level of rent relates to a defined period of 12 months in the period leading up to the offence or during the 12 month period whilst the offence was being committed. The local investigation will determine the levels of rent paid. A LHA has no control over the level of rent a tenant may apply for.

The Government have advised that the RRO should ensure it addresses the following factors; punishment of the offender, the recipient of any recovered rent, deter the offender from repeating the offence, deter others from committing similar offences and remove any financial benefit the offender may have obtained as a result of committing the offence. LHA must have regard to the statutory guidance issued under section 41(4) of the 2016 Act when exercising their functions in respect of RRO.

Where a conviction has been achieved the LHA will apply to the FTT for the maximum rent repayment, within a 12 month period. Section 46 of the 2016 Act states this is the level that must be awarded to either a tenant (except for section 72(1) or 95(1) offences) or a LHA where the landlord has been convicted or a FP issued in relation to that offence. In these cases there is no discretion within "Determining the Penalty".

If there is no conviction or a FP is not issued then the Council will apply to the FTT for the maximum rent repayment when a RRO is applied for. . If a FP is to be issued, the penalty point/ banding first determined will be reviewed under Stage 5 to ensure that the Totality Principle is met. This aims to ensure that the total penalties are just and proportionate to the offending behaviour.

The legislation places the ultimate decision for determining the financial award under a Rent Repayment Order with the FTT in line with section 74 and 97 of the 2004 Act and sections 44 and 45 of the 2016 Act. The FTT must take into account; the conduct of the landlord, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of an offence to which this Chapter (Part 2 Chapter 4 of the 2016 Act) applies. It is felt that not making the application for the maximum award would undermine the discretion of the FTT.

Appeals

A person issued with a FP has a right of appeal to the First Tier Tribunal (Para 10 of Schedule 13A of the 2016 Act)

A person placed on the DRL has a right of appeal to the First Tier Tribunal (Section 32 of the 2016 Act).

A person aggrieved by the decision of the FTT in relation to the making of a rent repayment order may appeal under the provisions of Part 2 Chapter 5 of the 2016 Act.

NOTE

Financial Penalty Process and Right for Person to make Representations..

Before imposing a financial penalty on a person under section 249A of the 2004 Act the LHA must, within 6 months of the date of the offence, give the person notice of the authority's proposal to do so (a "notice of intent"); incorporating why and the level of fine. A person in receipt of the notice of intent can make written representations within 28 days. Subsequently the LHA must decide whether to issue a financial penalty and the amount and to do so must issue a final notice.

Similarly, section 42 of the 2016 Act requires that the LHA must first serve a notice of intended proceedings on the landlord. He can then make written representations within 28 days of the date of service to the LHA about the proposed RRO

The landlord has the right to make representations and any representation must be duly considered. The LHA will provide a response within 21 days (no statutory time period) with a decision notice stating whether the penalty will be withdrawn, varied or upheld.

All communications for representations made against the intended FP or RRO are to be written and sent to:

**Private Sector Housing Manager
Dover District Council
White Cliffs Business Park
Dover
CT16 3PJ**

Telephone: 01304 872397
email to: privatehousing@dover.gov.uk

Dover District Council

Private Sector Housing Enforcement Policy

1. Aim

The primary enforcement role of the Private Sector Housing (PSH) service is to maintain and improve the housing conditions in Dover District (This excludes properties owned by the Council). It endeavours to achieve this through advice, information and financial assistance. Where this approach fails or is not appropriate and it is necessary to protect the health safety and welfare of persons then the service will take the appropriate enforcement action.

The aim of this policy is to:

- Set out the criteria and priorities we will use when enforcing legislation so it is transparent and clear to the public.
- Sets out our policy in respect of charges that may be imposed for enforcement.
- Ensure our enforcement is consistent, fair, proportionate and targeted.
- Ensure it is consistent with the aims and objectives contained in the Private Sector Housing Strategy 2010-15 and the Empty Property Strategy 2010-15.

2. Scope

This enforcement policy covers the following functional areas:

- Licensing of Houses in Multiple Occupation
- Enforcing minimum Housing standards (HHSRS) to prevent injury and ill health,
- The redress scheme for letting agency and management work

- Bringing empty homes back into use,
- Licensing of caravan sites and mobile homes
- Harassment and Illegal eviction of tenants

3. Authorisations

In accordance with the Council's constitution, the Director for Finance, Housing and Community has a duty to appoint officers with suitable qualifications, experience and level of competency to enforce, or, to ensure that appropriate officers are trained to the required level to undertake an enforcement role.

Authority to exercise executive functions in relation to Private Sector Housing has been delegated to the Private Sector Housing Manager as detailed in the Councils Constitution. These powers have then been further delegated where considered appropriate and necessary.

4. General Principles

When carrying out enforcement action it is important that the Council works within the statutory framework set out and that it follows best practice and procedure.

In particular, the Council is committed to acting in a fair and consistent manner and has adopted this enforcement policy as part of this commitment. When exercising its enforcement functions, the Council will act in such a way that is

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted only at cases where action is needed

Relevant advice/guidance and legislation underpinning this strategy includes

- Dover District Councils Overarching enforcement strategy
- DCLG document "Housing Health and safety Rating System; Enforcement Guidance".
- Regulator's Code
- Human Rights Act 1998
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996

- Regulation of Investigator Powers Act 2000
- Data Protection Act 1998
- Freedom of Information Act 2000
- The Protection of Freedoms Act 2012
- The Housing Acts 2004 and 1985
- Local Government Miscellaneous Provision Act 1976
- The Building Act 1984
- The Environmental Protection Act 1994
- The Caravan Site and Control of Development Act 1960
- The Caravan Sites Act 1968
- Mobile Homes act 1983 and 2013
- Protection from Eviction Act 1977
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 became operative on 1st October 2015
- The Redress Schemes for lettings Agency work and Property management Work (Requirement to Belong to a Scheme etc.) (England) Order
- Housing And Planning Act 2016
- DCLG Guidance for Local Housing Authorities “Civil Penalties under the Housing and Planning Act 2016”
- DCLG Guidance for Local Housing Authorities “Rent repayment orders under the Housing and Planning Act 2016”
- Other legislation may be used occasionally.

5. Interventions and Enforcement

After considering all relevant information one or more of the following courses of action shall be taken:-

a) Informal action

b) Formal action

- Statutory notice
- Simple caution
- Prosecution
- Works in default
- Penalty Charge Notice

- Rent Repayment Order
- Banning Order
- Register landlord on Rogue Landlord Database
- Compulsory purchase of property
- Empty Dwelling Management Order
- Management order

Not all of these options are available in every case. This underlines the need to consider powers available under each piece of legislation individually.

In making any decision on enforcement, officers will consider the following criteria: -

- The seriousness of any offence
- The owner/landlords past history
- Consequences of non-compliance
- The known or likely public benefit of the chosen enforcement action
- The willingness of the owner/landlord to carry out works and the confidence in them
- The likely ability of any witnesses to give evidence and their willingness to co-operate
- The Crown Prosecution Service's Code of Practice for Crown Prosecutors
- The risk of any hazard to health (see details below)
- Any relevant guidance or case law

The primary legislation used by PSH is the **Housing Act 2004** and is mainly used to remove hazards in a property that puts occupiers at risk of injury or ill health. This legal provision applies to all property and tenures including owner-occupiers. Hazards are subject to a statutory risk assessment that determines whether the hazards are classified as a Category 1 or 2. A category 2 hazard is less serious than a Category 1 hazard.

The Council are under a legal duty to take formal action in the case of a category 1 hazard. The Council do not have a duty to take action with category 2 hazards but they do have the power to take action. The decision in deciding which type of notice or order to serve will depend upon a number of factors. These factors are contained in DCLG document "Housing Health and safety Rating System; Enforcement Guidance" and is summarised in paragraph 5.3.

The Council may take enforcement action for category 2 hazards and will do so where it is felt appropriate. In making this decision we will take the following matters into account: -

- The wishes of the occupier
- Whether there are high scoring category 2 hazards
- Where there are multiple hazards;
- Whether the occupants are in the high risk group in relation to any hazards present
- Whether it is reasonably practicable to remedy the hazard;
- Whether the defects have a significant effect on the occupants well being
- Whether the landlord had a record of poor maintenance
- Whether the landlord is accredited with a recognised accreditation scheme
- Whether the landlord has agreed to remedy the defects
- Whether the property or person is within one of the Council priorities;
- Whether the hazard is likely to become more serious if not dealt with, for example, damp can often lead to the property fabric deteriorating.

As a general rule a Category 2 hazard scoring more than 500 points under the HHSRS statutory assessment will be considered a high scoring hazard.

5.1 INFORMAL ACTION

If appropriate, the Council will normally try to enforce in an informal manner. This would involve the officer drawing the matter to the attention of the owner, manager or responsible person in the form of a letter, e-mail or telephone. This letter will normally list any hazards or concerns or deficiencies found and arrange for a follow up visit to discuss the matter with the owner, manager and occupiers. If this informal approach does not result in works or action being completed or insufficient progress is made or information requested is not supplied then the Council will treat the matter in a formal way.

Informal action is appropriate where;

- The act or omission is trivial in nature and it can be simply remedied.
- Confidence in the individual/businesses management is high.
- Any hazards pose a minimal risk to health.
- There is insufficient evidence for formal action at the time (although formal action may follow at a later date).
- The views or circumstances of the occupiers or owners provide compelling reasons why formal action should not be taken.
- There are no concerns that the tenant may be subject to retaliatory eviction.

5.2 FORMAL ACTION

Where there is a category 1 hazard, the Council are under a legal duty to appropriate formal action under the Housing Act 2004.

Formal action will be taken when:

- Informal action has not resulted in compliance or progress. See **Appendix 1** detailing the PSH service standards;
- There is a serious risk to an occupier or member of the public, this would include a category 1 hazard;
- An owner or landlord is known to have a history of non compliance with statutory requirements;
- There is a belief that the tenant may be subject to retaliatory eviction
- A serious offence has been committed.
- The consequences of non-compliance are significant.
- The likely ability of any witnesses to give evidence and their willingness to co-operate in the case of a prosecution
- It is felt necessary or it is a statutory requirement to inform the owner formally that there are works that ideally should be carried out. This will normally be in the form of a Hazard Awareness Notice.
- Where an empty property is assessed as being a case for priority action as prescribed in our Empty Homes Strategy. See **Appendix 2**.

5.3 Statutory Notices

Most notices served by PSH are under the Housing Act 2004 to deal with serious hazards. The main notices used are:

- Improvement Notice (sections 11 and 12)
- Prohibition Order (sections 20 and 21)
- Emergency Remedial Action (sections 40 and 41)
- Emergency Prohibition Order (sections 43)
- Hazard Awareness Notice (sections 28 and 29)
- Suspended Improvement or Prohibition notice/order

The table on the following page provides a guide to the likely action the Council will take under the Housing Act 2004. However each case will be considered individually.

Other notices under other legislation may also be used. Examples of other legislation are the Building Act 1984, Environmental Protection Act 1990.

Notice type	Category 1 Hazard	Category 2 Hazard
Improvement Notice	Most common notice that will be used for Category 1 hazards. Although it's mainly used for rented accommodation, it may also be used for properties with owner-occupiers where there is a concern for the health of the occupants. An example would be in the case of a fire hazard in a multiple occupied property (flats).	This notice will often be used to require works to deal with category 2 hazards as part of a notice to remedy category 1 hazards. May also be used where there are high scoring category 2 hazards that may affect the health of the occupants or are likely to be a category 1 hazard in the future if the works are not carried out.
Suspended Improvement Notice	This may be used occasionally. For example where the occupier refuses to have works carried out or the work is not practical with the current occupiers.	This may be used occasionally. For example where the occupier refuses to have works carried out.
Hazard Awareness Notice	Not normally used for serious hazards except where the owner occupies the property. In this situation the owner is in full control whether to remedy the hazard and simply notifying the owner of the hazard is believed to be sufficient formal action.	This notice is often used where there are recommended works to be carried out but they are not serious enough to warrant an Improvement Notice. May also be used for a high scoring hazard if an owner occupies the property.
Prohibition Order	Mainly used where improvements are not practical or where it's more practical to prohibit certain age groups. Main use is for dealing with overcrowding. It may also be used to prohibit the use of unsuitable parts of a property such as cellars and basements.	This order is not normally used for Category 2 hazards.
Suspended Prohibition Order	A Suspended Prohibition Order may commonly be used where an owner occupies the property or in cases of overcrowding.	This order is not normally used for Category 2 hazards.
Emergency Prohibition Order	Only used in very exceptional cases. An Emergency Prohibition order will be served where there is an imminent risk to health or injury and prohibiting the use of the property is believed to be the best solution.	This order is not normally used for Category 2 hazards.
Emergency Remedial Action	This will only be used in exceptional cases. There has to be an imminent risk to health or injury. The Council can carry out Works immediately and recover their costs from the owner.	This action is not normally used for Category 2 hazards.

5.4 Works in default

Under certain pieces of legislation the Council is empowered to carry out works in default and recover the costs. Works in default may be carried out where:

- A notice has not been complied with within the specified time
- There is no prospect of the person responsible carrying out the work, e.g. the person is absent or infirm
- Speedy abatement is required, e.g. where there is an imminent risk of injury or ill health
- the circumstances are such that works in default are a more appropriate or effective remedy than prosecution
- The problem persists after prosecution.
- Where a landlord has not complied with a 28 days remedial notice under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 the Council must carry out works in default

Normally a 20% charge will be made on works in default to cover the Councils administration costs.

5.5 Prosecution

Prosecuting someone is a serious matter and will be considered carefully on a case-by-case basis. When considering prosecution officers must follow the guidance in the [Code of Practice for Crown Prosecutors](#) . For most of the offences under the Housing Act 2004 the decision whether to prosecute will be subject to **Appendix 5** attached – ***Determining the Penalty for Offences under the Housing Act 2004.***

Where there are offences that have been committed not covered by appendix 5, officers may consider that prosecution is an appropriate way of dealing with the matter when:

- A simple caution is not appropriate or the person accused has refused to accept the offer of a simple caution; or
- There is a risk to public health and safety or of environmental damage as a consequence of the breach; or
- The breach was as a result of a deliberate act or following recklessness or neglect; or
- The approach of the offender warrants it, e.g. repeated breaches, persistent poor standards; or
- A legal notice or order has not been complied with or no reasonable progress made in relation to its requirements; or
- Obstruction of an officer in the course of their duty; or
- When a person continues to commit offences despite being informed by the Council of these; or
- The refusal or provision of false information.

Please note this is not an exhaustive list and each case will be considered on its individual merits.

The initial decision to prosecute will normally be taken by the Private Sector Housing Manager in consultation with the solicitor of the Council and the Strategic Housing Manager.

5.6 Penalty Charges Notices

Under some legislation, the Council can serve a Penalty Charge Notice. These are:

- **The Redress Schemes for lettings Agency work and Property management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014**
- **The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**
- **The Housing Act 2004 as amended by the Housing and Planning Act 2016**

5.61 The Redress Schemes for lettings Agency work and Property management Work

Under the redress scheme the penalty charge will normally be £5,000 for any contravention but on representation this charge may be reduced or in exceptional cases be quashed. Some brief guidance has been provided on reasons to reduce the penalty charge which includes taking account of turnover of the business or other extenuating circumstances. This charge amount is in accordance with “Guidance on the Redress Scheme Improving Rented Sector” issued in March 2015 by DCLG.

The landlord can request the local authority to review the penalty charge. It is recommended that any representations that are made should be considered jointly by any two of the following officers the Private Sector Housing Manger, the Head of Strategic Housing or the Director of Finance, Housing and Community. A final appeal can be made by the landlord to the First Tier Tribunal.

5.62 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Under these regulations, a penalty charge of up to £5,000 can be made. Regulation 13 requires a local Housing Authority to prepare and publish a statement of principles which it proposes to follow in determining the amount of penalty charge. **Appendix 4** details the Councils Statement of Principles in this matter.

Where the Council undertake remedial action, the type of smoke detection fitted will if reasonable and practical meet the ideal standard. Normally the ideal standard would meet the minimum requirements contained in British Standard 5839- part 6:2013

5.63 Housing Act 2004 as amended by the Housing and Planning Act 2016

The Housing and Planning Act 2016 introduced new powers for local authorities to tackle rogue landlords. These new powers include;

- Civil penalties of up to £30,000
- Extension of Rent Repayment Order
- Banning orders for the most prolific offenders
- Database of rogue landlords/property agents

The Council has approved a policy for determining when to issue a penalty notice and the amount of penalty to be charged; when to apply for a Rent Repayment Order; when to put a landlord the database of rogue landlords and when to apply for a banning order.

This policy can be found at **appendix 5; *Determining the Penalty for Offences under the Housing Act 2004.***

5.7 OVERCROWDING

Wherever possible the Council will resist taking action that would lead to homelessness but will seek to reduce overcrowding using suspended notices that relies on a voluntary reduction in the occupation of the dwelling. We will work with the Council's Homelessness team where enforcement action may lead to a family moving out of their accommodation.

In taking action, we will consider:

- The impact of the overcrowding upon the health and safety of vulnerable adults and children's living conditions.
- Whether the occupants are being exploited and we will take this into account when deciding what action to take.
- The wishes of the occupier.

Where there is a serious hazard of overcrowding, a suspended prohibition notice will normally be served. This will require the occupation of the property to be reduced by the occupiers leaving the property when they choose to. The Notice will then become fully operative once the property is no longer overcrowded and it would be an offence if the property became overcrowded by new occupiers.

5.8 Priorities for Enforcement

Normally we will not prioritise owner-occupiers for action as statistically these homes are safer and the owner has far greater control and power to remedy any hazards in the property. A private tenant would not have this control or power. However where the Council knows there is a serious hazard in an owner occupied property we may have to take formal action in accordance with our statutory duty. In most cases this will simply be a Hazard Awareness Notice but an Improvement or Prohibition Notice may be served if this is needed to protect existing or future occupants.

To ensure that we meet our policy and enforcement objectives effectively, we will from time to time need to target our enforcement activity to specific subjects. For example this may be:

- Concentrating our action on specific roads or;
- On particular individuals or organisations who persistently commit offences or their activities result in the need for us to work proactively to meet our objectives or;
- On specific types of properties for example Houses in Multiple Occupation or empty homes;
- The need to work with partners on specific enforcement activities.

5.9 Charging Policy

The Housing Act 2004 allows Councils to charge for taking enforcement action that results in service of a notice. The Council will recover our costs when statutory action is taken including the full costs of an officer's time, overheads and any relevant expenses such as specialist reports. Current charges are attached as **appendix 3** and these will be updated annually.

There will be discretion to waive the charge when it is not reasonable to expect a person to pay for charges for the enforcement action taken i.e. where it is very clear that the owner is not at fault or that the reason for serving the notice was outside the control of the owner.

Where the notice is fully complied with within the time allocated by the Council, then the costs charged relating to officer time and administration will be waived. Any other costs such as the obtaining of specialist reports will be fully recovered by the Council. Where a charge for enforcement action is levied, it will be registered as a local land charge.

Normally a 20% charge will be made on works in default to cover the Councils administration costs.

6. Policy Monitoring

To ensure compliance with this policy, the enforcement activities of the Private Sector Housing Service will be monitored regularly by the Private Sector Housing Manager and are subjected to a regular audit process.

The Private Sector Housing Manager will review this policy annually.

7. Training and Development

Appropriate resources will be made available for training officers to enable them to successfully carry out their duties within this policy. All officers will have recognised relevant qualifications and completed training on the Housing, Health and Safety Rating System. Ideally senior enforcement officers will be professionally qualified and undertake Continual Professional Development.

8. Equality impact Assessment

This policy aims to promote the Council's objectives of improving environmental quality, promoting prosperous communities, health and well-being.

Care has been taken to ensure that application of these policies will not result in discrimination against any of the equalities groups. This document is covered by the Equalities Impact Assessment (EIA) for the overarching Corporate Enforcement Strategy.

9. Complaints against our Service

If you are dissatisfied with the service you receive please let us know. We are committed to providing quality services and your suggestions and criticisms about any aspect of our service will help us to improve. We will deal with all complaints in the strictest confidence. Wherever possible we will attempt to resolve your complaint informally.

Initially you should make representations through the case officer to try to resolve your concern. If you are unable to resolve this matter with the case officer you should contact the Private Sector Housing Manager.

If you are still dissatisfied, the Council has in place a Corporate Complaints procedure.

If you are still unhappy you can discuss your complaint with your local ward Councilor, MP or can complain to the Local Government Ombudsman.

How to Contact us

In the first instance please use the telephone number given on any correspondence we send and speak to the case officer dealing with the matter or contact;

Robin Kennedy, Private Sector Housing Manager,
Dover District Council,
White Cliffs Business Park,
Dover CT16 3PJ
Tel: 01304 872221 or E-mail: robin.kennedy@dover.gov.uk

Our complaints officer can be contacted

Professional Standards Officer
Dover District Council
White Cliffs Business Park
Dover CT16 3PJ

Tel: 01304 872322 or email: complain@dover.gov.uk

Appendices

Appendices 1	Service Standards
Appendices 2	Priority system for empty homes
Appendices 3	Charging Policies
Appendices 4	Statement of Principles for penalty charge for the Smoke and Carbon Monoxide Alarm (England) Regulations 2015
Appendices 5	Determining the Penalty for Offences under the Housing Act 2004

Appendix 1

SERVICE STANDARDS

Response to communication

This is to be determined by Council- wide standards.

Enforcement/request for service

1. All requests for service to be acknowledged within 7 working days by letter, telephone or e-mail.
2. Where a request for service is deemed very urgent with an imminent risk to health or injury, a visit to the premises should be made within 24 hours. If upon inspection it is confirmed there are hazards giving rise to a serious imminent risk to health the landlord or owner are to be informed as soon as practical and formal action taken within 4 days.
3. For all other requests for service, the complainant may be required to complete a questionnaire giving details of their problems and their landlord. If the questionnaire is not returned within 14 days a reminder letter will be sent. If following a further 14 days we have still not received a reply the case will normally be closed by the Private Sector Housing Manager. Wherever possible the complainant will be telephoned before the case is cancelled.
4. If a questionnaire is not required, or has been returned, the complainant will be contacted to make an inspection of the property within 10 working days.
5. Following an inspection of the property and in all cases not mentioned in section 2 above the council will write to the complainant within 10 working days informing them of the action the council are taking in the matter. The exception to this is where no action is required and the tenant will be given advice at the time of inspection.
6. Where an officer determines that works may be required, the council will write to the landlord and tenant within 10 working days of the inspection requesting a formal inspection¹ of the property with the landlord. This inspection will normally be arranged within 10 working days.

¹ This formal inspection is required by the Housing Act 2004.

7. A letter will be sent within 10 working days of the formal inspection to the landlord that identifies the hazards, works required and timescales to complete them. A copy will be sent to the tenant any other interested parties.
8. Where works or action is required by the council the matter will normally be reviewed by a re-visit or in some cases by contacting the complainant within the following time periods.
 - For all properties having a category 1 hazard the reviews will take place every 6 weeks.
 - For all properties having no category 1 hazard the reviews will take place every 8 weeks.

Where no adequate progress has been made, the owner shall receive written confirmation of the results within 10 days of the review. The tenant will be informed either in writing or verbally.

9. If there appears to be no satisfactory progress then legal action may be taken. This will usually be by the service of a statutory notice but this will depend upon all legal formalities such as ownership of the property being satisfied. The time scale allowed before progress is deemed unsatisfactory cannot be prescriptive but the following guidelines should be followed.
 - In the case of properties having category 1 hazards a formal notice would normally be served within 12 weeks of the formal inspection. In the case of properties having high scoring category 2 hazards, a formal notice would normally be served within 20 weeks of the formal inspection.
 - Where there is a concern that the tenant may be subjected to retaliatory eviction, the service of an Improvement Notice will be served as soon as possible.
10. Where a formal notice has been served, reviews will take place within 5 working days of any start date and completion date contained in the notice. The results of any review will normally be informed to the landlord in writing within 5 working days.
11. Where the notice has not been complied with then a prosecution and/or works in default will be considered. If action is deemed to be necessary this would normally be instigated within 6 weeks of the contravention. Any such action is subject to legal considerations, being proportional and in the public interest so timescales cannot be prescriptive.

Appendix 2

Empty Homes Priority System for Action

A priority list of known empty residential properties will be calculated, that reflects the length of time the property has been empty and the impact the property is having on the local environment & community.

The Council will tackle vacant residential property in priority order. The properties with the highest score will be dealt with first.

Vacant properties will be surveyed regularly to enable their points to be adjusted to take into account changes in circumstances.

Properties subject to new complaints will be surveyed within 14 working days. The points will be calculated in accordance with the table below to establish their priority. The points are accumulative. For example a property empty for eight years will be awarded 30 points for being empty for that length of time.

<u>Property Description</u>	<u>Points</u>
Vacant for over 2 Years.	15
Vacant for over 5 Years. An additional	15
Vacant for over 10 Years. An additional	15
Vacant for over 15 Years. An additional	15
Causing serious damage to adjoining property	15
Falling into serious disrepair	15
Property in a high profile area. (Regeneration areas, town centres, major roads and conservation areas)	10
Becoming an eyesore to the area	10
Attracting rubbish & fly tipping	10
Receiving complaints regarding the property	10
Attracting vandalism and anti-social behaviour	10
No real attempt to sell or re-let after 2 years	5
No sign of refurbishment after 2 years	5

Low Scoring Properties – up to 40 pts

This score could reflect an empty property that the owner is in the process of renovation, alterations or sale. Or there is a probate or other legal issues.

These properties are not causing a nuisance and are secure and in a good state of repair. Properties that fall into this category will only require minimal monitoring to ensure they do not deteriorate or remain empty long term.

Medium Scoring Properties – 41 to 65 pts

This score reflects empty properties that are falling in to a state of neglect. Attempts to sell or re-let the property have been unsuccessful or not pursued. The owner has not maintained the appearance of the property. They are now beginning to become an eyesore, cause a nuisance, attracting rubbish, or anti-social behaviour and action is needed to prevent them from falling into serious disrepair. The Empty Property Officer, who will attempt to negotiate with the owner to try and prevent further deterioration in their condition and bring them back into use and occupation, will closely monitor these properties. Planning and Public Protection enforcement powers will also be used at this stage, if necessary.

High Scoring Properties – over 65 pts

These properties will normally have been empty for many years, are causing a nuisance to the local community and are eyesores and probably in a prominent position. They are at risk of attracting vandalism, arson, fly tipping and are in a state of disrepair and/or derelict.

Priority and Urgent Properties.

These will be properties that in urgent need of attention by the Council. These will be properties that are, insecure, unsafe and dangerous and will be secured and made safe as soon as possible. Once secure the property will be rescored and dealt with in priority order.

Appendix 3

Charges for Notices and HMO licensing

Introduction

Under section 49 of the Housing Act 2004 charges can be made for work undertaken in respect of the Housing Act 2004 for the service of statutory notices and the licensing of Houses in Multiple Occupation. These charges can include the costs for officer time; specialist reports such as electrical or structural reports and legal costs.

The Council will only seek to recover costs that have been reasonably incurred in administering the service and cannot be used to make profit or used as a penalty. Where owners act responsible and co-operate then charges may be reduced to reflect this. Charges may also be reduced or waived in exceptional circumstances but this is at the discretion of the Private Sector Housing Manager and any request must be put in writing.

Charges for service of Statutory Notices under the Housing Act 2004

These charges are for 2017/18 and are subject to annual increases

Notice Type	Officer time costs*	Specialist reports costs	Possible Reduction
Hazard Awareness	No cost	Charge made for all costs	None
Improvement, Prohibition,	£370 charge for simple notice; £540 for standard notice; £650 for more complicated notice	Charge made for all costs and there is no reduction.	The charge is cancelled if the notice complied with within timescales contained in the Notice
Suspended Notices	Same charges apply as for Improvement and Prohibition Notices above. Plus annual charge of £50 for annual review.	Charge made for all costs and there is no reduction,	The charge is waived if works completed within 12 months of notice.
Emergency Remedial Action	£550 charge	Charge made for all costs	None
Demolition order	£610	Charge made for all costs	None

* A simple notice would typically be a notice on a one bed flat or a single hazard; a standard notice would typically be a two or three bed house or a number of hazards; a complicated notice would typically be a House in Multiple Occupation, a property with more than three bedrooms or a property with more than six hazards.

Charges for Licensing of Houses in Multiple Occupation under the Housing Act 2004

These charges are for 2017/18 and are subject to annual increases

License Type	Current Fee
Initial application fee to licence an HMO.	£700 for up to 8 habitable rooms plus £50 for each habitable room above 8
Fee for Licence renewal	£460 for up to 8 habitable rooms plus £30 for each habitable room above 8

Appendix 4

STATEMENT OF PRINCIPLES FOR DETERMINING THE AMOUNT OF CIVIL PENALTY CHARGES UNDER REGULATION 13 OF THE SMOKE AND CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015

1. Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on 1 October 2015. The regulations require private sector landlords from that date to have a working smoke alarm installed on every storey of their rented properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove). After that, the landlord must make sure the alarms are in working order at the start of each new tenancy.

2. Purpose of Statement of Principle

Under these regulations, Dover District Council (DDC) as an enforcing authority may impose a civil penalty of up to £5,000 on landlords who do not comply with a remedial notice that has been served on them in regard to meeting the requirements of the legislation.

The Council is required under these Regulations to prepare and publish a statement of principles and it must follow this guide when determining the amount of a penalty charge.

The civil penalty scheme is designed to encourage a landlord to comply with their duties under the legislation and to reimburse the Council in arranging remedial action in default of the landlord. The civil penalties we impose are intended to be proportionate to the level of non-compliant behaviour, the potential harm outcome, to consider any mitigating circumstances and are therefore calculated on a sliding scale.

3. Overview of the civil penalty process

The powers are contained in the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), being a Statutory Instrument (2015 No 1693) which came into force on 1 October 2015. The Regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The Regulations exclude registered providers of social housing.

The duty requires that landlords ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contained a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015

- that checks are made by the landlord, or someone acting on his behalf, that the alarm (s) is/are in proper working order on the day the tenancy starts.

Where the Council believe that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice on the landlord. The remedial notice is a notice served under Regulation 5 of these Regulations.

If the landlord fails to take the remedial action specified in the notice within specified timescale, the Council can require a landlord to pay a penalty charge. The power to charge a penalty arises from Regulation 8 of these Regulations

A landlord will not be considered to be in breach of their duty to comply with the remedial notice, if they can demonstrate they have taken all reasonable steps to comply. This can be done by making written representations to the Council at the address given at the bottom of this document within 28 days of when the remedial notice is served.

Dover District Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.

Illustration 1: Summary illustration of each stage of the civil penalty process

Issue a remedial notice	If DDC has reasonable grounds to believe there is a breach of the requirements of regulation 4, it must serve a remedial notice on the landlord.
Breach	Failure to comply with remedial notice
Decision	Decision is made on liability for civil penalty
Payment	Payment of penalty or request for review
Review	Penalty notice is confirmed, varied or withdrawn. Review decision notice issued together with appeal information.
Payment	Payment of penalty or appeal to tribunal.
Appeal	Appeal to First Tier Tribunal, penalty notice may be quashed, confirmed or varied.
Enforcement	Enforcement action can be taken if no payment is made on time.

Each stage is explained in further detail below.

Breach

The landlord has 28 days to comply with the remedial notice. The civil penalty process starts when DDC is satisfied, on the balance of probabilities that a landlord on whom it has served a remedial notice has failed to comply with the terms of that notice (regulation 6(1)).

Decision

A decision with respect to determining the liability and calculating the penalty amount will be based on the following Consideration Framework.

Table 1: Consideration Framework

Stage 1: Determining the level of breach		
Breach	Is there a history of non-compliance within the last 5 years?	Yes: Apply the Level 2 Civil Penalty Calculator No: Apply the Level 1 Civil Penalty Calculator

Stage 2: Determining the penalty amount	
Aggravating Factors	
Aggravating factor 1	Seriousness of offence. Does the premises have any working alarms, the length of time the property has lacked working detectors, has the tenant asked the landlord for working detectors, has the landlord refused to co-operate.
Aggravating factor 2	Is the property overcrowded, is it occupied by vulnerable persons, are there other fire hazards such as poor escape, height of premises above ground level or poor electrics.

Aggravating factor 3	Dover District Council has to carry out works in default
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Stage 3: We need to determine the penalty amount. This is done using the Civil Penalty Calculator at Table 2. This calculator sets out a sliding scale of penalty amounts for each incidence of non-compliance.

The actual penalty amount will depend on the landlord’s history of compliance and the seriousness of the offence. It will also look at any aggravating factors that should justify a higher penalty. For example if aggravating factors 1 and 2 apply the penalty charge will be increased by £500. If only aggravating factor 1 applies then the penalty charge will be increased by £250.

Table 2: Civil Penalty Calculator

The Civil Penalty Calculator comprises two levels:

- The **Level 1** table should be used where there is no history of non-compliance during the last five years. The starting point for the calculation of the civil penalty is £2,000 before any additions are applied.
- The **Level 2** table should be used where you have been found to a history of non-compliance within the previous five years. The starting point for the calculation of the civil penalty is £4,000 before any additions are applied.

Where a civil penalty notice has been cancelled following a review or appeal and has not been replaced by a warning notice, it shall not be taken into account when calculating any subsequent penalty.

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Level 1: First breach		
Starting penalty amount £2000		
Aggravating factor 1:	Aggravating factor 2:	Aggravating factor 3:

Penalty increased by £250	Penalty increased by £250	Penalty increased by £500
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Level 2: Second or subsequent breach		
Starting penalty amount £4000		
Aggravating factor 1:	Aggravating factor 2:	Aggravating factor 3:
Penalty increased by £250	Penalty increased by £250	Penalty increased by £500

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Payment

Penalty charges are to be paid in full within the period specified in the penalty charge notice (this will be not less than 28 days) unless within that specified period the landlord has given written notice to DDC that the penalty charge notice be reviewed.

DDC may reduce the specified charge under an early payment option which reduces the amount of your civil penalty by 50 per cent if we receive payment in full within 14 days of the civil penalty notice being served. The reduced penalty amount and the final date by which you must pay it will be clearly shown on your civil penalty notice.

If you lodge an objection to your penalty before the deadline specified in your civil penalty notice, you will continue to be eligible for the early payment option. If you are still required to pay a penalty following the review of your notice, you will be given a fresh notice which specifies a new date by which you may pay your penalty at the lower amount.

Review

On proper notice having been given, DDC will consider any representations made by the landlord, decide whether to confirm, vary or withdraw the penalty charge notice and serve notice of its decision to the landlord. Any mitigation factors will be taken into account and the penalty charge notice may be reduced. The review will be carried out by the Private Sector Housing manager acting in consultation with either of the senior building control officer or Head of Assets & Building Control.

Appeal

DDC will be bound by the outcome of the Tribunal decision.

Enforcement

If you do not pay your penalty in full, or a review or lodge an appeal, by the specified due dates, we will commence enforcement action against you. This includes action in the civil court to recover the unpaid penalty. This action may have an adverse impact on your ability to obtain future credit and act in the capacity of a company director.

In the event that the County Court allows for the enforcement of the civil penalty the outcome of the court's determination will automatically enter the County Court Register of Judgments. Banks and other financial institutions may check this Register when deciding whether to offer credit or other services.

4. Multiple properties

A landlord within the DDC area with more than one property found to be in non-compliance with the requirements of the legislation within the previous five years, will be subject to a penalty calculation using Level 2 of the Civil Penalty Calculator if the non-compliance is encountered at other of those properties, and the non-compliance can be attributed to a general failure of the landlord's overall approach to the legislation.

5. Information regarding this statement

DDC has prepared and published this statement in accordance with its duties under regulation 13 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015. This statement may be revised, and where this happens any revised statement will also be published. When determining the amount of a penalty charge, DDC will have regard to the statement of principles which was most recently prepared and published at the time when the breach in question occurred.

6. References in this statement

'We' or us' in this guidance mean the Dover District Council. References to 'you' and 'your' mean the relevant landlord.

'Days' means calendar days, i.e. including Saturdays, Sundays and bank holidays.

'Breach' or 'breaches' mean that the local authority is satisfied, on the balance of probabilities, that a landlord has breached the duty to comply (regulation 6) with a remedial notice served in respect to regulation 4 (within the relevant period of 28 days) and the local authority has arranged for remedial action to be taken. This is to ensure that tenants are protected by working alarms and may involve installing a required alarm, repairing an installed alarm or checking an installed alarm is in proper working order.

The legislation for the purposes of 'compliance and non-compliance' means the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

'A civil penalty notice' means a notice given under regulation 8 (3) of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 that requires a landlord to pay a penalty of a specified amount

Appendix 5

Housing Act 2004 as amended by the Housing and Planning Act 2016

Determining the Penalty for Offences under the Housing Act 2004

The authority to issue a Financial Penalty and Rent Repayment Order came into force on April 6 2017 following the making of the 'The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017' (SI 2017 No. 367) and 'The Housing and Planning Act 2016 (Commencement No. 5, Transitional Provisions and Savings) Regulations 2017'. These provisions are contained in Part 2 Chapter 4 and Part 5 of the Housing and Planning Act 2016.

Introduction

Financial Penalty (FP)

The new powers to issue a Financial Penalty came into force on April 6 2017 under Chapter 4 and schedule 9 of the Housing and Planning Act 2016 (“2016 Act”). A FP can be issued to a landlord (includes other responsible persons) who commits one of the following Housing Act 2004 (“2004 Act”) offences.

- Section 30 – not comply with an improvement notice
- Section 72 (1) – not licence a house in multiple occupation
- Section 72 (2) – licensed HMO that is overcrowded
- Section 72 (3) – not comply with HMO licence conditions
- Section 95 (1) – not licence a private rented property (non-mandatory HMO)
- Section 95 (2) – not comply with a private rented property licence condition.
- Section 139 – overcrowding notice for HMO
- Section 234 – non-compliance a HMO Management Regulation

A new offence is created by section 21(1) of the 2016 Act; the breach of a Banning Order. The option to issue a FP is available. This power will not be available until later in 2017 with the current proposed commencement date; 1st October 2017.

The new section 249A of the Housing Act 2004 (“2004 Act”) allows the Local Housing Authority (LHA) to issue a FP limiting the maximum penalty at £30,000.

Rent Repayment Orders (RRO)

Rent Repayment Orders can already be applied for by a LHA or tenant under sections 73 and 96 of the 2004 Act for the following offences;

- Offence of failing to license an HMO under section 72 (1) of the 2004 Act;

- Offence of failing to license a licensable house under section 95(1), Part 3 of the 2004 Act.

A tenant can only make an application where the LHA had either secured a conviction *or* following a successful RRO award.

Part 2, Chapter 4 of the 2016 Act widened the option to make an application to the First Tier Tribunal (FTT) for a RRO. This came into force on April 6 2017. An application for a RRO can be made, within 12 month period, by a LHA or tenant against a landlord who commits one of the following Housing Act 2004 (“2004 Act”) offences (whether or not convicted) (*application for RRO - in addition to issuing a FP).

- Failure to comply with an Improvement Notice under section 30*,
- Failure to comply with a Prohibition Order under section 32(1),
- Offence of failing to license an HMO under section 72 (1)*,
- Offence of failing to license a licensable house under section 95(1) Part 3*,
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977

A new offence is created by section 21(1) of the 2016 Act; the breach of Banning Order. The option to apply for a RRO is available. This power will not be available until later in 2017 with the current proposed commencement date; 1st October 2017.

Financial Penalties as an alternative to taking a prosecution.

The Government have introduced the FP as part of its campaign to clamp down heavily on criminal landlords; Ministers have made it very clear that they expected this power to be used robustly and they are not a lighter option to a prosecution. LHA have been given the authority to both determine whether to prosecute and the level of FP to impose; at up to £30,000. The level of penalty in the Magistrates Court is now unlimited for all offences where a FP could also be issued. All monies collected following the issue of a FP can be retained by the LHA to further its statutory functions in relation to private housing enforcement work.

The 2016 Act has also introduced the “Landlord Banning Order” (LBO) for the most serious and prolific offenders and the “Rogue Landlord Database” (RLD) of rogue landlords and property agents convicted of certain offences. Both elements are scheduled to come into force on 1

October 2017. Whilst a landlord issued with a FP* can be placed on the RLD (* requiring two FP within a 12 month period) a FP will not be a “Banning Order Offence” and so the issuing of a FP will preclude a LHA from seeking to apply to a FTT for a LBO.

The legislation does not permit LHA to both issue a FP and prosecute for the same offence. If a person has been convicted or is currently being prosecuted, the LHA cannot also impose a FP in respect of the same offence. Similarly, if a FP has been imposed, a person cannot then be prosecuted of an offence for the same conduct. A LHA must determine which route to follow

The Statutory Guidance says that a prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. The first of five stages of ‘Setting the Penalty’ offers a means of Banding the Offence based on the seriousness of the offence, culpability of the landlord and impact on tenant and community. The five stages allow a wide consideration of the appropriateness of the penalty chosen including the means, and the table below acts as a guide. As part of reviewing whether to prosecute the LHA should consider the scope for working together with other LHA where a landlord has committed breaches in more than one local authority area.

The decision whether to prosecute will be considered for each offence, but the Council will regard prosecution as the preferred option for the higher banded offences and offences that the LHA determine fall at the threshold where it is proportionate to look to seek further redress, ultimately through the RLD and BO procedures. This approach will meet the Government’s aim of clamping down heavily on a criminal landlord or letting agents.

Banding the Offence to Determining the Action (using scoring matrix)

Band 1				Band 2				Band 3				Band 4			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Caution															
Financial Penalty – Rent Repayment Order optional															
			Financial Penalty and Rent Repayment Order Register on Rogue Landlord Database (2 FP within 12M period)												
								Prosecution and Rent Repayment Order Banning Order Offence – register on Database							
										Consider -application to Ban Landlord					

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Setting the Financial Penalty (FP) for a Landlord.

A Local Authority must determine the level of FP that can be awarded against a landlord. Dover District Council has agreed this five stage process to provide a framework to assist with “*determining the level of fine*” which will ensure consistency, transparency and a fair assessment for all parties.

The process has taken into account the following documents;

1. The statutory guidance issued by the Secretary of State under;

- Section 41 (4) of the 2016 Act relating to making applications for Rent Repayment Orders.
 - Article 12 of the new schedule 13A in the 2004 Act.
2. The Code for Crown Prosecutors which gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions.
 3. Dover Districts Council Enforcement Policy (incorporating the Private Sector Housing Enforcement Policy)

Principles in the Statutory Guidance for Financial Penalties.

This explains that the FP should; reflect the severity of the offence, the culpability and track record of the offender, the harm caused to the tenant, the punishment of the offender, to deter the offender from repeating the offence, to deter others from committing similar offences and to remove any financial benefit the offender has from offending.

The five Stages in ‘Determining the Level of Financial Penalty’.

Stage 1: Banding the offence. The initial FP band is decided following the assessment of two factors;

- Culpability of the landlord; and
- The level of harm that the offence has had.

The scores are multiplied to give a penalty score which sits in one of four penalty bands;

Stage 2: Amending the penalty band based on aggravating factors.

Stage 3: Amending the penalty band based on mitigating factors.

Stage 4: A Penalty Review. To review the penalty to ensure it is proportionate and reflects the landlord’s ability to pay.

Stage 5: Totality Principle. A consideration of whether the enforcement action is against one or multiple offences, whether recent related offences have been committed and ensuring the total penalties are just and proportionate to the offending behaviour

Stage1: Banding the level of Offence, (there are two factors to assess)

Banding the Offence	
<p>Factor 1.</p> <p>Culpability of Landlord (seriousness of offence and culpability)</p> <p>To consider as part of assessment</p> <ul style="list-style-type: none"> a. the scale and scope of the offences, b. what length of time did the offence continue for or repeat over? c. what was the legislation being breached? d. to what extent was the offence premeditated or planned, e. whether the landlord knew, or ought to have known, that they were not complying with the law, f. the steps taken to ensure compliance. g. whether the landlord has previous relevant unspent housing offence related convictions (source National Landlord database), h. the likelihood of the offence being continued, repeated or escalated. i. the responsibilities the landlord had with ensuring compliance in comparison with other parties 	<p>Assessment:</p> <p>The landlord is to be assessed against four levels (low, moderate, high or significant) of culpability:</p> <hr/> <p>Significant - Where the offender deliberately or intentionally breached, or flagrantly disregarded, the law.</p> <hr/> <p>High – Landlord had actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken.</p> <hr/> <p>Moderate - Offence committed through act or omission which a landlord exercising reasonable care would not commit</p> <hr/> <p>Low - Offence committed with little fault, for example, because:</p> <ul style="list-style-type: none"> a. Significant efforts were made to address the risk although they were inadequate on this occasion b. There was no warning/circumstance indicating a risk c. Failings were minor and occurred as an isolated incident
<p>Factor 2</p>	<p>Assessment:</p>

<p>Level of Harm (for tenant, community)</p> <p>To consider as part of assessment</p> <ul style="list-style-type: none"> a. Circumstances or vulnerabilities or actual discrimination against the tenant or tenants. (age, illness, language, ability to communicate, young children, disabilities or in relation to any protected characteristic (Equalities Act 2010) b. Tenant’s views about the impact that the offence has had on them. c. The extent to which other people in the community have been affected, for example, because of anti-social behaviour, excessive noise and damage to adjoining properties. d. was more than one other household affected, e. The level of actual or potential physiological or physical impact on tenant(s) and third parties? f. What regulation, legislation, statutory guidance or industry practice governed the circumstances of the offence? g. has the level of trust been breached and have landlord actions impacted on sector? 	<p>The landlord is to be assessed against four levels (low, moderate, high or significant) of harm or consequence:</p> <p>Significant.</p> <ul style="list-style-type: none"> ▪ Serious adverse effect(s) on individual(s) and/or having a widespread impact ▪ Significant risk of an adverse effect on individual(s) – including where persons are vulnerable ▪ Significant disregard of Regulator or legitimate industry role with significant deceit <p>High</p> <ul style="list-style-type: none"> ▪ Adverse effect on individual(s) (not amounting to significant) ▪ High risk of an adverse effect on individual(s) or high risk of serious adverse effect, some vulnerabilities. ▪ Regulator and/or legitimate industry substantially undermined by offender’s activities ▪ Consumer/tenant misled <p>Moderate</p> <ul style="list-style-type: none"> ▪ Moderate risk of an adverse effect on individual(s) (not amounting to low risk) ▪ Public misled but little or no risk of actual adverse effect on individual(s)
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	<p>Low</p> <ul style="list-style-type: none"> ▪ Low risk of an adverse effect on individual(s) ▪ Public misled but little or no risk of actual adverse effect on individual(s)
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Scoring Matrix to Determine the Level of Fine.

Scoring Matrix for Financial Penalty					
FACTORS					
Level of Culpability (seriousness of offence)	Significant	4	8	12	16
	High	3	6	9	12
	Moderate	2	4	6	8
	Low	1	2	3	4
Level of Harm		Low	Moderate	High	Significant

Financial Penalty Banding and Penalty Scores

Penalty Band	Band 1				Band 2				Band 3				Band 4			
Penalty Score	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

Financial Penalty	£250	£500	£750	£1000	£2000	£4000	£6000	£8000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000
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Stage 2: Amending the penalty band based on aggravating factors.

Objective: to consider aggravating factors of the offence that may influence the FP. A significant aggravating factor may allow the FP to be increased by a FP point.

Example aggravating factors:

- Previous convictions, having regard to;

a) The nature of the offence to which the conviction relates and its relevance to the current offence; and

b) The time that has elapsed since the conviction (is conviction spent)?

- Motivated by financial gain, profited from activities.
- Deliberate planned concealment of activity resulting in offence and obstructive nature of landlord towards investigation
- Established evidence of longer term impact on the (wider) community as a consequence of activities.
- Role within the private rented sector and familiarity with responsibilities and current level of responsibility with managing and letting private rented properties.
- Refusal to accept offer of, or respond to LHA advice regarding responsibilities, warnings of breach or learned experience from past action or involvement of LHA or other Regulatory Body.
- Any further factor that can be deemed of sufficiently aggravating nature that is not covered above or within the culpability and harm banding factors.

Stage 3: Amending the penalty band based on mitigating factors

Objective: to consider any mitigating factors and whether they are relevant to the offence. A significant mitigating factor may allow the FP to be decreased by a FP point.

Example mitigating factors:

- No evidence of previous convictions or no relevant/recent convictions
- Voluntarily steps taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property and compliance with legislation, statutory standards and industry standards
- Self-reporting, co-operation and acceptance of responsibility
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment where linked to the commission of the offence.
- Age and/or lack of maturity where it affects the responsibility of the offender
- Any further factor that can be deemed of sufficiently mitigating nature that is not covered above or within the culpability and harm banding factors.

Stage 4: A review of the financial penalty to ensure that the case can be made and that the chosen approach is proportionate:

Step 1: to check that the provisional assessment of the proposed FP meets the aims of the Crown Prosecutions sentencing code:

- Punishment of offender
- Reduction of/stopping crime
- Deterrent offender or for other potential offenders
- Reform of offender
- Protection of public
- Reparation by offender to victim(s)
- Reparation by offender to community
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

Step 2: to check that the proposed FP is proportionate and will have an appropriate impact.

Local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty by making an adjustment to the financial penalty band. The general presumption should be that a FP should not be revised downwards simply because an offender has (or claims to have) a low income. Similarly, if a landlord with a large portfolio was assessed to warrant a low FP, the FP might require adjustment to have sufficient impact, and to conform to sentencing principles.

Part 6, Schedule 16 of the Crime and Courts Act 2013 permits the value of any assets owned by the landlords, e.g. rental property portfolio, to be taken into account when making an assessment and setting the level of penalty. The FP is meant to have an economic impact on the landlord, removing reward for criminal activities and acting as a deterrent to bad practice.

In setting a financial penalty, the LHA may conclude that the offender is able to pay any financial penalty imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the LHA such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. Where the LHA is not satisfied that it has been given sufficient reliable information, the LHA will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case which may include the inference that the offender can pay any financial penalty.

Process: The offender will be asked to submit relevant information as part of the process and the request for financial information will be incorporated into the notes on the "notice of intended action", the first step with issuing a FP notice.

Stage Five: Totality principle

Objective: Where the offender is being considered to be issued with more than one financial penalty, the LHA should consider the Sentencing Council guidance "Offences Taken into Consideration and Totality - Definitive Guideline". Where separate financial penalties are imposed the LHA must be careful to ensure that there is no double-counting. Section 249A of the 2004 Act (amended) states that 'only one financial penalty under this section may be imposed on a person in respect of the same conduct'. The 2016 Act does permit the LHA to issue a FP and also apply for a RRO. Where the FP is issued the FTT must award the maximum RRO.

"The total financial penalty is inevitably cumulative". The LHA should determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the LHA. The LHA should add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the LHA should consider how to reach just and proportionate financial penalties. There are a number of ways in which this can be achieved.

Examples:

- where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind (management offences or breach of conditions), especially when committed against the same person, it will often be

appropriate to impose for the most serious offence a financial penalty which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;

- Where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalties for each of the offences. The LHA should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the LHA should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.
- Where a LHA has determined that it will apply for a RRO within the 12 month deadline the FP should be reviewed to ensure the total penalty is proportionate as guided by Stage 4. The FP may be adjusted accordingly knowing that, *if successful*, the RRO award will be the maximum.

Setting the Rent Repayment Order (RRO) for a Landlord.

A tenant or a LHA may individually apply to a FTT for a RRO award in respect of their rent payments within 12 months of an offence. Under section 73 (7)(iii) and section 96 (7)(iii) of the 2004 Act and section 42 (2)(b) of the 2016 Act; the LHA is required to stipulate, in the notice of intended proceedings, how much the order for repayment of rent is. The level or rent relates to a defined period of 12 months in the period leading up to the offence or during the 12 month period whilst the offence was being committed. The local investigation will determine the levels of rent paid. A LHA has no control over the level of rent a tenant may apply for.

The Government have advised that the RRO should ensure it addresses the following factors; punishment of the offender, the recipient of any recovered rent, deter the offender from repeating the offence, deter others from committing similar offences and remove any financial benefit the offender may have obtained as a result of committing the offence. LHA must have regard to the statutory guidance issued under section 41(4) of the 2016 Act when exercising their functions in respect of RRO.

Where a conviction has been achieved the LHA will apply to the FTT for the maximum rent repayment, within a 12 month period. Section 46 of the 2016 Act states this is the level that must be awarded to either a tenant (except for section 72(1) or 95(1) offences) or a LHA where the landlord has been convicted or a FP issued in relation to that offence. In these cases there is no discretion within "Determining the Penalty".

If there is no conviction or a FP is not issued then the Council will apply to the FTT for the maximum rent repayment when a RRO is applied for. . If a FP is to be issued, the penalty point/ banding first determined will be reviewed under Stage 5 to ensure that the Totality Principle is met. This aims to ensure that the total penalties are just and proportionate to the offending behaviour.

The legislation places the ultimate decision for determining the financial award under a Rent Repayment Order with the FTT in line with section 74 and 97 of the 2004 Act and sections 44 and 45 of the 2016 Act. The FTT must take into account; the conduct of the landlord, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of an offence to which this Chapter (Part 2 Chapter 4 of the 2016 Act) applies. It is felt that not making the application for the maximum award would undermine the discretion of the FTT.

Appeals

A person issued with a FP has a right of appeal to the First Tier Tribunal (Para 10 of Schedule 13A of the 2016 Act)

A person placed on the DRL has a right of appeal to the First Tier Tribunal (Section 32 of the 2016 Act).

A person aggrieved by the decision of the FTT in relation to the making of a rent repayment order may appeal under the provisions of Part 2 Chapter 5 of the 2016 Act.

NOTE

Financial Penalty Process and Right for Person to make Representations..

Before imposing a financial penalty on a person under section 249A of the 2004 Act the LHA must, within 6 months of the date of the offence, give the person notice of the authority's proposal to do so (a "notice of intent"); incorporating why and the level of fine. A person in receipt of the notice of intent can make written representations within 28 days. Subsequently the LHA must decide whether to issue a financial penalty and the amount and to do so must issue a final notice.

Similarly, section 42 of the 2016 Act requires that the LHA must first serve a notice of intended proceedings on the landlord. He can then make written representations within 28 days of the date of service to the LHA about the proposed RRO

The landlord has the right to make representations and any representation must be duly considered. The LHA will provide a response within 21 days (no statutory time period) with a decision notice stating whether the penalty will be withdrawn, varied or upheld.

All communications for representations made against the intended FP or RRO are to be written and sent to:

Private Sector Housing Manager

Dover District Council, White Cliffs Business Park

PSH Enforcement Policy Revised October 2017

Dover, CT16 3PJ

Telephone: 01304 872397

email to: privatesectorhousing@dover.gov.uk

Subject:	ESSENTIAL WORKS TO DEAL PIER
Meeting and Date:	Cabinet – 2 October 2017
Report of:	Roger Walton, Director of Environment and Corporate Assets
Portfolio Holder:	Councillor Trevor Bartlett, Portfolio Holder for Property Management and Public Protection
Decision Type:	Key Decision
Classification:	Unrestricted

Purpose of the report:	To consider the business case to carry out essential works to Deal Pier.
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Recommendation:	To approve the business case to carry out essential works to Deal Pier.
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1. Summary

- 1.1 Deal Pier is a significant Dover District Council asset which requires urgent concrete repairs to reinforce the concrete structure, a new pedestrian pier surface to replace the existing uneven and defective surface, and new seating to replace old seating which is in disrepair.
- 1.2 The new pedestrian pier surface and seating were originally to be replaced in 2008 but were delayed to facilitate construction of the new restaurant. This capital project is long overdue and is now the most cost effective method of ensuring that the environment remains safe for members of the public using the pier and prevents further deterioration of the pier structure.

2. Background

- 2.1 Deal has had a pier since the late 1800s which has remained a focal point for the townspeople and holiday makers alike. The most recent and 3rd Deal pier was opened on 19th November 1957 by H.R.H Prince Philip Duke of Edinburgh. At a cost of £250,000, it remains the last pleasure pier ever constructed within the UK.
- 2.2 This unique pier is a significant landmark and public amenity visited by many thousands of tourists and locals, providing them with a very pleasant walk with spectacular panoramic views of the coastline and channel. The pier is internationally recognised as an angling venue and has been the scene of many international, national and local fishing competitions, and is used extensively by the local angling community. The pier head lower deck originally had a berthing facility intended for pleasure steamers, however, this facility was removed many years ago.
- 2.3 The pier structure is of reinforced concrete and has a stem of 1000 feet (305m) long leading to a two deck pier head at the seaward end. In 2004, many of the pier legs and structural supports underwent an extensive refurbishment to repair corroded reinforcing steel and spalled concrete. In 2008, following a design competition organised by the Royal Institute of British Architects, the 1950s café on the pier head upper deck was replaced with an award winning design new café.

- 2.4 The pier stem and upper deck has continuous timber seating on both sides throughout its entirety providing more than one third of a mile of seating. The seating is fixed to a “box” section concrete duct containing the pier services such as gas, water, power and waste which serve the café at the pier head. The concrete pier stem deck is covered with asphalt which acts as a “wearing” surface for the pier footfall/vehicles and also provides the concrete decking with protection against the elements. Throughout the pier’s length are the original 1950’s reinforced concrete pier lighting columns as well as a CCTV system.
- 2.5 In 2006, when it was first planned to renew the cafe on the pier it was also intended to renew the asphalt pedestrian surface to the pier stem and also to carry out other miscellaneous work to the pier as required at the time. However, at its meeting in December 2007, Cabinet agreed to delay the resurfacing and other miscellaneous works until a future date as the tenders for the new café had exceeded the project budget allocated within the MTFP.

Pier Stem Resurfacing

- 2.6 Since the decision to delay renewing the pier stem asphalt surface, the asphalt has had many patch repairs in order to provide a level and safe surface for the pier pedestrians. However, the asphalt is well beyond its life and has lost most of its elasticity. Cracks and patch repairs within the asphalt are now extensive; the only remaining option now is to completely renew it.
- 2.7 Officers are considering modern alternatives to using asphalt which will look similar, provide the pier structure with the protection it requires, and will provide a lasting finish. It is unlikely that these materials will cost less, but they may have other advantages over asphalt, such as speed of application and ease of future maintenance. Whatever surface replacement is used, it is intended that the pier will remain open throughout the works.
- 2.8 It is anticipated that the pier resurfacing will cost £210,000.

Pier Seating

- 2.9 Much of the timber seating has been removed due to its very poor condition and safety concerns. Pier pedestrians can still sit down in these locations on the box section concrete duct, however this is not ideal. The few seats that remain amount to approximately one third of the original quantity and are useable but in a very poor condition. They make the pier look very scruffy and are the source of many complaints and comments from pier users.
- 2.10 It is proposed that the seating is replaced with a design based very much upon the original slated timber scheme, however, the seating is unlikely to be exactly the same. It is proposed to use the same timber (Iroko) as used on the pier restaurant so as to provide the pier with some continuity and visual connection with the restaurant. The Council will also be providing seating with sponsorship plaques, and/or may reconfigure the seating and have less of it.
- 2.11 To replace all of the seating in one go to the full length of the pier as per the original 1950s concept could cost £210,000. It is therefore intended to initially provide just a few seats located in small lots throughout the pier’s length. These new seats will provide resting places for pier pedestrians and will also serve as a sample and a template for more seating and sponsorship plaques to be installed at a later date.

Subject to demand it is proposed to set aside each year an appropriate sum to provide more seating and thus as more seating and plaques are commissioned, more seating will be provided to meet that demand.

It is estimated that this first phase for new seating will be £40,000 to £50,000.

Concrete Repairs

- 2.12 The marine environment has an aggressive detrimental effect on the steel reinforcement encased within the pier concrete structural members. Such corrosion is common within a marine structure and a widespread problem internationally. Steel corrosion has caused many structural members to crack and these must be repaired to stop further deterioration. The structural members that are currently cracking are not those repaired during the 2004 structural repairs contract.
- 2.13 Repairing reinforced concrete is a much specialised area and it will be necessary to employ a specialist contractor to undertake intrusive surveys, sampling and testing to determine the full extent of the steel corrosion. Upon completion of this survey it is intended to make a start repairing some worst affected concrete members. This is necessary to ensure that the corrosion is halted as soon as possible in these structural members. When the full extent of the steel reinforcement corrosion is known and the cost of the remedial work determined, it is likely that further funds will be required and as such provision will be made in the MTFP 2018/19 budget for this.
- 2.14 It is estimated that the cost of the survey and initial urgent concrete repairs will be £50,000

Pier Café Services

- 2.15 Following a recent fire safety review of the pier carried out by Kent Fire and Rescue Service, it will be necessary to make some alterations to the restaurant's water main. This water main also serves as a fire hydrant to be used by the firefighting service in the event of a fire on the pier. It is estimated that this work will cost £17,500.

Stakeholder Engagement

- 2.16 Officers will be consulting with lessees on the pier and the Deal & Walmer Angling Association regarding the impending work.

3. Identification of Options

- 3.1 Option 1. Is to do nothing. This is not recommended as the pier is a significant asset and delaying the work or not carrying out these repairs could lead to further deterioration, or even structural failure (in the case of concrete repairs). A delay carrying out these repairs would considerably escalate costs of any remedial works which will inevitably have to be carried out anyway.
- 3.2 Option 2. Undertaking urgent concrete repairs now would halt the damage currently being caused to pier's structure. The existing asphalt pier pedestrian surface is at the end of its life and renewing it will safeguard the pier stem decking from damage due to egress of water. It will also ensure the piers continued safe operation and should safeguard the Council from insurance claims due to trips and falls. The new seating and pier stem surface will considerably improve the appearance of the pier. The introduction of commemorative seating/plaques will provide a much valued lasting reminder of departed relatives whilst giving visitors a comfortable resting point on the pier.

4. Resource Implications

It is intended to fund the cost of the works from the £255k provision for Deal Pier works, and the £72.5k Corporate Property Maintenance contingency, both of which are included in the current Medium Term Financial Plan.

5. Corporate Implications

5.1 Comment from the Section 151 Officer: Accountancy has been consulted and has no further comment to add. (KW)

5.2 Comment from the Solicitor to the Council: The Solicitor to the Council has been consulted in the preparation of this report and has no further comments to make.

5.3 Comment from the Equalities Officer: 'This report does not specifically highlight any equalities implications however, in discharging their responsibilities members are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15> ' (KM)

6. Appendices

None.

7. Background Papers

None.

Contact Officer: Frank Thompson, Asset Manager
Frank.thompson@dover.gov.uk
Ext 42237

Canterbury City Council

Policy and Resources Committee 4 October 2017
Council 19 October 2017

Dover District Council

Cabinet 2 October 2017

Thanet District Council

Cabinet 3 October 2017

East Kent Services Committee To be advised (but following the last of the above meetings.

Subject: EK Services Strategic Service Delivery Options and Potential for Contracting out of certain functions

Director/Head of Service: Director of Shared Services

Decision Issues: These matters are within the authority of the executive of each of the authorities of, Dover District and Thanet District and are within the authority of the Canterbury City Council.

Once agreed by the above authorities this matter falls within the authority of the East Kent Services Committee.

Decision type: Non-Key Decision

Classification: This report is open to the public with the exception of Annexes B and D of the attached Business Case which are confidential under Paragraph 3 of Schedule 12A of the Local Government Act 1972 - Information relating to the financial or business affairs of any particular person (including the authority holding that information)

Summary:

This report outlines the current challenges to maintaining EK Services (EKS) viability; presents options for the future of EKS delivery of functions and gives a business case for the potential contracting out of certain functions.

This is based upon a case for change that would require Councils to either:

- increase current management fees (£2m growth over the next seven years) to ensure viability of the current operation to the detriment of other council services;
- reduce cost by a similar amount within EKS which would now require significant staff reduction (circa 67 posts over the same period) introducing major risk to service and requiring significant redundancies;
- consider the likelihood of delivering income of similar quantity through expansion or exploitation of shared services;
- Consider entering into a strategic partnership with a commercial provider for the delivery of Revenues, Benefits and Customer Services in order to significantly reduce operating costs, avoid redundancies (and in fact provide new jobs in the Canterbury, Dover and Thanet area through the establishment of a trading “hub” operating from the Councils’ existing premises) whilst also providing a revenue stream through a combination of profit share from the hub and rental of desk space within Council buildings.

It proposes amendments to the delegations made to the East Kent Services Committee, by the three authorities, in establishing revised governance arrangements for EKS and EK Human Resources (EKHR) in 2015, in order to give effect to the recommendations within the business case, if agreed.

Recommendations:

That the Cabinets of Dover District Council and Thanet District Council agree and approve:

- (1) The councils are requested to accept the recommendation contained within the report of the Director of Shared Services to approve the business case for entering into a strategic partnership and contract for the delivery of the Revenues, Benefits and Customer Services functions and to request the East Kent Services Committee to give effect to the recommendation.

That the Policy and Resources Committee of Canterbury City Council recommends to Full Council:

- (2) To the extent that they are not already authorised to do so, the East Kent Services Committee be authorised to discharge the following functions and delegations on behalf of the Council:-

That the Canterbury City Council agree and approve:

- (a) Acting in consultation with the chief legal officer of the Council*, to authorise entry into contracts with third parties in relation to the discharge of all or any of the Revenues, Benefits and Customer Services Functions, including the granting of interests in land.

(b) To exercise the powers and functions of the Council in relation to any contract entered into by the Council pursuant to (2)(a) above, (to include but not be limited to) making decisions on behalf of the Council in relation to:-

- (i) Contract management
- (ii) Renegotiation of the contract (acting in consultation with the chief legal officer of the Council)*
- (iii) Variation of the contract (acting in consultation with the chief legal officer of the Council)*
- (iv) Assignment of the contract (acting in consultation with the chief legal officer of the Council)*
- (v) Novation of the contract (acting in consultation with the chief legal officer of the Council)*
- (vi) Termination of the contract (acting in consultation with the chief legal officer of the Council)
- (vii) Renewal of the contract (acting in consultation with the chief legal officer of the Council)*
- (viii) Enforcement of the contract including the making and settling of any claims arising under it (whether or not legal proceedings are actual or contemplated)

*the contracts shall be entered into in accordance with each local authority's respective Contract Standing Orders.

(c) To authorise the doing of anything in relation to the exercise of the powers and functions of the Council under Part II of the Deregulation and Contracting Out Act 1994 and the orders and regulations made under it.

(d) Acting in consultation with the chief legal officer of the Council to authorise entry into contracts* with third parties in relation to any functions of the Council which are not the Revenues, Benefits and Customer Service Functions but which can usefully be entered into in connection with or in order to facilitate contracts entered into, or to be entered into with regard to the Revenues, Benefits and Customer Service Functions.

*the contracts shall be entered into in accordance with each local authority's respective Contract Standing Orders.

- (e) To authorise the doing of anything incidental to, conducive to or otherwise expedient in connection with (a) to (d) above.

Next stage in process

The East Kent Services Committee (EKSC) to consider the existing delegations to each of the Director of Collaborative Services and the Director of Shared Services and amend, as felt appropriate, to enable the effective discharge of the authorities detailed above. Following any contract negotiations, a supplementary report will come back to EKSC for their consideration and approval of final contract terms and seek authority to enter into the contract and associated documentation.

Thanet District Council will be required to make determinations in relation to staff including any pension admission agreement.

SUPPORTING INFORMATION

1. Background

As part of EK Services' ongoing operation, the Director of Shared Services and his Management Team have been examining options to reduce the cost of service delivery whilst maintaining the high quality of services that have been delivered since its inception. This options appraisal and supporting detailed research included visits to other Local Authorities and informal supplier engagement.

This work has now developed an alternative that ensures services can be maintained without loss of staff and provides savings. It also offers a new income stream for the partner Councils and new employment opportunities within the three East Kent districts. The proposed arrangement is based on a "core and hub" model contract with a commercial provider. The core comprises a contract for the continued provision of Revenues, Benefits and Customer Services to the three partners at a reduced cost. The trading hub would be located in CCC, TDC and DDC locations and service new commercial contracts with any profit being shared with CCC, DDC and TDC. This trading hub is expected to grow and increase staff, delivering jobs growth in the District(s).

The proposed strategic partnership will provide:

- Immediate savings via reduction in costs of EKS operation on day 1
- Safeguards existing jobs and prevents redundancy costs
- High likelihood of additional "one-off" savings in Year 1
- An income stream from a profit share arrangement with a "trading centre of excellence" providing services to the public sector from current District Council locations (SE hub)
- Jobs growth in East Kent as the South East hub expands (as proven elsewhere)
- Development of business cases for future savings / service improvement opportunities

2. Current Situation and the need for change

EK Services (EKS) was formed in 2011 as a Shared Service governed by a Joint Committee to provide a range of services including ICT managed services, Revenues & Benefits and Customer Services. It has been a success, delivering £6m savings back to the three Councils whilst improving performance and increasing resilience, without significant investment.

EKS is funded by a combination of Management Fees from its partner Councils as well as income from other, non-partner organisations. The Councils require EKS to operate within its own fixed budget which is agreed with the three Councils each year and EKS also has to absorb any inflationary pressure (including pay and contract inflation). This means that year-on-year savings between £300K and £500K are needed to maintain the status quo but historically the Councils have also expected EKS to deliver further savings on top of the absorbing of growth items.

In 2017/18, EKS has to achieve £832k of savings to ensure the 2017/18 budget is balanced at end of year. This is a challenging task as the economy of scale and benefits of Shared Services which have delivered major savings over the past six years mean that the delivery of further savings will now have greater service impact. In recent years, most savings have been delivered either via deletion of posts using natural staff churn to avoid redundancies or through reduction in operating costs from technology system rationalisation. However, further reduction in operating costs is no longer achievable to any great degree and, as the number of Full Time Equivalent posts has reduced (to 258 in Aug 2017, from 270 in Aug 2016), the potential for reducing posts without staff redundancies is now limited.

Further savings will require a significant staff reduction (an estimated 15 redundancies are required to deliver the anticipated budget savings for 2018/19¹) which introduces a high degree of service risk as well as high exit costs and the economic impact of job losses in the local area and this staff reduction would then rise up to approximately 70 posts by 2024.

EKS is now at the point where cutting services in line with its partner Councils' affordability constraints will start to have a direct impact on service quality, raising the risk of service failure and performance degradation on Benefits (error bonus and payment time) and collection levels as well as Customer Services.

This reduction in staffing would be required in addition to any other losses that would be required as a consequence of external impacts, for example the reduction in DWP and DCLG grants for the administration of Housing Benefit and Council Tax Support as well as the likelihood of the introduction of Universal Credit creating further job losses.

A number of options have been explored, ranging from continuing the current direction of travel, through to a more fundamental reshaping of EK Services, including expansion through the on-boarding of additional services and the development of EK Services into a form that could provide services to the wider public-sector market.

¹ This assumes that EKS continue to contain inflationary costs such as salary growth but does not include any further reduction in management fees, which would increase this loss of staff posts significantly.

All of these options have their strengths and weaknesses but fundamentally none can deliver the financial impacts required to adequately address the scenario outlined above.

Informal discussions with a private sector company (and due diligence with a number of other councils who have entered into contracts with them) have indicated that a strategic commercial venture with a private partner has the potential to protect and grow jobs and develop services whilst delivering significant savings, and this option appears to offer the most attractive service delivery model for this service. In outline, this provides:

- Financial savings from contract go-live date;
- Guaranteed performance levels and quality;
- Guaranteeing jobs for the duration of the contract;
- Avoidance of redundancy for transferring staff;
- Staff terms and conditions (including LGPS) protected;
- Ongoing investment in the service;
- Creation of an East Kent based business process trading hub to be operated on a profit sharing basis plus rent per desk space;
- Local new job creation.

Attached to this Report is a business case outlining the options that have been considered and recommending that entering to a commercial contract with a private sector company provides the three Councils with the best opportunity to achieve significant financial savings against current costs whilst guaranteeing jobs. It is also expected to generate new jobs in East Kent and provide additional income to Councils through the establishment and operation of a trading hub (based in current locations) delivering transactional, business process services to new customers.

In order for contract negotiation and final due diligence to proceed and to allow the East Kent Services Committee to:

- (a) consider the final business case position, post any contract negotiations;
- (b) to give final approval for any contract if agreed;
- (c) and to potentially enter into a contract for services, if applicable;

the changes to existing delegations detailed above are required.

Arising from the fact that EK Services are not a legal identity the recommendations still require each Council to be involved in the renegotiation, variation, assignment, novation, termination and renewal of the contract. This shall be in accordance with the provisions of each Council's Contract Standing Orders.

The recommendations as drafted will allow Thanet District Council, Dover District Council and Canterbury City Council to leave day to day matters to EK Services and provide the supplier with a single point of contact.

3. **Relevant Council Documents**

Report to Canterbury City Council, Dover District Council and Thanet District Council, July 2017, "Outsourcing of Revenues, Benefits, Debt Recovery and Customer Services Functions (Revision of Delegations to the East Kent Services Committee)."

4. **Consultation planned or undertaken**

If the recommendations are agreed, a Transfer of Undertakings and Protection of Employment (TUPE) consultation will be required between Thanet District Council (EKS staff employer) and their representative trade union, plus impacted staff, as part of any pre - contracting activity.

5. **Options available with reasons for suitability**

- (i) To approve the findings of the attached business case that recommends the entering into a commercial contract for the provision of revenues, benefits and customer service functions and request the EKSC to give effect to the recommendations contained therein. (**Recommended option**)
- (ii) Maintain EKS operations as currently provided. This option will require Councils to increase management fees at detriment to other council service funding or to deliver major staff reductions within EKS resulting in significant degradation of service and performance inducing risk to council income collection and benefits payments. It will also mean the opportunity for jobs growth and new income will be lost.
- (iii) Maintain EKS operations as currently provided whilst attempting to 'exploit or expand' existing services to generate new income from areas such as payroll, ICT service provision and providing resilience to other Local Authorities and potentially expand to onboard other services into EKS. This option will require significant investment into EKS to create capacity and capability to undertake such activity and will require a commercial risk approach. However, even if this was achievable the level of profit that can reasonably be expected will mean that either major staff reductions will still be required (reducing services and weakening performance and most likely weakening the commercial offer) or Councils will need to increase management fees to the detriment of other council service funding. This option is most unlikely to create sufficient new work to create jobs growth or significant income.

6. **Reasons for supporting option recommended, with risk assessment**

Option (i) is recommended, as it allows the East Kent Services Committee to agree the provision of Revenue, Benefits and Customer Services function via a commercial contract in order to deliver the benefits outlined in the Business Case. It allows the three Councils to rapidly deliver significant base budget revenue savings commencing in 2018/19 whilst protecting existing jobs and maintaining service standards. It will enable the development of a trading hub and centre of excellence located in the three Districts areas, that is expected to create new jobs and deliver new income to the Councils via profit share, rent and royalties.

The risk assessment is contained within the attached business case at Appendix 1 to Annex B.

7. Implications

(a) Financial Implications

Agreeing the recommendation will result in a significant reduction in the operating cost of EK Services and consequently reductions in Council management fees providing direct cashable savings to each Council. It also provides a high likelihood of income generation over the lifetime of the contract through a combination of profit share and rental income.

In addition, agreeing the recommendation would avoid an estimated £1.2m of redundancy costs over the next 7 years and/or the need to increase fees paid to EK Services of circa £2m over the same period.

It mitigates against the potential loss of DWP grant by maintaining the current levels of service quality.

It also indirectly provides a financial benefit to the three partner Councils through the generation of a large number of new jobs over the same contract period as well as helping to support the wider East Kent economy.

(b) Legal Implications

The proposed amendments to the delegations to the East Kent Services Committee are in accordance with legislation and are considered to be lawful. All contracts and related documentation will continue to be executed on behalf of the relevant local authority. As the employing authority for the EK Services staff, Thanet District Council will need to enter into appropriate agreements with Kent County Council and the contractor in regard to the Local Government Pension Scheme.

8. Conclusions

Entering into a contract with a commercial private company, using the available framework contract, allows the three Councils to maintain service provision, quality and performance standards whilst rapidly delivering significant base budget revenue savings commencing in 2018/19 whilst protecting existing jobs. It will enable the development of a trading hub and centre of excellence in East Kent that is expected to create new jobs and deliver new income to the Councils via profit share, rent and royalties.

The alternative is to maintain EKS current operations, whilst attempting to 'exploit' existing services to generate new income from areas such as payroll, ICT service provision and providing resilience to other Local Authorities and potentially expand to onboard other services into EKS. However, even if this was achievable, it will require investment, time, commercial risk appetite and the level of profit that can reasonably be expected will mean that either major staff reductions will be required (reducing services and weakening performance) or Councils will need to increase management fees to the detriment of other council service funding. It will also mean the opportunity for jobs growth and new income will be lost.

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EK Services
Alternative Delivery Options

Business Case



Version Control

Version	Description	Date
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0.2-0.5	Internal drafts	
0.6	Updated with additional comments from DW	27 Aug 17
0.7	Additions to Recommended Option from RN	30 Aug 17
0.8	Incorporating feedback from S.151 officers	31 Aug 17
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0.12	Updated following CMT meetings	14 Sep 17
0.13	Updated Risk log and budget base	15 Sep 17
1.0	Final version for release	21 Sep 17

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Executive Summary

It is no longer possible for EK Services to operate within its own fixed budget whilst maintaining the quality of services delivered.

The partner Councils could choose to either increase the funding available to EKS by approximately £400,000 in 2018/19 (£2m over the next seven years) or choose to reduce costs by cutting staff by at least 67 posts over the same period.

Expanding the existing shared service, selling services to other public sector bodies or a traditional outsourcing contract will not generate the combination of savings and income required.

One of the options offers an alternative that ensures services can be maintained without loss of staff and provides savings. It also offers a new income stream for the partner Councils and new employment opportunities within the three East Kent districts. The proposed arrangement is based on a “core and hub” model contract with a commercial provider. The core comprises a contract for the continued provision of Revenues, Benefits and Customer Services to the three partners at a reduced cost. The trading hub would be located in CCC, TDC and DDC locations and service new commercial contracts with any profit being shared with CCC, DDC and TDC. This trading hub is expected to grow and increase staff, delivering jobs growth in the District(s).

The proposed strategic partnership will provide:

- Immediate savings via reduction in costs of EKS operation on day 1
- Safeguards existing jobs and prevents redundancy costs
- High likelihood of additional “one-off” savings in Year 1
- An income stream from a profit share arrangement with a “trading centre of excellence” providing services to the public sector from current East Kent locations (South-East hub)
- Jobs growth in East Kent as the South-East hub expands (as proven elsewhere)
- Development of business cases for future savings / service improvement opportunities

Background

EK Services (EKS) was formed in 2011 to provide a range of services including ICT managed services, Revenues & Benefits and Customer Services. It has been a success, delivering approximately £6m savings back to its three partner Councils whilst improving performance and increasing resilience – without significant investment.

EKS is governed under a Joint Committee arrangement and is funded by its three partner Councils via management fees as well receiving a smaller amount of income from other, non-partner organisations. The Councils require EKS to operate within its own fixed budget which is agreed with the three Councils each year and EKS also has to absorb any inflationary pressure (including pay and contract inflation). This means that year-on-year savings between £300K and £500K are needed to maintain the status quo but historically the Councils have also expected EKS to deliver further savings on top of the absorbing of growth items.

In 2017/18, EKS has to achieve £832k of savings to ensure the 2017/18 budget is balanced at end of year. This is a challenging task as the economy of scale and benefits of Shared Services which have delivered major savings over the past six years mean that the delivery of further savings will now have greater service impact. In recent years, most savings have been delivered either via deletion of posts using natural staff churn to avoid redundancies or through reduction in operating costs from technology system rationalisation. However, further reduction in operating costs is no longer achievable to any great degree and, as the number of Full Time Equivalent posts has reduced¹, the potential for post reduction without staff redundancies is now limited. Because employee costs form the bulk of EKS' cost base (81%), maintaining the current approach is no longer sustainable in the longer term without a significant impact on staffing and consequential impact on services. Even for this current financial year, it is expected that further deletion of posts will be required, possibly with some staff reduction, to achieve a balanced budget in 2017/18.

Beyond this current year, further savings will require a significant staff reduction (an estimated 15 redundancies are required to deliver the anticipated budget savings for 2018/19) which introduces a high degree of service risk as well as high exit costs and the economic impact of job losses in the local area. In addition, the redundancy costs themselves will create further budget pressures.

EKS is now at the point where cutting services in line with its partner Councils' affordability constraints will start to have a direct impact on service quality, raising the risk of service failure and performance degradation in Benefits where the time to make payments and accuracy levels are likely to fall and Council Tax and Business Rates collection levels as well as Customer Services performance.

This reduction in staffing would be required in addition to any other losses that would be required as a consequence of external impacts, for example the reduction in DWP and DCLG grants for the administration of Housing Benefit and Council Tax Support as well as the likelihood of the introduction of Universal Credit creating further job losses.

¹ Current EKS FTE as at Aug 2017 = 258.85; equivalent as at Aug 2016 was 270.25.

A number of options have been explored, ranging from continuing the current direction of travel, through to more fundamental reshaping of EK Services. These can be broadly categorised as:

- “maintain” – either increase funding year on year or continue to make savings in order to keep EK Services running “as is”. This equates to an additional funding requirement of £400,000² for 2018/19 (meaning that by Year 7, EKS would require an additional £2m per annum over current costs) or a reduction in staffing of 67 posts over the same period.
- “exploit” – continue to manage savings required and generate income through offering services. This would require staff reductions in the current areas of activity but also investment in business development, certification and the like, for a relatively small (and uncertain) return and take time to build a potential pipeline of work.
- “enhance” – leverage the EK Services brand and governance to share additional services between the three councils. However, as costs have already been taken out of the partner councils, it is highly likely that this would only generate resiliency and other, non-cashable benefits.
- “expand” – bring another partner into EK Services to gain further economies of scale. Again, as likely partners would already have undertaken their own cost-reduction measures, the return is not likely to be large enough to avoid further large-scale staff reductions. It is more likely that non-cashable benefits, such as improved resilience, will accrue.
- “partner” – enter into a contract with a commercial operator for the provision of services and the generation of income. This has the potential to safeguard employment (with the accompanying economic benefits) as well as deliver immediate cashable savings to the council plus generate income.

These options are explored in more detail in the Options Appraisal, shown at Annex A to this business case.

² For 2018/19, 2019/20 and 2020/21. After this, increased funding is still required year on year, but at a slightly lower level of up to £200,000 per annum

Current Situation

EK Services and EK Human Resources (EKHR) total operating costs for 2016/17 were £12.36m. For 2017/18 a further reduction in funding has seen the operating costs fall to £11.7m. This reflects a substantial reduction in the costs that were born by the three partner councils before the shared services were brought into being.

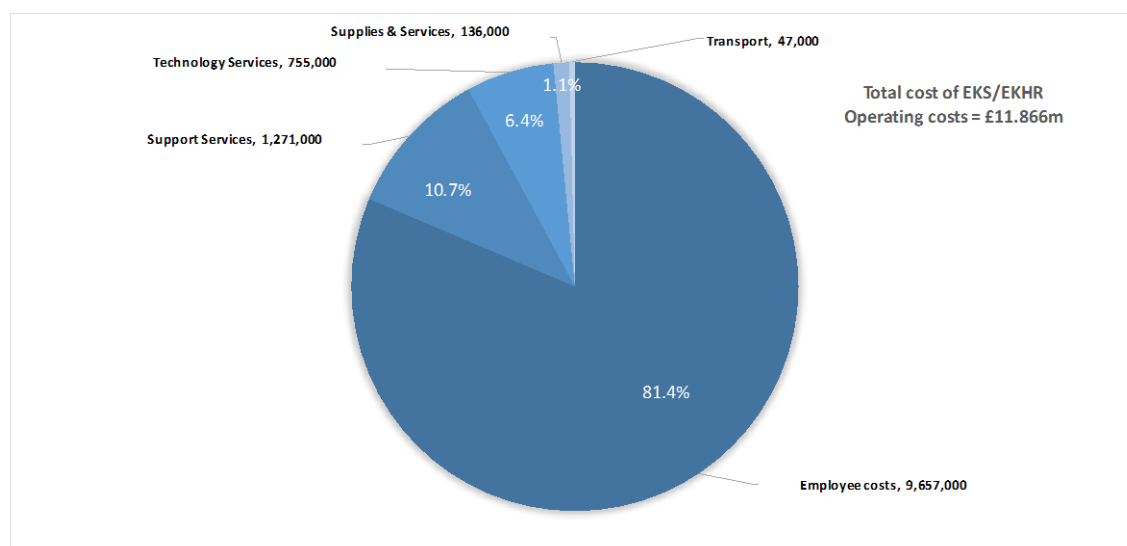


Figure 1 - EKS Operating Costs

Figure 1 outlines the current breakdown of EK Services operating costs. As would be expected, the majority of costs are staff related, with approximately £755,000 of technology and other 3rd party contract costs and £1.27m of support charges (which flow back to the councils providing those services).

In 2017/18, EKS has to achieve £832k of savings to ensure the 2017/18 budget is balanced at end of year.

On the whole, the scope for reductions in contract costs is negligible, meaning that the majority of the savings required to “stand still” need to be met from within the EKS staff budget. Whilst a move towards more “digital” delivery of services can help to compensate for staff reductions by encouraging “self-help” amongst that part of the customer base that is able, willing and using a service that lends itself to this type of delivery, this is not a universal solution and staff reductions of the scale required to deliver this amount of annual savings will inevitably start to adversely impact service quality.

Although there is some limited scope to make EK Services more resilient to such pressures (for example, by on-boarding additional services or selling services to third parties) the likely savings or income from such activities would not, on its own, be sufficient to bridge this affordability gap and maintain the current levels of service quality.

Annex A to this report gives a detailed appraisal of options available to enable EKS to continue delivering the current range of services.

Recommended Option

Maintaining the status quo with EKS containing all inflationary cost pressure and continuing to deliver savings back to their clients is not sustainable in the longer term. There is also unlikely to be an appetite for the partner councils to increase funding to EKS by the amount required to maintain a level of staffing required to deliver existing services to the current standards. Therefore, EKS in its current form, is not sustainable in the medium to long term.

Expanding the EKS offer (either by introducing additional 3-way shared services, adding an additional partner or by selling transactional services into the public sector market) are also highly unlikely to deliver the savings that are required. There would be some benefits in terms of heightened resilience, and some limited management cost reductions, but not sufficient to address the underlying affordability issues.

Unlike a traditional outsourcing arrangement, where a third-party supplier delivers services under contract for a defined price, usually extracting costs through staff reduction and redundancy, it is felt that a strategic commercial venture with a private partner has the potential to protect and grow jobs and develop services whilst delivering savings and generate additional income, and considering the pros and cons of the options detailed above, appears to be the most attractive delivery model for this service moving forward.

This preferred option offers an alternative that ensures services can be maintained without loss of staff and provides savings. It also offers a new income stream for Councils and new employment opportunities within Canterbury District, as well as across East Kent. The proposed arrangement is based on a “core and hub” model contract with a commercial provider. The core comprises a contract for the continued provision of Revenues, Benefits and Customer Services to the three partners. The trading hub would be located in CCC, TDC and DDC locations and service new commercial contracts with any profit being shared with the CCC, DDC and TDC. This trading hub is expected to grow and increase staff, delivering jobs growth in the District(s).

It is therefore recommended that EK Services enters into a strategic partnership contract with a commercial provider for the delivery of Revenues, Benefits, Debt Recovery and Customer Services. The residual services provided by EK Services should continue as part of a slimmed-down “EKS-lite” in order to provide continuity of governance and contract management capacity, with an intention to review this after 12-18 months of the strategic partnership coming into effect.

Financial case

This proposal has the potential to deliver significant reductions in annual operating expenditure when compared with existing spend. It also provides a way of avoiding the necessity for the councils to either commit to an increase in funding for EK Services (with compensatory savings needing to be delivered elsewhere in the organisations) or implement a large scale reduction in headcount and accept the associated impact in terms of reduced services and additional exit costs. Details are given in Annexes A and B to this report.

This option also provides a high likelihood of additional income for the councils as a result of business flowing into the proposed trading hub. This income is delivered as both a profit share from the hub operations and also desk rental as the headcount in the hub increases to service new business. There is also the option to generate additional income from EKS offering to undertake the client function to customers of the trading hub. This has proven itself elsewhere and would provide both an additional income stream plus the opportunity to build resilience and capability into the client function retained on behalf of the three Councils.

Economic case

Future funding of local government will be increasingly dependent on economic performance, with a reliance on local taxation (council tax, business rates) and New Homes Bonus or similar to support operating expenditure. This option assists by supporting and protecting the existing workforce as well as aiding the location of a growing and profitable business in the East Kent area. Specifically, the commercial venture outlined in the options appraisal gives a high likelihood of jobs growth across the three council areas over the lifetime of the contract, as well as avoiding both the costs of redundancy and the consequential impacts of job losses on the local economies of Canterbury, Dover and Thanet.

The business growth for the trading hub, in the first couple of years of operation, is estimated to deliver between 40 – 100 additional jobs generated across the three Districts, dependent of course on the progression of commercial opportunities that would be pursued.

That fact that the three councils are willing to enter into an innovative service delivery and development partnership sends a strong message that the area is “open for business” and that the local authorities are serious about working together to improve the economic outlook for the entire area through a co-ordinated East Kent- wide approach rather than through competition between districts.

Operational case

The fact that this option does not require large scale reductions in staffing means that the quality of EKS’ services can be maintained. Whilst EKS has an outstanding track record of successfully introducing digital solutions to encourage self-service, driving down costly face-to-face or phone contact (and thereby enabling help to be targeted at those who need the most assistance), there is a practical limit on what can be achieved in the short term and the cost:benefit ratio for additional investment gradually starts to erode.

The commercial venture enables staffing to be maintained at levels that preserves the ability of EKS to effectively serve its customer base, whilst providing flexibility to better align capacity to peaks and troughs in demand. It also provides for the ongoing development of business cases to identify opportunities that may bring about further improvements in service delivery, reduced costs or both, which will provide for the continued development of services to meet the changing demands of EKS' (and the Councils') clients. It also recognises the "direction of travel" that the Councils have towards the modernisation and increasing digitisation of services and seeks to continue to develop this work, not constrain it.

A financial analysis of the likely savings that would accrue and other commercial information is at the confidential Annex B to this report.

Control and Governance

The proposed operating model and partnership approach with a commercial provider is well established in other parts of the country and feedback from other local authorities who have entered into similar arrangements is very positive.

The proposed contractual arrangement maintains similar governance to the existing EKS model with oversight via the East Kent Services Board (EKSB) and East Kent Services Committee (EKSC) being maintained and with the opportunity to design a robust joint 'client side' structure. The delivery of Income & Payments services in particular is mostly statutory (and very transactional) work that is delivered in line with central government direction, which will remain. Where Councils have the ability to set policy (e.g. determining levels of Council Tax, the details of Council Tax Support schemes, etc.) this will remain. Similarly, external audit and internal audit managed by East Kent Audit Partnership (EKAP) will remain in place to provide assurance.

Services will continue to be branded as Council services to the public and customer service advisors will also continue to answer calls or present themselves in accordance with council requirements. Support and specialist advice to Council officers will continue to be provided by the existing EKS subject matter experts, albeit as contracted personnel.

The current client arrangements for EKS include monthly and quarterly performance reports, written by EKS, presented to each Council client officer. This is supplemented by the Director of Shared Service providing regular contact on a one to one basis with each senior client officer (S151s) and reporting to chief officers at East Kent Services Board. Additional engagement and reporting takes place at various council committees as required. The expectation for any alternative service delivery will be to maintain similar reporting and contact via the residual EKS joint client structure, if this model is agreed. Any contract for services will include appropriate performance reporting requirements and support to client and council meetings as required. The vision, is to maintain the governance and reporting arrangements as close to the existing arrangements and to minimise impact on the three Councils as much as possible. There is scope to develop these client arrangements and offer these services to hub customers, providing an additional income stream.

A separate issue is the future of the “residual” parts of EKS, should the Revenues, Benefits, Customer Services and debt recovery functions be moved into this form of strategic partnership. A separate report will outline the options for the residual EKS, but this should be decoupled from the immediate decision about entering into a strategic partnership.

Procurement Route

Following the publication of an OJEU notice in September 2014, Hull City Council undertook a competitive dialogue process to tender a framework agreement for the provision of (inter alia) Revenue & Benefits and ancillary services. This Framework agreement is open for other local authorities to use and this is the recommended procurement route for reasons of both speed and cost. The alternative (of undertaking a full OJEU compliant procurement process), whilst an option, is not recommended because of the likely time frame to complete (in excess of 12 months) and subsequent delay in realising both savings and income, plus the associated staffing, legal and procurement team costs that this would incur.

Residual Services

If the decision is taken to enter into a strategic partnership contract, the future structure and operation of those EKS services not “in-scope” needs to be considered. There are four main options:

- Continue to share services between the three councils but move to a “lead authority” model for the residual services (ICT and HR), removing the EKS management overhead but establish a joint client to manage any third part contract
- Continue the operation of a slimmed-down EK Services (“EKS-lite”) in order to provide continuity of governance and contract management capacity
- Revert to individual stand-alone services for each Council (in house arrangements for ICT and HR) but establish a joint client to manage any third party contract
- Outsource the residual parts of EK Services and create a larger client structure for the management of the separate functions (ICT, HR and the partnership contract)

Details of these options are provided in a separate report, “EK Services – Residual Structure Options” which will be presented in due course following further work. In summary, the recommendation is to maintain an “EKS-lite” in order to provide transition and contract management capacity, along with an opportunity for each council to take stock and consider what appetite (if any) there is for the future development of an expanded shared services and / or exploit some of the residual services such as selling payroll or ICT consultancy. “EKS-Lite” should then be reviewed after 12-18 months by which time savings and income from the strategic partnership should be realised and the management arrangements running smoothly.

Benefits, risks and opportunities

This option delivers a number of quantifiable benefits and financial, economic and operational opportunities to the councils, for example:

- Financial savings from contract go-live date
- Guaranteed performance levels and quality (to be agreed as part of detailed contract negotiation)
- Avoidance of redundancy for transferring staff (and the cost for EKS)
- Staff job security for the contract duration
- Staff terms and conditions (including LGPS) protected
- Creation of a partnership style of operation where added value from service growth is shared
- New job creation across the 3 Council areas
- Provides flexibility for the Councils to consider additional development (or otherwise) of their shared services activity
- Risk of impacts from new burdens (for example, the introduction of apprenticeship levy, increased employee costs) is reduced

The risks associated with this proposal are considered manageable. A Risk Log is provided at Annex B to this report.

Some points that should be noted (and managed either as part of a formal risk management process, or through more informal engagement) are:

- Contract management capacity either within a residual EK Services or as a shared function on behalf of the client councils would need to be strengthened
- Potential complexity of aligning client-side functions in a 4-way contract unless this function remains with a residual EK Services
- Long term budget commitment (albeit at a reduced level) required from contracting Councils
- Impact of bringing staff back into the Councils at contract end is not quantifiable at present but should be reviewed in good time before end of contract or any other break-points
- Staff concerns around a transfer to a private sector employer
- Potential for inflation-linked contract price growth (can be mitigated through contract negotiation and expected contract review points to review pricing)
- Flexibility for EKS to be used to deliver further budget savings in the future is reduced, unless a decision is made to either maintain or build as required an appropriate management and governance structure

Options Appraisal

Option 1 – “Maintain”

Summary:

Refine and implement the new operating model for EK Services, exploit the existing digital ambitions as far as possible and seek further funding from councils or, alternatively, reduce costs through staff reduction

Strengths	Weaknesses
Currently very competitive costs	Risk to service, collection levels, error bonus
Mature, stable service offering	Realistic limitation on savings
Nationally recognised, award winning service with a high reputation across the sector	Costs of exit via redundancy
Track record of achieving more for less	Impact on local employment
Good relationship with the 3 councils with a high level of trust	Universal Credit looming so greater redundancies or redeployments ahead. Reducing Admin Grants likely to add further budget pressure
Highly responsive to council requirements	Large increase in charges to Councils if they desire to maintain the current levels of staffing and service quality. This would probably be to the detriment of other council services

Analysis:

As detailed above, the participating Councils have hitherto required EKS to operate within its own fixed budget and therefore inflationary pressure (including pay and contract inflation) means that year-on-year savings between £300K and £500K have historically been needed to maintain the status quo. This will remain and, with a potentially deteriorating fiscal climate, increasing inflationary pressure may add further budget pressure.

If the councils wished to maintain EKS in “steady state” with no further fundamental changes, and based on the assumptions for growth shown below), additional funding of c. £400,000 per year (leading to in an increased expenditure of £2.0m per annum by year 7) would be required, assuming

- employee related inflation of 2% per annum
- other operating cost inflation of 4%¹ per annum

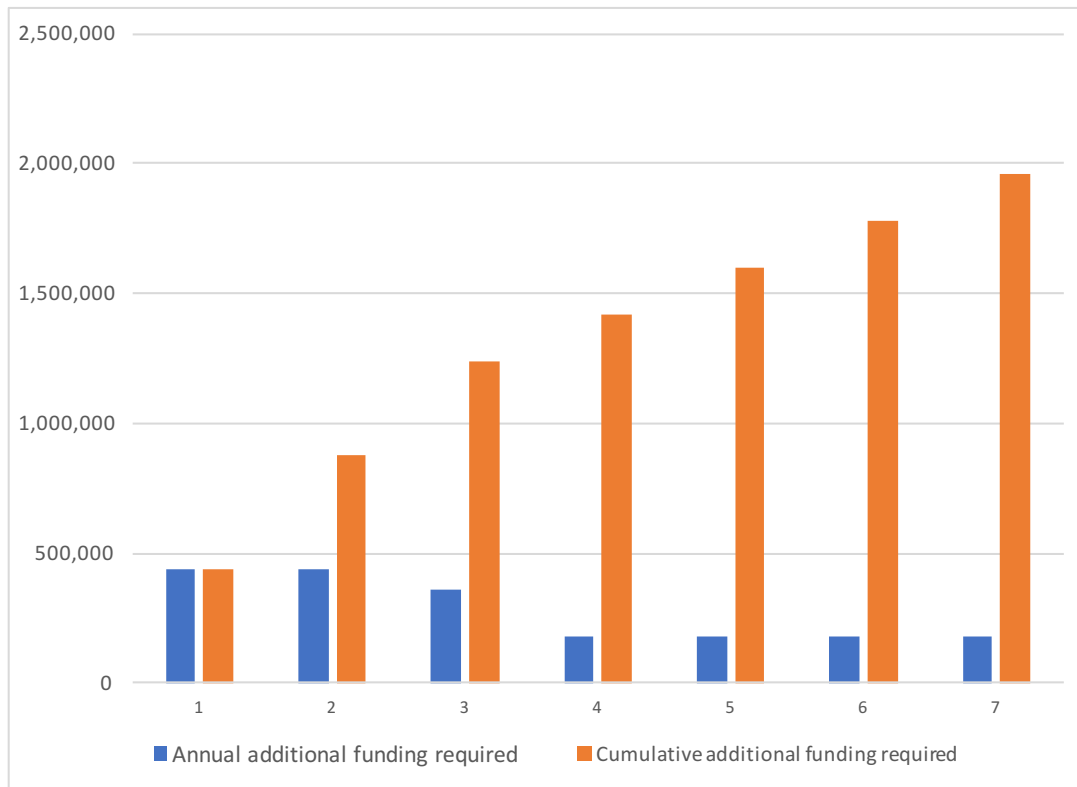


Figure 1 - Additional Council funding requirements to maintain status quo²

In reality, the programme of digital work in place within EK Services to move high volume transactional services online (for example the introduction of the IEG4 Digital Benefits product) will result in some modest staff reductions (as these form part of the business case for the adoption of IEG4) but these savings are largely used to offset the increased licensing, support and maintenance costs of the new product suite and should more accurately be viewed as a cost avoidance measure.

Should this increase in funding not be acceptable to the three Councils, EKS would be required to achieve ongoing savings of an equal amount.

¹ This figure is based on the assumption that support contracts will be indexed against RPI or UK IT industry salary inflation. It also assumes that a percentage of support contracts are priced in USD and therefore subject to exchange rate fluctuation

² The growth requirement reduces after years 2 & 3 due to an expectation of staff reductions as a result of normal efficiency activities and the anticipated changes to Universal Credit delivery

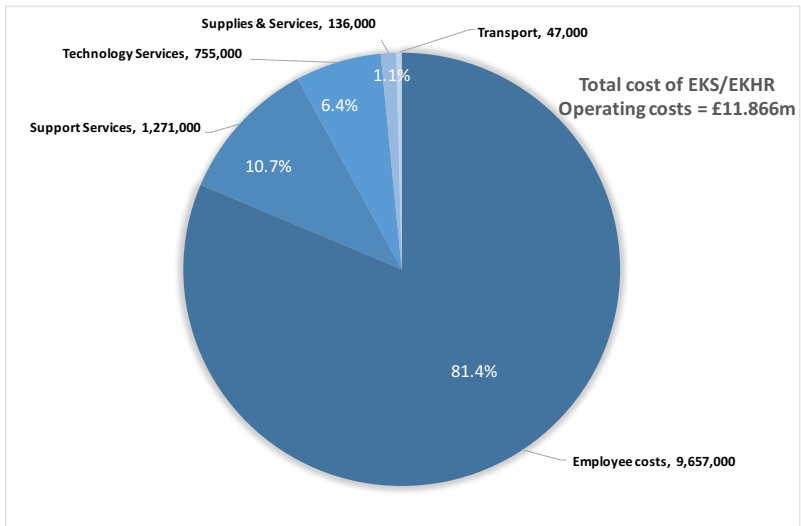


Figure 2 - EKS Operating Costs

Figure 2 outlines the current breakdown of EK Services operating costs. As would be expected, the majority of costs are staff related, with approximately £800,000 of technology and other 3rd party contract costs and £1.2m of support charges (which flow back to the councils providing those services).

On the whole, the scope for compensatory reductions in contract costs is negligible, meaning that the majority of the savings required to “stand still” need to be met from within the EKS staff budget. Assuming:

- the Councils are happy to maintain the current level of funding to EKS
- employee related inflation of 2% per annum
- overall contract inflation of 4% per annum

Savings of around 4% of budget are required year on year. Over a 7-year period, this equates to a 21% reduction in EKS staff - circa 67 posts by 2024/25 (Year 7), profiled as:

- 15 FTE in 2018/19
- A further 52 FTE posts removed over the remaining period to balance budget

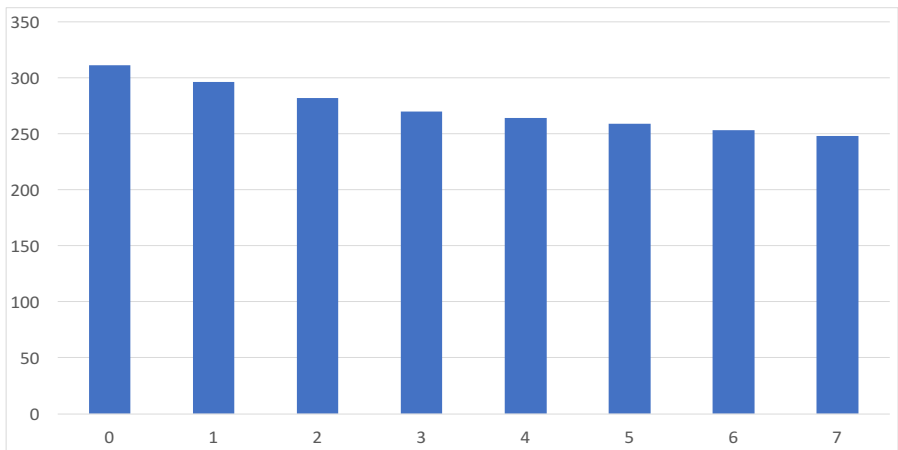


Figure 3-Headcount reduction required for "Maintain"

A reduction in staff of this scale has significant impacts, both on the organisation and the wider local economy. CIPD studies indicate the average cost of making a redundancy is £16,375 – before the cost to the treasury of paying benefits and lost tax revenues, the cost to the economy of lost spending, and the personal trauma. The impact on the residual organisation should not be underestimated – research undertaken by Bain revealed that nearly half of UK organizations have made redundancies and the move proved to be the most damaging kind of workplace change as it undermines morale, confidence, trust and comfort of staff.

Without having precise details of staff involved in any redundancy scenario, it is not possible to give totally accurate figures for the redundancy costs or actuarial strain costs to the pension scheme. However, assuming that:

- 40% of redundancies are Grade F staff, 50% Grade G and 10% Grade I
- Redundant posts are paid at the top of the grade
- The average length of service and age for each grade is:

Grade	Average age	Average length of service
F	43	10
G	46	17
I	46	17

then the costs of redundancy for 67 staff (excluding pension strain impact) could be in the region of £1,200,000.

If the Councils wish to reduce the charges (management fees) paid to operate EKS, as has been the norm over the past six years, further savings would be required above those listed above.

Assuming:

- a continued annual reduction in charges of £390,000 per year³
- employee related inflation of 2% per annum
- overall contract inflation of 4% per annum

a 48% reduction in headcount would be required over the same 7-year period to remain within budget (154 FTE members of staff) profiled as:

- 28 FTE in 2018/19
- 27 FTE in 2019/20
- Further 99 FTE posts removed over the remaining period to balance budget

³ Apportioned as: CCC: £133k DDC £102k TDC £148k, based on 2017/18 management fees

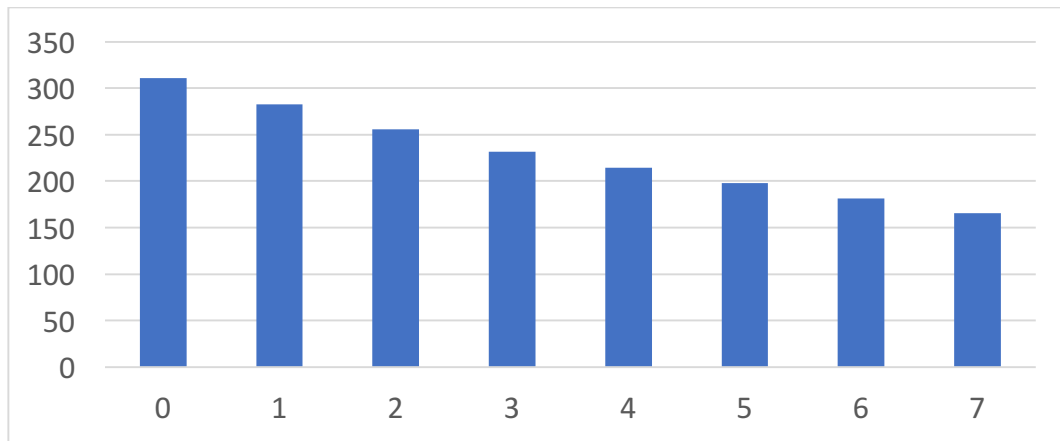


Figure 4 - EKS staff count over time including management charge reductions

With the same assumptions and caveats as per the previous scenario, the costs of redundancy on this scale could be in the region of £2,250,000.

Any downsizing of operations on this scale brings with it some difficult decisions – including which services to allow to degrade, which to maintain and which to cease entirely.

Inevitably, discretionary services would need to be reduced first, in order to safeguard as far as possible, the delivery of statutory services. These discretionary services (for example, welfare support, digital engagement, business rates analysis) are highly valued by EKS' clients but are exposed to the greatest risk of degradation or cessation.

Such an option is highly likely to be untenable, creating a situation which will result in a failure of service at a major scale.

Option 2 - “Exploit”

Summary:

As per the maintain option plus manage the need to contain inflation growth and deliver savings via income from new business.

Strengths	Weaknesses
Currently very competitive costs	Not structured so will require investment in areas such as business development, certification etc, starting from zero baseline
Mature, stable service offering	Need realism over quantity and speed of pipeline / delivery (4 & 5 figure sums more likely, not 6 figure)
Existing corporate layer and governance structures provide a sound foundation for expansion	Competing against other players offering solutions at scale and competitive pricing
Nationally recognised, award winning service with a high reputation across the sector	Will not prevent job losses from areas such as Benefits
Track record of achieving more for less	Lack of flexibility in the current workforce to deliver income generating services out of EK Services’ current geographical area
	To be effective would need to seek business beyond public bodies and therefore establishment of a Teckal compliant company (increasing set up costs and risk)

Analysis:

This option explores the potential for selling current services to third parties.

The opportunities this option presents are limited to the type of transactional services already provided to the partner councils by EK Services. Examples would include payroll, Revenues & Benefits resilience (offering overflow processing services), training and miscellaneous consultancy services. Informal market testing and spend analysis indicates that the profit from such activities is likely to be low, with typical profit margins of 5-10%. The development of a marketing and commercial strategy and the time required to develop a pipeline of potential opportunities means that any income is likely to be very low for the first few years and even beyond that, limited to “five figure” profits.

Councils would need to be prepared to take a commercial approach to risk and, in order to create the decision-making tempo required for a Company to operate successfully in a commercial environment, the establishment of a separate legal entity (a Teckal compliant company⁴) is likely.

This can be done but would require financial and resource investment to set up and growth in operating costs would be required.

The time required to establish such a model and the time needed to develop the commercial pipeline means that EKS would still require the initial few years of investment as outlined within Option 1 (Maintain) or reduce staffing levels by circa 40 staff. There is a risk that such staffing reduction would create service failure that in turn would impact on the ability for EKS to win any commercial contracts. A superficial survey of set-up costs for other, similar public sector based companies providing similar services suggests that initial investment of upwards of £200,000 would be required – mainly to set up a realistic business development function but also to gain the levels of professional, corporate and quality certifications that the market would reasonably expect from a supplier.

⁴ *The local authority must control all of the shares in the company and must also exercise effective day-to-day control over its affairs; in other words, the same as the relationship between the council and one of its internal directorates. This can be achieved through the governance structure. The company must be “inwardly and not outwardly focused”. The directive requires that at least 80% of the activity of the Teckal company – that is, over 80% of its turnover – must be for its public sector owners*

Option 3 – “Enhance”

Summary:

Look to bring other (transactional) council services into EK Services

Strengths	Weaknesses
Leverages the existing EKS corporate layer and governance	Streamline and improves value via process improvement through scale and resilience rather than deliver significant savings
Greater resilience and helps with specialist areas where recruitment / retaining is challenging	Job losses remain in areas such as Benefits through UC and Customer Services via Digital
Proven expertise in running shared services and sound governance reduces risk	Helps councils deliver savings but existing EKS staff (300+) still require inflationary pressure to be absorbed
Proven ability to both transform and deliver services	Main driver would be added resilience and not cost reduction as most clients would already have stripped out excess costs

Analysis:

Again, the services that could lend themselves to being offer by a shared service arrangement are those that are largely transactional and non-contentious. Examples could be procurement, legal services and transactional finance (with strategic finance, such as financial planning, treasury management etc.) being considered as more likely to be out of scope and maintained in house.

Experience of shared service implementation has demonstrated that some financial savings are possible. As a benchmark, staff cost reductions in the region of 13% will typically accrue along with approximately an 8% reduction on external spend as support, maintenance and other contracts are re-negotiated.

However, it is important to note that most, if not all local authority services have already removed significant operating costs over the last few years and in most cases any significant staff reductions would need to be balanced against the acceptability of declining service quality standards. It is therefore more likely that the benefits of on-boarding additional shared services into EKS would be improved resilience and the ability to maintain current levels of performance, rather than the delivery of worthwhile, cashable savings.

Option 4 - “Expand”

Summary:

Bring additional local authorities into the existing EK Services provision

Strengths	Weaknesses
Leverages the corporate layer and governance	Level of savings not likely to be as large as one may expect, other LAs already on a journey of staff reduction so economies limited
Greater resilience and helps with specialist areas where recruitment / retaining is challenging	Universal Credit looming so greater redundancies ahead
Complements any other work within East Kent that may seek to assess opportunities for closer working	Shared Service partnerships greater than four become very challenging; usually only achievable via a contractual style relationship rather than partner approach
Should generate further savings through sharing fixed costs, subject to specific individual service business cases	Extended time frame for delivery of savings and significant effort required
Proven expertise in running shared services and sound governance reduces risk	Need for investment for infrastructure alignment and potential systems migration
Proven ability to both transform and deliver services	Could face significant cultural and/or political differences
	Lack of flexibility in the current workforce to manage services out of EK Services' current geographical area

Analysis:

This option does offer scope for the delivery of savings and income from on-boarding services from other local authorities. The attractiveness of this option is however, diminishing over time as most councils are already undertaking aggressive programmes of cost reduction and service modernisation.

Taking as an example, the provision of Revenues & Benefits and Customer Services provision to another district council, savings are achievable (mainly through staff reduction) although significant up-front costs for systems migration are incurred. The table overleaf shows a possible indication of total costs and savings (to be split between all participating councils) for such an onboarding over four years. This includes growth for platform migration and increased running costs for EKS against the potential savings in software, ICT infrastructure and staffing:

Item	Year 1	Year 2	Year 3	Year 4
Software licencing & support		(42,300.00)	(42,300.00)	(42,300.00)
General ICT/Infrastructure costs		(10,000.00)	(10,000.00)	(10,000.00)
Staff reductions - management	(60,000.00)	(80,000.00)	(80,000.00)	(80,000.00)
Staff reductions - support staff	(30,000.00)	(60,000.00)	(60,000.00)	(60,000.00)
Staff reduction - processing staff		(60,000.00)	(90,000.00)	(90,000.00)
Additional capacity contract reduction		(30,000.00)	(30,000.00)	(30,000.00)
Platform migration costs	150,000.00	50,000.00		
Increased EKS costs estimate	30,000.00	30,000.00	30,000.00	30,000.00
Total Cost/(Saving) for four Councils combined	90,000.00	(202,300.00)	(282,300.00)	(282,300.00)

For simplicity, assuming an even distribution of savings, EKS could expect to achieve a saving in the region of £211,000 (75% of the anticipated savings) from the third year of operation.

Option 5 - “Strategic Partnership”

Summary:

Use the existing service as a basis for the development of a locally-based processing hub run by a commercial organisation but sharing growth opportunities through profit share arrangements.

Strengths	Weaknesses
Financial savings from contract go-live date	Contract management capacity either with a residual EK Services of the client councils would need to be strengthened
Guaranteed performance levels and quality	Potential complexity of aligning client-side functions in a 4-way contract unless this function remains with a residual EK Services
Avoidance of redundancy for transferring staff	Long term budget commitment (albeit at a reduced level) required from contracting Councils
Staff job security for the contract duration	Impact of bringing staff back into the Councils at contract end is not quantifiable at present
Staff terms and conditions (including LGPS) protected	Staff concerns around a transfer to a private sector employer
Indexation increases likely to be less than maintaining status quo	Potential for inflation-linked contract price growth
Creation of a partnership style of operation where added value from service growth is shared	Flexibility for EKS to be used to deliver further budget savings in the future is reduced
Local new job creation	
Provides flexibility for the Councils to consider parallel “maintain” or “enhance” options	
Risk of impacts from new burdens (eg introduction of apprenticeship levy, increased employee costs) is reduced	

Analysis:

Unlike a traditional outsourcing arrangement, where a third-party supplier delivers services under contract for a defined price, usually extracting costs through staff reduction and redundancy, the proposed strategic partnership model with a supplier offers more benefits over and above a simple reduction in operating costs. These typically include a mixture of: direct cost reductions, profit share from new business generation and economic development benefits from delivering jobs growth and accompanying spend into the local economy.

This is a relatively well-established business model, with several councils across the country having entered into similar arrangements over the past few years. At the same time, the market for business process outsourcing (BPO) activities in both public and private sector has increased as a result of organisations needing to deliver reductions in operating costs as well as providing some certainty around future expenditure and the “cost of doing business.”

As part of their expansion plans in the Business Process Outsourcing (BPO) market, Civica are proposing to establish a trading hub and centre of excellence (CoE) in the south east to complement their existing locations (Hull, South Worcester, Denbighshire and Gloucester). EK Services have been exploring the possibility of a commercial contract with a partnership approach, with Civica. This would seek to provide a core contract delivering existing Income, Payments and Customer Services functions to a defined level of performance and quality, along with a “Centre of Excellence” (termed “the Hub”), based within the Councils’ existing premises (and generating a rental income), providing additional capacity to Civica’s existing on-demand services that are marketed nationally and internationally as well as providing a platform to provide other transactional contracts to new business opportunities.

In practice, this means that staff would transfer (under TUPE regulation) to the chosen supplier and continue to deliver services for EKS as before, from the same locations, with no visible change to the councils or customers. As the new provider streamlines service delivery, staff can be moved from providing services to EKS under the “core contract” into a team within the Hub that provides services to third parties, reinforced with existing or newly recruited Civica staff. This results in income to the councils (as a result of a profit share arrangement for revenue generated by the Hub plus rental for any additional desk space that is required within the existing EKS locations as a result of staffing growth.)

This provides a number of expected benefits to EK Services and its partner Councils:

- Financial savings from day 1;
- Guaranteed performance levels and quality;
- Guaranteeing approx. 220 jobs for the duration of the contract (i.e. up to 7 to 10 years);
- Avoidance of imminent redundancy for up to 30 FTE;
- Staff terms and conditions (including LGPS) protected;
- Ongoing investment in the service;
- Creation of an East Kent based processing hub (“Centre of Excellence”) to be operated on a profit sharing basis plus rent per desk space generating new income to the Councils;
- Local new job creation;

The trading hub will have exclusivity for new work from new business across Kent, Sussex, Surrey, SE London and Essex. It is also used to provide resilience to the core contract if needed, which de-risks the chance of performance slide due to staff erosion as other contracts often find.

A financial analysis of the likely savings that would accrue is detailed in the confidential Annex B to this report, although it is anticipated that the formal contract negotiation process would result in additional savings being identified.

A summary of how this type of partnership has worked in parts of the country, along with an explanation of the business development activity proposed, is given in Annex D.

At contract end, the trading hub operation is expected to operate from their existing locations, providing a continued rental income to the councils. The “core contract” (delivery of the councils Revenues, Benefits and Customer Services functions) could be re-procured (aiming for the market to produce an equivalent or better commercial offer than the original contract) or alternatively choose to move this provision back in-house, whilst complying with the TUPE regulations in force at that time.

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DOVER DISTRICT COUNCIL

NON-KEY DECISION

EXECUTIVE

CABINET – 2 OCTOBER 2017

EXCLUSION OF THE PRESS AND PUBLIC

Recommendation

That, in accordance with the provisions of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, the public be excluded from the remainder of the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in the paragraph of Schedule 12A of the 1972 Act set out below:

<u>Item Report</u>	<u>Paragraph Exempt</u>	<u>Reason</u>
Pitched Roofing and Associated Works Contract	3	Information relating to the financial or business affairs of any particular person (including the authority holding that information)
Modular Interim Housing	3	Information relating to the financial or business affairs of any particular person (including the authority holding that information)

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

Agenda Item No 16

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

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of the Local Government Act 1972.

Agenda Item No 17

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Agenda Item No 18

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