

PORTFOLIO HOLDER FOR CORPORATE FINANCE AND GOVERNANCE

4 JANUARY 2023

REPORT OF THE ASSISTANT DIRECTOR, GOVERNANCE & DEPUTY CHIEF EXECUTIVE

A.1 Governance Directorate/Legal and Democratic Services - Proposed Fees and Charges for 2023/24

(Report prepared by Debbie Bunce and Lisa Hastings)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To seek the Portfolio Holder's concurrence to the proposed schedule of fees and charges 2023/24 for the Governance Directorate for Legal and Democratic Services, other parts of the directorate remain unaffected.

EXECUTIVE SUMMARY

- This report sets out the proposed fees and charges for 2023/24 for the Governance Directorate/Legal and Democratic Services. They continue to be considered against a number of key principles that form part of the long term financial forecast approach which are summarised later on in this report.
- Any amendments to income budgets that are required to reflect changes to fees and charges will be included in the detailed budget proposals for 2023/24 that will be considered by Cabinet / Full Council next year.
- In respect of Full Council next year, the individual decisions agreeing fees and charges will be collated and presented as part of the overall budget setting process for 2023/24.

RECOMMENDATION(S)

That the Schedule of Fees and Charges 2023/24 for the Governance Directorate/Legal and Democratic Services set out in Appendix A be agreed.

REASON(S) FOR THE RECOMMENDATION(S)

To enable the implementation of a revised fees and charges schedule for 2023/24.

ALTERNATIVE OPTIONS CONSIDERED

Please see the considerations / reasons behind the proposed fees and charges later on in this report.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The forecasting and budget setting process, including fees and charges, will have direct implications for the Council's ability to deliver on its objectives and priorities. At its heart, the 10 year approach to the forecast seeks to establish a sound and sustainable budget year on year through maximising income, including income raised from fees and charges, whilst limiting reductions in services provided to residents, businesses and visitors.

OUTCOME OF CONSULTATION AND ENGAGEMENT

Councillor Carlo Guglielmi, Portfolio Holder for the service areas has been consulted and is happy with the proposed increase in fees and charges. The Assistant Director for Governance is a member of Management Team and the Section 151 Officer's comments are included below.

LEGAL REQUIREMENTS (including legislation & constitutional powers)

Is the recommendation a Key Decision (see the criteria stated here)	No	If Yes, indicate which by which criteria it is a Key Decision	<input type="checkbox"/> Significant effect on two or more wards <input type="checkbox"/> Involves £100,000 expenditure/income <input type="checkbox"/> Is otherwise significant for the service budget
		And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)	N/A

The arrangements for setting and agreeing a budget and for the setting and collection of council tax are defined in the Local Government Finance Act 1992. The previous legislation defining the arrangements for charging, collecting and pooling of Business Rates was contained within the Local Government Finance Act 1988. These have both been amended as appropriate to reflect the introduction of the Local Government Finance Act 2012.

The powers to charge are set out in the Local Authorities (Goods and Services) Act 1970 and the Local Government Act 2003 – Section 93 respectively. The latter also requires that charges for discretionary services should be on a cost recovery basis.

A local authority may be able to rely on the subsidiary powers under section 111 of the LGA 1972 to authorise the provision of a service to facilitate the discharge of a specific function. Where it does so, the local authority may charge under section 93 for that function-related service (Section 93(7)(a) of the LGA 2003 specifically states that section 111(3) of the LGA 1972, which prohibits local authorities from using their subsidiary powers to raise money, is to be disregarded.

Under Para 4.4.1 (8) Part 3.4 of the Council's Constitution, all Assistant Directors, in

consultation with the relevant Portfolio Holder, Management Team Member and the Assistant Director (Finance & IT), are authorised to decide the level of the annual discretionary fees and charges for their service (including any in-year changes that may be required) for inclusion within the Council's corporate schedule of fees and charges. Following the above consultation, an Officer decision must be published.

The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:

The fees being proposed are within the Council's legal powers as set out in the section above, as these relate to charging for completing legal matters connected to performing Council functions. In addition, these have been benchmarked against other local authorities legal services fees and charges within the Public Law Partnership.

FINANCE AND OTHER RESOURCE IMPLICATIONS

Finance and other resources

Fees and Charges have been reviewed against the key principles that underpin the long term forecast, which includes the generation of income whilst balancing strategic and external market conditions.

Given the significant Financial challenges faced by the Council in 2022/23 and 2023/24, a key underlying principle is to consider inflationary increases wherever possible to support corresponding increases in the Council's own costs in delivering the associated service(s). The current rate of inflation (RPI) is 12%, with predictions of further increases going into 2023. With such a high rate of inflation it may not necessarily be practical / possible to 'translate' such an increase into the actual fee increase proposed. Therefore, set against this inflationary context, any proposed increases in fees and charges must be balanced against other considerations / market conditions, whilst also recognising the restrictions placed on local authorities in terms of setting fees and charges on a cost recovery basis. Further details relating to any proposed increases to fees and charges is set out below.

Any changes to income budgets resulting from any changes in the level of fees and charges agreed, will form part of the detailed budget setting process for 2023/24.

A summary of the major changes are as follows:

- Generally overall we have applied the 12% inflationary increase to the fees and charges, due to the fact that most of the fees relate to commercial or property related matters, and not the delivery of direct services to individuals;
- Increased the level of minimum and maximum for acquisitions, new builds and disposals
- New fees introduced for:
 - providing a DS1 (which is a formal receipt that is produced to Land Registry for a legal charge to be removed) and
 - a Certificate of Compliance (which is also required for Land Registry purposes, if there is a restriction on title);
 - engrossment of a RTB lease or transfer (this is being introduced following benchmarking exercise);
 - Trainee Legal Executive hourly rate;
- Increased the preparation fee for Unilateral Undertakings to reflect the amount of time being taken to complete the documentation, based on the information being provided by third parties;

- Removal of Weeley Council Chamber for hire accommodation and replacing this with the Whitelaw Room and Committee Room.

These increase in fees will generate an estimated £10,200 extra in legal fees during the year.

The schedule has also been populated to give a rough estimate of the anticipated level of volume of transactions based upon the two years.

The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:

There are no additional comments over and above those set out elsewhere in this report.

USE OF RESOURCES AND VALUE FOR MONEY

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services.	Please see relevant comments elsewhere in this report.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks.	
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	

MILESTONES AND DELIVERY

Fees and Charges for 2023/24 form part of the wider budget setting process, which culminates in the detailed estimates being presented to Full Council in February 2023. Fees and Charges must therefore be approved in advance of this date.

ASSOCIATED RISKS AND MITIGATION

The recovery of legal costs and fee (income) budget for the Legal Service has been set at:

- For 21/2022, £43,330 and at the end of year £57,303 had been recovered; and
- for 22/2023, £28,330 and as the date of writing the report, £45,230 has been recovered.

Legal fees and charges form part of the Heads of Terms on property transactions. In cases where these have been negotiated by the Assets or Housing Teams and it has been agreed with the third party that either a lower level will be recovered or each party to bear their own legal costs this has a negative impact on the ability to recover the costs to the service for undertaking the work. The Assistant Director for Governance believes that the legal charges agreed should be in line with the Fees and Charges for the current year and any departure should be agreed in consultation with the Head of Legal Services and Assistant Director for Governance.

In addition, where heads of terms are agreed but there is a delay in completion, which is due to lack of progress with the third party, legal fees should be set at the level within the relevant financial year, the matter is completed.

EQUALITY IMPLICATIONS	
<p>The fees apply equally to matters and related to the type of transaction, as opposed to any individual's circumstances, as the costs recovered do not relate to direct service delivery. Therefore, none of the protected characteristics would be impacted by the level set. Equality implications for each transaction are considered separately, and if such a situation arose whereby the level of fees and charges had an adverse impact these would be considered on an individual basis at the time.</p>	
SOCIAL VALUE CONSIDERATIONS	
<p>The recovery of the costs for the administration of transactions listed within the Schedule contribute to the Council being able to provide an internal legal service, which in turn supports other council services such as planning, property and housing to make the best use of its powers and assets to improve the economic, social and environmental wellbeing of the area.</p>	
IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030	
<p>The proposed decision is neutral in relation to the Council's emissions ambitions.</p>	
OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS	
<p>Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.</p>	
<p>Crime and Disorder</p>	<p>The changes introduced do not have implications on these considerations and apply equally to transactions irrespective of the area or ward in which the matter is located.</p>
<p>Health Inequalities</p>	
<p>Area or Ward affected</p>	

PART 3 – SUPPORTING INFORMATION

BACKGROUND
<p>Income from fees and charges form an important element of the budget and the financial sustainability of the Council as set out in the long term forecast.</p> <p>Similarly to previous years, Departments have been asked to review their fees and charges on an individual basis as changes may need to be made to meet specific aims or strategic objectives or in some cases in response to external factors such as market forces.</p> <p>The review of fees and charges has been set against the following key principles:</p> <ul style="list-style-type: none"> • general inflationary increases where possible or lower where appropriate / justified • amounts rounded for ease of application, which may result in a slightly above inflation increase. • on a cost recovery basis as necessary • reflect statutory requirements. • increases where market conditions allow • to meet specific priorities or service delivery aims / objectives <p>As highlighted earlier in this report, the Council faces a number of significant financial challenges in 2023/24 and beyond. It is therefore important that fees and charges are considered against this context and to maximise income opportunities where possible, albeit whilst balancing the various issues highlighted above.</p>

Income budgets included in the detailed estimates will reflect any required changes from the proposed fees and charges set out in this report.

GOVERNANCE DIRECTORATE/LEGAL AND DEMOCRATIC SERVICES - PROPOSED FEES AND CHARGES 2023/24

Set against the current fees and charges for 2022/23, **Appendix A** includes the schedule of fees and charges proposed for 2023/24, which have been developed by applying the key principles highlighted above.

As part of this review, a comparison of the legal fees of other authorities within Public Law Partnership was undertaken using the annual benchmarking data collected by the partnership.

A summary of the major changes are as follows:

- Generally overall we have applied the 12% inflationary increase to the fees and charges, due to the fact that most of the fees relate to commercial or property related matters, and not the delivery of direct services to individuals;
- Increased the level of minimum and maximum fees for acquisitions, new builds and disposals
- New fees introduced for:
 - providing a DS1 (which is a formal receipt that is produced to land registry for a legal charge to be removed) and
 - a Certificate of Compliance (which is also required for land registry purposes, if there is a restriction on title);
 - engrossment of a RTB lease or transfer (this is being introduced following benchmarking exercise);
 - Trainee Legal Executive hourly rate;
- Increased the preparation fee for Unilateral Undertakings to reflect the amount of time being taken to complete the documentation, based on the information being provided by third parties;
- Removal of the Weeley Council Chamber for hire accommodation and replacing this with the Whitelaw Room and Committee Room.

PREVIOUS RELEVANT DECISIONS

Decision of Deputy Chief Executive and Monitoring Officer – 7 February 2022

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

None

APPENDICES

Attached – Detailed fees and charges 2023/24 for the Governance Directorate/Legal and Democratic Services

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