



Shropshire Council  
Legal and Democratic Services  
Shirehall  
Abbey Foregate  
Shrewsbury  
SY2 6ND

Date: Tuesday, 8 January 2019

**Committee: Cabinet**

**Date: Wednesday, 16 January 2019**

**Time: 11.00 am**

**Venue: Shrewsbury Room, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND**

You are requested to attend the above meeting.  
The Agenda is attached

Claire Porter  
Head of Legal and Democratic Services (Monitoring Officer)

**Members of Cabinet**

Peter Nutting (Leader)  
Steve Charmley (Deputy Leader)  
Joyce Barrow  
Lezley Picton  
David Minnery  
Robert Macey  
Nicholas Bardsley  
Lee Chapman  
Steve Davenport

**Deputy Members of Cabinet**

Dean Carroll  
Rob Gittins  
Simon Harris  
Roger Hughes  
Elliott Lynch  
Alex Phillips  
Ed Potter

Your Committee Officer is:

**Jane Palmer** Senior Democratic Services Officer

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# AGENDA

## 1 Apologies for Absence

## 2 Disclosable Pecuniary Interests

Members are reminded that they must not participate in the discussion or voting on any matter in which they have a Disclosable Pecuniary Interest and should leave the room prior to the commencement of the debate.

## 3 Minutes (Pages 1 - 8)

To approve as a correct record and sign the Minutes of the Cabinet meeting held on 12 December 2018.

## 4 Public Question Time

To receive any questions or petitions from members of the public, notice of which has been given in accordance with Procedure Rule 14. Deadline for notification for this meeting is no later than 24 hours prior to the start of the meeting.

## 5 Member Questions

To receive any questions of which members of the Council have given due notice, the deadline for notification for this meeting is 5.00pm on Friday 11 January 2019.

## 6 Scrutiny Items

To consider any scrutiny issues from Council or any of the Scrutiny Committees.

## 7 Draft Private Rented Sector Housing Enforcement Policy Introducing Civil Penalties and Rent Repayment Orders for Consultation (Pages 9 - 26)

Lead Member – Councillor L Chapman – Portfolio Holder for Adult Services, Health and Social Housing.

Report of the Director of Public Health

Contact: Professor Rod Thomson      Tel: 01743 258918

## 8 Shropshire Schools Funding Formula 2019-20 (Pages 27 - 34)

Lead Member – Councillor N Bardsley – Portfolio Holder for Children and Young People

Report of the Director of Children's Services

Contact: Karen Bradshaw      Tel: 01743 254201

**9 Exclusion of the Public and Press**

To resolve that, in accordance with the provisions of Schedule 12A of the Local Government Act 1972 and Paragraph 10.4 (3) of the Council's Access to Information Rules, the public and press be excluded from the meeting during consideration of the following item/s.

**10 Exempt Minutes (Pages 35 - 36)**

To approve as a correct record and sign the exempt Minutes of the Cabinet meeting held on 12 December 2018.



## Committee and Date

Cabinet

16 January 2019

## **CABINET**

**Minutes of the meeting held on 12 December 2018 in the Shrewsbury Room, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND  
11.00 am - 12.00 pm**

**Responsible Officer:** Jane Palmer  
Email: jane.palmer@shropshire.gov.uk Tel: 01743 257712

### **Present**

Councillor Peter Nutting (Leader)  
Councillors Steve Charmley (Deputy Leader), Lezley Picton, David Minnery,  
Robert Macey, Nicholas Bardsley, Lee Chapman and Steve Davenport

### **111 Apologies for Absence**

Apologies for absence were received from Councillor J Barrow.

### **112 Disclosable Pecuniary Interests**

The Portfolio Holder for Culture and Leisure declared an interest in the agenda item relating to the Shrewsbury Shopping Centres and stated that she would leave the room during consideration of this matter.

### **113 Minutes**

#### **RESOLVED**

That the Minutes of the Cabinet meeting held on 28 November 2018 be approved as a correct record and signed by the Leader.

### **114 Public Question Time**

Public questions were submitted by Mr S Mulloy relating to Mardol House and by Mr P Carter relating to the designation of Longden as a Community Hub. Responses from the Portfolio Holders were read out and form part of the formal record of the meeting.

### **115 Member Questions**

No questions were received from members of the Council.

## 116 Scrutiny Items - Welfare Reform Task and Finish Group Final Report

The Chair of the Performance Management Scrutiny Committee, Councillor C Wild, presented the findings of the Welfare Reform Task and Finish Group that had been considered and supported by the Scrutiny Committee at its meeting in November 2018.

She drew attention particularly to the vital work undertaken by Landau, a supported employment and training charity originally set up the Council and suggested that Cabinet may wish to consider receiving a presentation from this organisation in future to fully appreciate its work.

A Member spoke strongly against the Government's Policy on welfare and stated that Universal Credit showed a flagrant disregard to the needs of the poor with poverty crippling some families. He drew attention to the £102M loss of income to Shropshire arising from the benefit rule changes. At the very least he urged the continuation of the Task and Finish Group to undertake further investigations into those affected and an assessment of the roll out of Universal Credit to Shropshire residents.

Another Member drew attention to the £1.1M net savings to the Council following changes to Council Tax support which resulted in many benefits recipients having to pay Council Tax for the first time. He also commented that Shropshire Council had underspent on its Discretionary Housing Payment [DHP] and monies had been returned to Central Government funds that should have been used to support local people.

The Chair of the Performance Management Scrutiny Committee commented that excellent systems were now in place and the money would be efficiently allocated in future with as little as possible returned to Central Government.

The Chief Executive highlighted the new opportunities for improvement that would be afforded through the Council's digital platform whereby a single 'front door' would allow improved tracking and ultimately better support to those in need. He added that more work was needed in this area and a report would be presented to Cabinet in the New Year on these issues. The Leader agreed this way forward and added that getting people back into work and employment also formed part of the equation.

### **RESOLVED:**

- i) That the recommendations from the Welfare Reform Task and Finish Group, as supported by the Performance Management Scrutiny Committee be approved, as follows:
  - That a single process and procedure for managing applications for discretionary hardship support be produced;
  - That work be undertaken with partners to develop a single strategy for supporting people receiving benefits;
  - That any Welfare Strategy be focussed on supporting people into work;

- That ways to better co-ordinate work to support individuals and families be explored with the Council's partners
- ii) That a report on the steps to be taken to implement i) above be made to a future meeting of Cabinet

#### **117 Financial Strategy 2019/20 to 2023/24**

The Portfolio Holder for Finance presented a report from the Head of Finance, Governance and Assurance [s151 Officer] on the Council's Financial Strategy 2019/20 to 2023/24 and provided an update on work completed over the Autumn, including a review of delivery against the plans set out in February and a range of proposals to enable a balanced budget to be set for 2019/20.

A Member commented on the brevity of the report and the dearth of information relating to some of the budget savings and drew particular attention to monies outstanding to the Council from the CCG. The Portfolio Holder for Adult Services, Health and Social Housing reported that the legacy debt had been paid and the figures within the report related to commissioning work; he anticipated that savings would be delivered,

Another Member voiced grave concerns regarding the financial situation of the authority resulting from Government policies. Reliance on the Government's Fairer Funding Strategy was, he believed, a massive gamble.

The Leader gave assurances that the Council would deliver a balanced budget in this and the next financial year. He acknowledged that there were uncertainties going forward but stated that the Council was planning on a worst-case scenario and had taken a conservative approach. The Portfolio Holder for Finance commented that beyond 2019/20 issues would be dealt with when they became certain; he acknowledged that other Councils had taken an alternative view.

#### **RESOLVED:**

That the savings proposals be approved which will deliver a balanced budget as outlined in Appendix 4 to the report, enabling the Leader of Council to take his proposed budget to consultation before reporting to Council on 28 February 2019.

#### **118 Setting the Council Tax Taxbase and Council Tax Support for 2019/20**

The Portfolio Holder for Finance presented a report from the Head of Finance, Governance and Assurance [Section 151 Officer] on the setting of the Council Tax taxbase and Council Tax Support Scheme 2019/20. The Leader commented on the excellent Council Tax collection rate of 98%.

#### **RESOLVED:**

That the following be agreed and recommended to Council for approval:

- i) In accordance with the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 to approve the revised discretionary power to levy a Council Tax premium in relation to dwellings which have been empty for more than two years i.e. increasing the premium to 100% in relation to dwellings which have been empty for more than two years and the resulting inclusion of an additional 503.34 Band D equivalents in the taxbase.
- ii) To approve the publication of a notice regarding the new discretionary Council Tax discount policy awarded in respect of vacant properties within 21 days of the determination.
- iii) To approve two amendments to the Council Tax Support Scheme to exempt claimants from the 20% minimum payment that are in receipt of Universal Credit that meet the qualifying criteria for the severe disability premium, and claimants in receipt of Universal Credit in receipt of limited capability for work related activity element in Universal Credit (that is the equivalent to the support element of employment and support allowance).
- iv) To approve the Council's localised Council Tax Support (CTS) scheme in 2019/20 (as amended). The scheme summary is attached at Appendix B.

On the assumption that the changes to the discount policy in relation to vacant dwellings detailed in Sections 2.1 and 7.3 of this report have been approved, Cabinet members are asked to agree and recommend to full Council:

- v) To approve, in accordance with the Local Authorities (Calculation of Tax Base) (England) Regulations 2012, the amount calculated by Shropshire Council as its Council Tax taxbase for the year 2019/20, as detailed in Appendix A, totalling 111,240.10 Band D equivalents.
- vi) To note the exclusion of 9,211.79 Band D equivalents from the taxbase as a result of localised Council Tax Support.
- vii) To note continuation of the discretionary Council Tax discount policy of 0% in respect of second homes (other than those that retain a 50% discount through regulation as a result of job related protection) and note the inclusion of 729.45 Band D equivalents in the Council Tax taxbase as a result of this discount policy.
- viii) To note continuation of the discretionary Council Tax discount policy to not award a discount in respect of vacant dwellings undergoing major repair, i.e. former Class A exempt properties.
- ix) To note continuation of the discretionary Council Tax discount policy in respect of vacant dwellings, i.e. former Class C exempt properties, of 100% for one month i.e. effectively reinstating the exemption and the resulting exclusion of 294.56 band D equivalents from the taxbase.
- x) To note continuation of the "six week rule" in respect of vacant dwellings, i.e. former Class C exempt properties.



- xi) To note the Council Tax Support Scheme amendments detailed in Section 2.3 and 6 have no impact on the taxbase determination.
- xii) To approve a collection rate for the year 2019/20 of 98.0%.

#### 119 **Treasury Management Update Quarter 2 2018/19**

The Portfolio Holder for Finance presented a report from the Head of Finance, Governance and Assurance [s151 Officer] outlining the treasury management activities of the Council in the last Quarter.

Responding to a Member's question, the Head of Finance, Governance and Assurance stated that he would circulate further information on the investment return of 0.78% to which reference was made in paragraph 8.3 of the report.

#### **RESOLVED:**

That the position as detailed in the report be accepted.

#### 120 **Addressing Unmet Housing Need - Outline Business Case to Establish a Wholly Owned Local Housing Company**

The Portfolio Holder for Planning and Housing Development presented a report from the Director of Place outlining the business case to establish a wholly owned Local Housing Company.

General cross Party support for this initiative was acknowledged together with the overarching accepted aim to provide the right house in the right place to meet the needs of local people.

#### **RESOLVED:**

That the following be recommended to Council:

- In principle that a Council Wholly Owned Local Housing Company be formed.
- The outline governance and constitutional arrangements for the Company detailed in the report are agreed.
- A full business case, business plan, financing and governance arrangements be developed by the Executive Director of Place in consultation with the Portfolio Holder for Planning & Housing Development; and be brought back for final approval.

## 121 **Designation of Norton in Hales, Adderley and Morton Say Parishes as a Neighbourhood Plan Area**

The Portfolio Holder for Planning and Housing Development presented a report from the Director of Place seeking approval for the application by Adderley Parish Council for the three Parish Council areas of Adderley, Moreton Say and Norton in Hales to be considered as a single Neighbourhood Area for the purposes of preparing a Neighbourhood Plan.

### **RESOLVED:**

- i) That the proposed Neighbourhood Area identified on the map in Appendix 2, covering the three Parish Council areas of Adderley, Moreton Say and Norton in Hales (minus the area already covered by the Market Drayton Neighbourhood Area), be agreed as an appropriate basis for the development of a Neighbourhood Plan and notifies Adderley Parish Council accordingly.
- ii) That if the proposed Neighbourhood Area is approved, the three Parish Councils will be able to prepare a Neighbourhood Plan for that area, which will be subject to public consultation, examination and local referendum as set out in Neighbourhood Planning Regulations 2012 as amended. Assuming any subsequent local referendum if successful, Shropshire Council's full Council will then be asked to adopt the final version of the Neighbourhood Plan.

## 122 **European Social Fund - Community Grants**

The Deputy Leader and Portfolio Holder for Corporate and Commercial Support presented a report from the Director of Place summarising the content of the tender response to administer the European Social Fund Community Grants scheme for the areas of Shropshire and Telford and Wrekin. He added that £1.7M funding would be deliverable across Shropshire and Telford and would be administered by Shropshire Council. This was acknowledged by all to be good news for the area.

### **RESOLVED:**

- i) That Shropshire Council becomes the accountable body for the Community Grants Scheme, pending the [Education and Skills Funding Agency] ESFA decision, covering the European Social Funds [ESF] Transitional area of Shropshire and Telford and Wrekin.
- ii) That the development and signing of a Partnership Agreement between Shropshire Council and Telford and Wrekin Council to ensure successful delivery of the programme, be approved

## 123 **Shrewsbury Shopping Centres Next Phase**

The Portfolio Holder for Culture and Leisure and the Chair of the Performance Management Scrutiny Committee left the meeting during consideration of this item.

The Deputy Leader and Portfolio Holder for Corporate and Commercial Support presented a report from the Director of Place setting out the next phase of work required to drive forward the ambition set out in the Shrewsbury Big Town Plan [SBTP] and the purchase of the three shopping centres in the town centre through a cohesive and coordinated delivery approach. He added that the parties of the tripartite agreement comprised Shropshire Council, Shrewsbury Town Council and the BID.

A Member drew attention to the need to reinforce the message that the Big Town Plan relating to the whole of the area in and around Shrewsbury. Another commented that the BTP was the product of a sound partnership together with stakeholder involvement and wide consultation that had been most beneficial and had had a positive impact.

Noting comments by some Members, the Leader stated that Workshops for all Members would be held in the New Year to discuss the options available to deliver the ambition within the SBTP. The Chair of the Place Overview Committee commented on the benefits of scrutiny involvement in this major project to serve as a critical friend and to be involved in the place shaping process going forward that could ultimately be rolled out to market towns in the county.

The Director of Place stressed the importance of place shaping and the transition to a new economy but added that strong commercial development would have to remain confidential at this stage.

In bringing the debate to a close, the Leader accepted that scrutiny would be involved in the process, would have the opportunity to look at the issues and provide feedback. He further re-iterated all Member involvement in the planned workshops in the New Year when more detailed work would get underway.

**RESOLVED:**

- i) That an initial budget of £500,000 be approved to secure the appropriate resources and expertise to prepare a Strategic Development Framework and Masterplan to support the delivery of the Shrewsbury Big Town Plan (to include the redevelopment of Riverside) and the appointment of two dedicated posts to support this implementation.
- ii) That the reallocation of the New Homes Bonus (NHB) capital funding previously agreed to provide part funding for the project be approved.
- iii) That authority be delegated to the Executive Director of Place in consultation with the Portfolio Holders for Economic Growth, to procure, appoint and commence with the work required to create a Strategic Development Framework and Masterplan.

**124 Exclusion of the Public and Press**

**RESOLVED:**

That, in accordance with the provisions of Schedule 12A of the Local Government Act 1972 and Paragraph 10.4 (3) of the Council's Access to Information Rules, the public and press be excluded from the meeting during consideration of the following item.

**125 Shrewsbury Business Park**

The Deputy Leader and Portfolio Holder for Corporate and Commercial Support presented a confidential report from the Director of Place relating to the Shrewsbury Business Park.

**RESOLVED:**

That the two confidential recommendations as detailed in the report be approved.

Signed ..... (Leader)

Date: .....



Committee and Date

Cabinet

16<sup>th</sup> January 2019

## **DRAFT PRIVATE RENTED SECTOR HOUSING ENFORCEMENT POLICY INTRODUCING CIVIL PENALTIES AND RENT REPAYMENT ORDERS FOR CONSULTATION**

**Responsible Officer** Karen Collier, Regulatory Services Operations Manager  
e-mail: karen.collier@shropshire.gov.uk Tel: 01743 251711 Fax

### **1. Summary**

- 1.1 Regulatory Services regulate private rented accommodation to ensure it is safe to live in and free from health and safety hazards. Houses in multiple occupation (HMO) must be licensed and follow extra rules around health and safety.
- 1.2 A Private Sector Housing Enforcement Policy is required to reflect the new powers that have been given to local authorities under the Housing and Planning Act 2016 to impose civil penalties of up to £30,000 as an alternative to prosecution and the extension of rent repayment orders.
- 1.3 The introduction of civil penalties, together with the extension of rent repayment orders to include a wider range of offences, will help the Council to tackle criminal, rogue and irresponsible landlords, improve standards in the private rented sector and ensure that the private rented housing is safe, well managed and properly maintained.
- 1.4 A Draft Policy has been produced for consultation.

### **2. Recommendations**

- 2.1 Members are requested to approve, with any necessary amendments, the draft "Private Sector Housing Enforcement Policy" as set out in Appendix 1 for consultation.
- 2.2 The Regulatory Services Operations Manager undertake an eight week period of consultation, the feedback from which and the proposed policy be brought back before Cabinet for further consideration prior to presentation to Council for adoption.

## REPORT

### 3. Risk Assessment and Opportunities Appraisal

(NB This will include the following: Impact on Children and Vulnerable Adults, Risk Management, Human Rights, Equalities, Community and other Consultation)

- 3.1 Section 126 of The Housing and Planning Act 2016 allows financial penalties to be imposed as an alternative to prosecution for certain offences as set out in Schedule 9 of the Act. Schedule 9 in turn amends the Housing Act 2004 including providing a new Section 249A which has the financial penalties as an alternative to prosecution. The details of the offences to which a civil penalty may be imposed are as set out in section 5.2 of the draft policy.
- 3.2 The Private Rented Sector Housing Enforcement Policy (together with the Council's Better Regulation & Enforcement Policy which is already in place) will help improve housing conditions and the life chances of people, including those with protected characteristics such as people with disabilities and families with children. They will therefore have a positive impact on Equality and Diversity.
- 3.3 The Council cannot issue civil penalties or rent repayment orders without a Private Rented Sector Housing Enforcement Policy in place which will limit the Council's powers to improve housing conditions.
- 3.4 A First-Tier Tribunal has the power to quash, confirm, increase or reduce the civil penalty and the civil penalties regime is currently untried and untested. However, the Government has made it clear that offenders must not derive any financial benefit from their offences and it has briefed the Tribunals on what is expected of them.
- 3.5 Another key risk is that, if there is a substantial increase in the number of investigations, this is likely to result in a corresponding pressure on the existing staffing resources.
- 3.6 An Equality and Social Inclusion Impact Assessment (ESIIA) has been undertaken and will be reviewed following the consultation.

### 4. Financial Implications

- 4.1 The Housing and Planning Act 2016 specifies that all of the income that a local authority receives from the imposition of Civil Penalties and the recovery of Housing Benefit through Rent Repayment Orders can be retained by the local authority to further its statutory enforcement functions in relation to the private rented sector.
- 4.2 However, any income that a local authority receives from Civil Penalties and Rent Repayment Orders but fails to spend in support of one of the activities listed above must be paid into a Central Government Consolidated Fund.
- 4.3 A First-Tier Tribunal would consider any appeal against the imposition of a civil penalty or a request (from tenants or the local authority) for a rent repayment order. In both situations, an unfavourable outcome may affect the Council's income.

## 5. Background

- 5.1 In Shropshire, the private rented sector represents 16% of the housing market (approximately 22,000 properties).
- 5.2 Although Shropshire has some excellent landlords and letting agents, there are criminal, rogue and irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard and or unsafe.
- 5.3 The consultation will be made available on the Shropshire Council Website and will be open to the public and stakeholders to put forward their comments. An offer will also be made to the National Landlords Association Branch meeting for a presentation and discussion on the proposed policy.
- 5.4 The draft policy sets out enforcement criteria regarding private rented sector housing which supplements the generic approach to enforcement described in the Council's existing Better Regulation and Enforcement Policy.
- 5.5 The Government has pledged to crack down on rogue landlords and has introduced a number of measures, under the Housing and Planning Act 2016, to help local authorities deal more robustly with criminal, rogue and irresponsible landlords:
- **Civil penalties of up to £30,000** as an alternative to prosecution for certain specified offences;
  - **Extension of rent repayment orders** to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences;
  - **Database of rogue landlords and property agents** who have been convicted of certain offences or received multiple civil penalties; and
  - **Banning orders** for the most serious and prolific offenders.
- 5.6 The maximum civil penalty that can be imposed for an offence is £30,000, but it is for the Council to determine the level of civil penalty. A method for determining the civil penalty amount is proposed in the draft policy.

## 6. Additional Information

- 6.1 The draft policy also sets out supplementary private rented sector housing enforcement activities including the licensing of houses in multiple occupation (HMO).
- 6.2 The Housing and Planning Act 2016 extended mandatory HMO licensing, so HMOs occupied by five or more people, in two or more households, must obtain a licence, irrespective of the number of storeys of the property. This is a mandatory legal requirement.

**List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

None

**Cabinet Member (Portfolio Holder)**

Councillor Lee Chapman

**Local Member**

N/A – countywide.

**Appendices**

1. Draft Private Rented Sector Housing Enforcement Policy



## **APPENDIX 1: Draft Private Rented Sector Housing Enforcement Policy**

### **CONTENTS**

- 1.0 Introduction**
- 2.0 Purpose and Scope of Policy**
- 3.0 Regulation of Private Rented Sector**
- 4.0 Statutory Notices**
- 5.0 Civil Penalties**
- 6.0 Rent Repayment Orders**
- 7.0 Banning Orders**
- 8.0 Database of Rogue Landlords and Letting Agents**
- 9.0 Powers of Entry**
- 10.0 Licensing of Houses in Multiple Occupation**
- 11.0 Works in Default**
- 12.0 Appeals**
- 13.0 Housing Associations / Registered Social Landlords**
- 14.0 Guidance**

## 1.0 Introduction

- 1.1 Shropshire Council's Regulatory Services is committed to improving standards in private rented sector housing, bringing empty homes back into use and ensuring private rented accommodation is well managed, properly maintained and safe and habitable.
- 1.2 The private rented sector plays an important role in the County's housing market. Shropshire Council shares the Government's desire to support good landlords and agents who provide decent well-maintained homes and to crack down on unscrupulous landlords who are flouting the law and seeking profit from their non-compliance.
- 1.3 Shropshire Council is keen to strike the right balance on regulation in order to avoid stifling investment in this sector. A small number of rogue or criminal landlords knowingly rent out unsafe and substandard accommodation. The Council is determined to create a level playing field for all landlords by dealing robustly with criminal, rogue and irresponsible landlords.
- 1.4 We provide advice and guidance to assist landlords and property agents in complying with their legal requirements.
- 1.5 We advise tenants of their rights and obligations and how they can try and resolve a situation prior to any involvement being required by the Council. We expect private tenants to contact their landlord to report any issues before contacting us. This ensures that landlords are aware of issues and gives them an opportunity to resolve them. We have more information on how to report issues on [our website](#). Where works are needed we would expect tenants to co-operate with the landlord to facilitate the repair. Social tenants are expected to go through the complaints procedure of the relevant Housing Association prior to any involvement being required by the Council.
- 1.6 The Housing and Planning Act 2016 introduced the following measures to crack down on criminal, rogue and irresponsible landlords:
  - Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences;
  - Extension of rent repayment orders to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences;
  - Database of rogue landlords and property agents who have been convicted of certain offences or received multiple civil penalties;
  - Banning orders for the most serious and prolific offenders.

## **2.0 Purpose and Scope of this Policy**

- 2.1 This policy sets out enforcement criteria regarding private rented sector housing which supplements the generic approach to enforcement described in the Council's Better Regulation and Enforcement Policy.
- 2.2 This policy is aimed at the regulation of the private rented sector which will include housing association properties except those owned by Shropshire Council.
- 2.3 The supplementary private rented sector housing enforcement activities set out in this policy include the licensing of houses in multiple occupation (HMO), the service of statutory notices as well as the following measures introduced by the Housing and Planning Act 2016 which aim to tackle rogue landlords and improve the private rental sector:
- Civil penalties which can be used as an alternative to prosecution,
  - Banning Orders for the most prolific offenders
  - Database of rogue landlords/property agents.
  - Rent Repayment Orders (RROs).
- 2.3 This policy takes into account the statutory guidance that has been issued by the Government under Schedule 9 and Section 41 of the Housing and Planning Act 2016.

## **3.0 Regulation of Private Rented Sector Housing**

- 3.1 Regulatory Services respond to complaints from tenants and other residents about private rented sector housing, prioritising the complaints on the basis of an assessment of the risk and seriousness. If enforcement action is necessary, a variety of regulatory powers may be used to address and resolve the problem.
- 3.2 Housing issues will primarily be dealt with under the Housing Act 2004 but this is not exclusive and where circumstances are appropriate, other legislation will be used such as:
- Environmental Protection Act 1990: we will use this where a property defect is considered prejudicial to health or causing a nuisance
  - Building Act 1984: we will use this to tackle drainage issues and dangerous buildings or building elements (in collaboration with the Building Control Team)
  - Smoke and Carbon Monoxide Alarm (England) Regulations 2015: we will use this where there is a lack of smoke alarm or where there is no carbon monoxide detector in a room with a solid fuel burning appliance.
- 3.3 The Housing, Health and Safety Rating System (HHSRS) is set out in Part 1 of the Housing Act 2004. It is a method of assessing how likely it is that the condition of a property will cause an unacceptable hazard to the health of the occupant(s). There are two categories of possible hazards:

- Category 1 hazards represent a serious danger to health and the Council has a duty to take appropriate action to deal with these.
  - Category 2 hazards represent a lesser danger and, although it has no duty to take action, the Council will exercise its power to reduce category 2 hazards through appropriate action.
- 3.4 The HHSRS is an evidence based risk assessment procedure which considers any one of 29 hazards that may be present in a dwelling. The risk that any such hazard may impact on the most vulnerable, potential occupant of that dwelling is then used to generate a score. These scores are categorised to determine the consistent level of duty the Council has with regards to the seriousness of hazards that can cause harm in dwellings and then what enforcement action is the most proportionate and suitable in each case.
- 3.5 The approach followed by Regulatory Services when making decisions in respect of enforcement decisions is set out in the Council's Better Regulation and Enforcement Policy. We aim to achieve compliance through advice, This policy provides supplementary enforcement information in relation to private rented sector housing provisions.
- 3.6 Charges will be made for any formal enforcement action that the Council takes (see Council's fees and charges for further information).

### **Statutory Notices**

- 4.1 Following an inspection and subsequent assessment, where the rating shows that there are hazards which are classed as Category 1, the Council is under a duty to take appropriate enforcement action. Where the rating shows the hazard is classed as Category 2, the Council is not under a duty to take action but it may still do so where it is deemed necessary and proportionate to the hazard.
- 4.2 The forms of appropriate enforcement action that can be taken are as follows:
- For Category 1 Hazards:**
- Emergency remedial action under (Housing Act 2004, Section 40)
  - Emergency prohibition order (Housing Act 2004, Section 43)
- For Category 1 or Category 2 Hazards:**
- Improvement notice (Housing Act 2004, Section 11 & Section 12)
  - Prohibition order (Housing Act 2004, Section 20 & Section 21)
  - Hazard awareness notice (Housing Act 2004, Section 28 & Section 29)
  - Demolition order (Housing Act 1985, Section 265(1) & Section 265(2))
  - Declaring the area in which the premises concerned are situated to be a clearance area (Housing Act 1985, Section 289(2))
- 4.3 Where the issuing of a Notice is considered necessary, Section 49 of the Housing Act 2004 permits Local Authorities to make a reasonable charge for such Notices as a means of recovering certain administrative and other expenses incurred. The decision to impose this charge and the amount will be dependent on how much time the Officer has spent in resolving the issue with the landlord. We always want to resolve issues as quickly as we can and the co-operation of the landlord is very

much a factor on amount of administration expense incurred. Section 50 of the Housing Act 2004 gives us the powers to recover this expense. A charge can be placed as a Local Land Charge on the premises to which it relates. This is recorded in the register of local land charges kept by the Council. This register is normally searched during a property sale by purchasers.

## **5.0 CIVIL PENALTIES**

5.1.0 Section 126 and Schedule 9 of the Housing and Planning Act 2016 gives Local Authorities the power to impose civil penalties (financial penalties) of up to £30,000 on individuals and organisations, as an alternative to prosecution, for certain Housing Act 2004 offences.

5.1.1 If the Council believes that it has a reasonable prospect of a conviction in a particular case, it will always consider a civil penalty in the first instance and only by exception will it seek alternative measures such as prosecution or formal cautions.

5.1.2 Cases put forward for Civil Penalties, in preference to prosecution, will still have to satisfy the Council that there is a realistic prospect of conviction should the decision have been to take a prosecution for the case. The case would still be required to meet the evidential and public interest elements required.

5.1.3 Any money received from Civil Penalties is retained by the Council and then must be specifically utilised to support the work of the team in enforcing standards in the Private Rented Sector.

## **5.2 Housing offences covered by civil penalties**

5.2.1 The power given to local authorities to impose a civil penalty, as an alternative to prosecution for certain specified housing offences, was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

5.2.2 Civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 listed below:

- Section 30 - Failure to comply with an Improvement Notice
- Section 72 - Offences in relation to licensing of Houses in Multiple Occupation
- Section 95 - Offences in relation to licensing of houses under Part 3 of the Act
- Section 139 - Offences of contravention of an overcrowding notice
- Section 234 - Failure to comply with management regulations in respect of Houses in Multiple Occupation

5.2.3 Although only one civil penalty can be issued (as an alternative to prosecution) for each of the first 4 offences listed in paragraph 4.2.2 above, a civil penalty can be issued for each separate breach of the HMO Management Regulations.

## **5.3 Factors to be considered to determine the level of civil penalty**

5.3.1 In order to ensure that the civil penalty is set at an appropriate level, local housing authorities should consider the following factors set out in the Statutory Guidance issued by the Department for Communities and Local Government in April 2017:

a) **The severity of the offence**

The more serious the offence, the higher the civil penalty should be.

b) **The culpability and track record of the offender**

A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

c) **The harm caused to the tenant**

The greater the harm or the potential for harm, the higher the civil penalty will be.

d) **The punishment of the offender**

A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

e) **Whether it will deter the offender from repeating the offence**

The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future.

f) **Whether it will deter others from committing the offence**

While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

g) **Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence**

The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

## 5.4 Determining the Civil Penalty Amount

5.4.1 The table below provides an indication of the level of fine that is likely to be appropriate taking into account both culpability and harm.

<b>H A</b>	<b>HIGH</b>	£15,000 - £19,999	£20,000 - £24,999	£25,000 - £30,000
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R M	MEDIUM	£10,000 - £14,999	£15,000 - £19,999	£20,000 - £24,999
	LOW	£0 - £4,999	£5,000 - £9,999	£10,000 - £14,999
		LOW	MEDIUM	HIGH
<b>CULPABILITY</b>				

5.4.2 £30,000 is the maximum level of fine permitted under the legislation.

5.4.3 The starting point in each band will be the mid-point i.e. for Band 1 the mid-point will be £2,500.

5.4.4 The penalty may be increased by £1,000 for each aggravating factor up to a maximum of the top of the band level determined above.

5.4.5 The penalty may be decreased by £1,000 for each mitigating factor up to a maximum of the bottom of the band level determined above.

5.4.6 When considering aggravating and mitigating factors the civil penalty imposed must remain proportionate to the offence.

5.4.7 An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.

5.4.8 In determining the level of harm the Council will have regard to:

- The person i.e. physical injury, damage to health, psychological distress
- To the community i.e. economic loss, harm to public health
- Other types of harm i.e. public concern/feeling over the impact of poor housing conditions on the local neighbourhood

The nature of harm will depend on the personal characteristics and circumstances of the victim e.g. tenant.

5.4.9 Where no actual harm has resulted from the offence the Council will consider the relative danger that persons have been exposed to as a result of the offender’s conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

5.4.10 Factors that indicate a higher degree of harm include:

- Multiple victims
- Serious or psychological effect on the victim
- Victim is particularly vulnerable

5.4.11 Examples of Harm Categories

High	Housing defect giving rise to the offence poses a serious and substantial risk of harm to the occupants and/or visitors; e.g. danger of electrocution, carbon monoxide poisoning or serious fire safety risk
Medium	Housing defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors; e.g. falls between levels, excess cold, asbestos exposure

Low	Housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors; e.g. localised damp and mould, entry by intruders
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5.4.12 In determining culpability the Council will have regard to 4 levels of culpability. Where the offender:

- Has the **intention** to cause harm, the highest culpability where an offence is planned
- Is **reckless** as to whether harm is caused i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences, even though the extent of the risk would be obvious to most people.
- Has **knowledge** of the specific risks entailed by their actions even though they do not intend to cause the harm that results.
- Is **negligent** in their actions.

5.4.13 Examples of culpability

High (Deliberate Act)	An intentional breach by a landlord or property agent or flagrant disregard for the law. For example, by failing to comply with a notice or regulations.
High (Reckless Act)	An actual foresight of, or wilful blindness to the risk of offending, but decides to take the risk nevertheless. For example, failing to comply with a strict liability in the HMO regulations.
Medium (Negligent Act)	The failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding the offence. For example, partial compliance with a schedule of work to an enforcement notice but failure to fully comply with all schedule items.
Low (Low or no culpability)	The offence committed has some fault on the part of the landlord or property agent but there are other circumstances for example obstruction by the tenant to allow a contractor access for repairs, or damage caused by tenant negligence.

## 6.0 RENT REPAYMENT ORDERS

6.1 Rent Repayment Orders were introduced by the Housing Act 2004 to cover situations where a landlord had failed to obtain a licence for a property where one is required.

6.2 The use of these Orders has now been extended by the Housing and Planning Act 2016 to cover a wider range of offences. These are outlined below:

- Failure to comply with an Improvement Notice served under the Housing Act 2004
- Failure to comply with a Prohibition Order served under the Housing Act 2004
- Breach of a Banning Order made under the Housing and Planning Act 2016



- Illegal eviction or harassment of the occupiers of a property under the Protection of Eviction Act 1977
- Using violence to secure entry to a property under the Criminal Law Act 1977

- 6.3 Rent repayment orders can be granted to either the tenant or the local authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis
- 6.4 A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.
- 6.5 The Council must consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the Council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.
- 6.6 The Council will also offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves.
- 6.7 Where a landlord has been convicted of the offence to which the rent repayment order relates the First-tier Tribunal must order that the maximum amount of rent is repaid, capped at a maximum of 12 months.
- 6.8 An Order can also be applied for where an offence has been committed but a landlord has not been convicted of one of the above offences. In this instance the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence. In this instance when considering how much rent should be recovered the following factors should be taken into consideration:
- The Rent Repayment Order should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities
  - The level of the penalty should be such that it is likely to deter the offender from repeating the offence
  - The imposition of the Order will be in the public domain so robust and proportionate use of them will dissuade others from committing similar offences
  - Removal of any financial benefit the offender may have obtained as a result of committing the offence

## **7.0 BANNING ORDERS**

- 7.1 The Housing and Planning Act 2016 gives Councils the option of applying for a Banning Order to prevent a person from managing rented property, where they have been prosecuted for a relevant offence.
- 7.2 In deciding whether to apply for an Order the following will be considered:

- The seriousness of the offence to which the person has been convicted
- Any previous convictions the person has for a banning order offence
- Whether the person has at any time been included in the database of rogue landlords and property agents
- The likely effect of the banning order on the person and anyone else who may be affected by the order

7.3 Banning Orders must be for a minimum of 12 months except for certain exemptions.

7.4 Any person who is subject to a Banning Order may not hold a HMO licence.

## **8.0 DATABASE OF ROGUE LANDLORDS AND LETTING AGENTS**

8.1 The database will contain details of landlords and property agents who have been convicted of a Banning Order offence or have received two or more civil penalties by any Local Authority, in any 12 month period.

Banning order offences are specified in legislation and can be for landlords or property agents who have been convicted of particular serious offences and/or are repeat offenders.

A number of offences set out in the regulations are not directly related to housing, such as fraud, sexual assault, misuse of drugs, theft and stalking. To result in a banning order such an offence must be committed:

- against or in collusion with her/his tenant or licensee (or member of her/his household) or at (or in relation to) the property let out, and
- at a time when the offender was a landlord or property agent of that property, and
- by an offender who was sentenced in the Crown Court.

The offence can also be for relevant housing offences including any offence under the Housing Act 2004, committing or causing overcrowding, providing a local authority with false or misleading information, continuing to let to illegal immigrants, or illegally evicting or harassing as residential occupier.

8.2 Their details can be entered on the National Database of Rogue Landlords and Property Agents. This national database is an important tool to assist local authorities and prospective tenants identify landlords who have failed to maintain their properties to the required standard.

## **9.0 Powers of Entry**

9.1 Authorised officers have a power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that they have given 24 hours' notice to the owner (if known) and the occupier (if any) of the premises they intend to enter. These duties are:

- Enter a property to carry out an inspection
- Take any appropriate persons with them
- Take equipment or materials with them
- Take measurements, photographs or make recordings

- Take samples of articles or substances

9.2 If admission is refused, then a warrant may be granted by a Justice of the Peace on written application. A warrant under this section includes power to enter by force, if necessary.

9.3 No notice is required where entry is to ascertain whether an offence has been committed under certain sections of the Act relating to HMO's.

## **10.0 Licensing of Houses in Multiple Occupation**

10.1 The Housing Act 2004 introduced a mandatory licensing system for certain types of Houses in Multiple Occupation (HMO). The aim of licensing is to ensure that every licensable HMO is safe for the occupants and visitors and is properly managed.

10.2 An HMO is a house or flat that is occupied as a main residence, by more than one household, where occupiers share facilities such as kitchens, bathrooms and WCs. This would include, for example, houses containing bedsits, a combination of bedsits and self-contained flats where the bedsits share facilities, and also shared houses and hostels. In addition, houses entirely converted into self-contained flats not in strict compliance with the Building Regulations 1991, with at least one third occupied as flats on short tenancies are classed as HMOs.

10.3 Since 1<sup>st</sup> October 2018, the Housing and Planning Act 2016 extends mandatory HMO licensing, so HMOs occupied by five or more people, in two or more households, must obtain a licence, irrespective of the number of storeys of the property. This is a mandatory legal requirement.

10.4 The responsibility for applying for a licence rests with the person having control of or the person managing the property.

10.5 The Housing Act 2004 sets out a number of HMO licensing related offences all of which carry an unlimited fine, including:

- Operating an unlicensed HMO or allowing an HMO to be occupied by more persons than a licence allows
- Breach of licence condition
- Supplying incorrect information in a licence application

10.6 A civil penalty can be issued as an alternative to prosecution for each separate breach of the HMO management regulations.

10.7 In addition to the above, a landlord who operates an unlicensed HMO can be subject to a Rent Repayment Order (RRO). The Council may also decide to apply a Civil Penalty for certain offences using the Housing and Planning Act 2016.

10.8 Generally, any breach of licence condition will be dealt with informally initially. However, if the breach is serious and affects the safety of the occupants or the responsible person does not carry out necessary works within an agreed timescale, the Council will pursue enforcement action in line with the Council's Better Regulation and Enforcement Policy.

- 10.9 In serious cases An Interim Management Order (IMO) transfers the management of a residential property to the Council for a period of up to twelve months. In exceptional circumstances the Council can also apply for a Final Management Order (FMO) which can last for up to five years.
- 10.10 Licence Holders and HMO Managers will be assessed in order to determine whether they are a fit and proper person having regard to:
- any previous convictions relating to violence, sexual offences, drugs and fraud;
  - contraventions of any laws relating to housing, public health or landlord and tenant issues;
  - any convictions for unlawful discrimination;
  - previous HMO licence refusals;
  - training and qualifications through professional bodies and/or landlord accreditation schemes.
  - Basic Disclosure result. The Council requires that a Basic Disclosure is undertaken for the proposed licence holder and manager of the HMO. Where a company is either the licence holder and/or the manager, each Company Director/Partner will be required to undertake a Basic Disclosure.

## **11.0 Works in Default**

- 11.1 In certain circumstances the Council may decide to carry out works detailed in any enforcement Notice or Order. Such action can be taken with or without the agreement of the responsible person. If works in default are undertaken a Civil Penalty can still be imposed or a prosecution considered.
- 11.2 The Council is not obliged to carry out the works in default and reserves the right not to do so. We will avoid actions that may encourage owners, landlords and agents to be non-compliant, such as carrying out costly works in default where it may be difficult for the Council to recover its costs.
- 11.3 When taking action with the agreement of the person concerned, the Council may take any action which that person is required to take in relation to the Notice/Order. However taking action by agreement will only generally be considered where it is felt that the relevant person is for whatever reason incapable of organising, executing and overseeing the necessary works. Any such work undertaken will be at the expense of the person concerned.
- 11.4 Taking action without the agreement of the person concerned, will be considered as a course of action in the following circumstances:
- Where there is a significant risk to health and safety
  - Where a person has failed without “reasonable excuse” to comply with the requirements of an Improvement Notice
  - Where reasonable progress, in relation to the requirements of the Notice/Order, is not being made
  - Where it is likely that the Council will be able to recover its costs.
- 11.5 Where the Council has undertaken works in default, or exercises its power to take Emergency Remedial Action, it will seek to recover the cost of the work carried out and our reasonably incurred expenses for organising the work. The expenses will

carry interest from the date of service until payment of all sums due under the demand at a rate of 2%. A charge will also be placed as a Local Land Charge on the premises to which it relates.

## **APPEALS**

- 12.1 There is a right of appeal against any formal notice, order or decision made by the council. All appeals should be made to a First-tier Tribunal and must be made within a specified time from the date the notice was served. Tribunals are informal bodies and do not operate like courts. They will hear cases presented by each side. The Tribunal may confirm, cancel or change the notice, order or decision.
- 12.2 In the case of imposing a civil penalty, a local housing authority is required to issue a 'notice of intent' to issue a financial penalty. Under this notice a landlord has 28 days with which to make representations to the local housing authority. At the end of this period, should the local housing authority still propose to issue the financial penalty, they must serve a 'final notice' imposing the penalty.
- 12.3 On receipt of a final notice imposing a financial penalty a landlord can appeal to the First-tier Tribunal against the decision to impose a penalty and/or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. The final notice is suspended until the appeal is determined or withdrawn.
- 12.4 The appeal will involve a re-hearing of the Council's decision to impose the civil penalty. The Tribunal has the power to confirm, vary (increase or decrease) or cancel the civil penalty that the Council has issued.
- 12.5 The First-tier Tribunal can dismiss an appeal if it is satisfied the appeal is frivolous, vexatious or an abuse of process, or it has no reasonable prospect of success.
- 12.6 The Council intends to defend its decision to issue civil penalties rigorously and this will involve not only Officer time and resources but also specialist legal support.

### **13.0 Housing Association / Registered Social Landlords**

Housing Association / Registered Social Landlords have published arrangements for reporting problems and clear response times for tenants addressing these issues. If tenants feel that repairs have not been carried out to their satisfaction, each Housing Association / Registered Social Landlords has a complaints procedure that the tenant should follow. Because of this we will not normally investigate issues from Housing Association / Registered Social Landlords tenants, unless the reporting and complaints procedure has been followed and the landlord has then failed to take appropriate action.

### **14.0 Guidance**

- 14.1 This Policy has been developed with regard to the following:
  - Shropshire Council's Better Regulation and Enforcement Policy
  - The Housing and Planning Act 2016

- Civil Penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities – Department for Communities and Local Government (published April 2017)



Committee and Date

Cabinet

16 January 2019

## **SHROPSHIRE SCHOOLS FUNDING FORMULA 2019-20**

**Responsible Officer** Karen Bradshaw

e-mail: karen.bradshaw@shropshire.gov.uk Tel: 01743 252407

### **1. Summary**

In July 2018 the Education and Skills Funding Agency (ESFA) published the 2019-20 school revenue guidance for local authorities and schools forums. Next year will be the second year of the national funding formula (NFF) for schools, high needs and central schools services, following the Government's announcement in September 2017 on school funding arrangements for 2018-19 and 2019-20.

At their meeting on 10 January 2018, Cabinet approved the recommendation from Shropshire Schools Forum to replicate the NFF, through Shropshire's local funding formula, from 2018-19.

The ESFA require the proposed formula for 2019-20 to be politically approved by mid-January 2019. This paper therefore sets out the proposals, agreed by the Shropshire Schools Forum on 22 November 2018, for Cabinet approval.

### **2. Recommendation**

That Cabinet accept the recommendation of Shropshire Schools Forum on the funding formula for Shropshire schools for the financial year 2019-20 for maintained schools, and the academic year 2019-20 for academies.

## **REPORT**

### **3. Risk Assessment and Opportunities Appraisal**

The 14 September 2017 announcement by the Secretary of State for Education on the planned changes to the school funding arrangements for 2018-19, placed a requirement on local authorities to formally consult with maintained schools and academies on the schools funding formula.

Shropshire schools were consulted in the autumn term 2017 on the basis of distributing the Schools Block of the Dedicated Schools Grant (DSG) to Shropshire schools and academies. Following this consultation

Shropshire Schools Forum recommended, and Cabinet agreed, the distribution of individual school budgets for 2018-19 and 2019-20 in line with the transitional NFF announced by the Government in July 2017.

In July 2018, the Government's announcement on school funding arrangements confirmed that this local flexibility on the basis for distributing funding to schools through the local funding formula would be extended to 2020-21 i.e. a further year.

At their meeting on 22 November 2018, Shropshire Schools Forum considered specific arrangements for 2019-20, with a view to these arrangements being politically ratified by Cabinet early in the Spring term 2019, in line with ESFA requirements.

#### **4. Financial Implications**

The school funding formula is used to determine how part of the Council's DSG allocation, in particular the Schools Block, is distributed to Shropshire maintained schools and academies. The individual school 'budget shares' determined by the formula represent a significant proportion of the annual revenue funding for maintained schools for the financial year, and funding for academies for the academic year.

The funding for maintained schools is distributed through the local authority, while the ESFA uses the formula to allocate funding direct to Shropshire's academies and the county's one free school.

Shropshire DSG has remained largely unchanged since 2012-13. In 2015-16 Shropshire, along with 68 other local authorities in England, received a share of £390 million in additional DSG funding, addressing an acknowledged historic unfairness in the school funding system. Shropshire's schools benefitted from this additional funding, which provided an additional £10.4 million funding for Shropshire schools and academies.

In July 2017 the announcement on the future arrangements for school funding confirmed the introduction from April 2018 of a NFF for schools and pupils with high needs. The announcement included a commitment to additional funding of £1.3 billion nationally for schools in 2018-19 and 2019-20.

#### **5. Background**

Shropshire Schools Forum has a statutory consultative and advisory role in respect of school funding, while the responsibility for determining and approving the funding formula rests with the local authority. The ESFA require formal political approval of the schools funding formula, hence why this report has been brought to Cabinet.



The Government has acknowledged for some time that the current system for funding schools across the country is unfair, lacks transparency and is out of date. In 2016 and early 2017 the Government consulted on proposals for the implementation of a NFF.

In September 2017, the Government confirmed the funding arrangements for schools for the next two years. The headlines were:

- the NFF will not be fully implemented until 2020-21
- over the next two years the school level formula will be used to calculate how much funding each local authority will receive
- local authorities will be able to implement the new NFF or to apply their existing local formula to the notional funding allocations in 2018-19 and 2019-20, subject to consultation with their Schools Forum and schools community
- new absolute minimum levels of funding per pupil in primary and secondary schools were set:
  - primary - £3,300 in 2018-19 and £3,500 in 2019-20
  - secondary - £4,600 in 2018-19 and £4,800 in 2019-20
- every school will receive a minimum increase in funding of 0.5% per pupil in each of the next two years (noting that this will not protect schools with falling pupil numbers).

## **6. School Funding Arrangements for 2019-20**

The latest guidance on schools revenue funding arrangements for 2019-20 was published by the ESFA in July 2018. The guidance included an update to the NFF for 2019-20, along with a number of policy changes. The Government has also published illustrative local authority level allocations for 2019-20 for the schools, high needs and central school services blocks within the DSG and illustrative NFF calculations for the Schools Block for all maintained schools and academies in each local authority area.

The Government has confirmed that the NFF will now not be fully implemented until 2021-22 and so funding will be distributed through the local funding formula for a further year.

Shropshire Schools Forum considered a paper on the *School Funding Arrangement 2019-20* at their meeting on 22 November 2018, which is appended to this report.

Shropshire Schools Forum considered and agreed a number of additional specific technical arrangements for 2019-20, designed to align the local funding formula for Shropshire schools and academies as closely as possible to the NFF. As well as applying the NFF formula values and weightings, Schools Forum agreed the following:

- Shropshire’s 2019-20 local funding formula to include a Minimum Funding Guarantee (MFG) at minus 1.5% to ensure the formula allocations continue to mirror the NFF.
- The submission of a disapplication request to the Secretary of State to allow the local funding formula to mirror the alternative gains cap methodology with the NFF.
- The continued operation for 2019-20 of an additional targeted high needs contingency, funded from the High Needs Block of the DSG.
- Agreement to transfer, as in 2018-19, up to the maximum 0.5% allowable of the Schools Block funding, into the High Needs Block to offset significant cost pressures in this area

**Cabinet are recommended to approve a schools funding formula for 2019-20 that delivers funding to Shropshire schools and academies through the application of the NFF formula factors and weightings.**

**List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

Schools Forum website - <https://shropshire.gov.uk/committee-services/ieListMeetings.aspx?Committeeld=632>

**Cabinet Member (Portfolio Holder)**

Nick Bardsley

**Local Member**

All Council members

**Appendices**

Appendix 1 – Schools Forum report – School Funding Arrangements 2019-20 – 22 November 2018

## Appendix 1



### Schools Forum

Date: 22 November 2018

Time: 8:30 a.m.

Venue: Shrewsbury  
Training and Development  
Centre

Paper

# B

Public

## School Funding Arrangements 2019-20

**Responsible Officer** Gwyneth Evans

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### Summary

Following consultation with all Shropshire maintained schools and academies, Shropshire Schools Forum agreed to recommend to Cabinet the distribution of funding to schools for 2018-19 and 2019-20 in line with the transitional national funding formula (NFF) introduced by the Government.

This report details additional specific funding arrangements from April 2019 for consideration and agreement by Schools Forum in relation to the minimum funding guarantee, a disapplication request required to mirror the NFF through Shropshire's local funding formula, the basis for calculating Element 2 of a school's notional SEN budget and the potential transfer of funding between funding blocks.

### Recommendation

Schools Forum is recommended to consider and approve the specific funding arrangements from April 2019 as detailed within this report.

## REPORT

### Background

1. In July 2017, the Government announced the introduction of a national funding formula (NFF) for allocating Dedicated Schools Grant (DSG) to local authorities from April 2018 with transitional arrangements for 2018-19 and 2019-20.
2. Local authorities, in consultation with their schools and Schools Forum, have local flexibility on the basis for distributing the funding to schools through the local funding formula in 2019-20 and following the Government's announcement of school funding arrangements in July, this local flexibility has been extended into 2020-21.
3. Shropshire schools were consulted on the basis for distributing the Schools Block of the DSG to Shropshire schools in the autumn term 2017. Following

that consultation, Schools Forum recommended, and the Council's Cabinet agreed, the distribution of individual school budgets for 2018-19 and 2019-20 in line with the transitional national funding formula announced by the Government.

4. Schools Forum members are asked to consider and agree specific arrangements for 2019-20 as detailed within this report. Cabinet will make a final decision on the school funding arrangements for 2019-20 in January 2019.

### **Minimum Funding Guarantee (MFG)**

5. Local authorities are required to continue to set a pre-16 MFG in the local funding formula to protect schools from excessive year on year changes to funding. The MFG in the 2019-20 local funding formula protects against 2018-19 funding levels. The local authority can set a MFG within the local formula between minus 1.5% and plus 0.5% per pupil.
6. The MFG offers a different level of protection to the funding floor protection within the NFF which for 2019-20 is based on a 1% per pupil (pupil-led factors) increase compared to a 2017-18 per pupil funding baseline.
7. Setting the MFG at plus 0.5% within the 2019-20 local funding formula would see some Shropshire schools receiving more funding than the NFF with the funding floor protection would deliver. Financial modelling demonstrates that for each individual Shropshire school the NFF funding floor protection would deliver more than the MFG set at minus 1.5%.
8. **It is therefore recommended that Shropshire's local funding formula for 2019-20 includes the MFG at minus 1.5% to ensure the local funding formula allocations continue to mirror the NFF.**

### **Disapplication of School Finance Regulations**

9. As for 2018-19, to mirror the NFF alternative gains cap, which allows smaller schools to gain more than the 3% per pupil (pupil-led factors) gain over the previous year where appropriate, local authorities are required to apply to the Secretary of State to disapply the School and Early Years Finance Regulations.
10. Based on October 2017 census data the alternative gains cap in 2019-20 would relate to 36 Shropshire schools ranging in size from 21 on roll to 105 on roll.
11. **Schools Forum is recommended to agree the submission of a disapplication request to the Secretary of State to allow the local funding formula to mirror the alternative gains cap methodology within the NFF.**

### **Additional Targeted High Needs Contingency Funding**

12. With the introduction of schools funding reforms in 2013-14, Shropshire Schools Forum agreed an additional targeted high needs contingency budget

to provide additional funding to schools where Element 2 funding within a schools notional SEN budget, based on an element of the age weighted pupil unit (AWPU) funding, and the proxy indicators of free school meals (FSM), the Income Deprivation Affecting Children Index (IDACI) and low prior attainment, do not provide enough funding to meet the requirement for the school to contribute £6,000 towards the costs of meeting the needs of each high needs pupil in the school and leave 20% remaining for pupils not deemed to be high needs but requiring additional support.

13. The additional targeted high needs contingencies are funded from the High Needs Block of the Dedicated Schools Grant (DSG).
14. As Schools Forum are aware, the national funding formula distributes significantly higher levels of funding against the deprivation and low prior attainment formula factors and lower levels against primary and KS3 AWPU values compared to Shropshire's local funding formula prior to 2018-19 when the targeted high needs contingency arrangements were put in place.
15. Using the NFF values for calculating the Element 2 of a school's notional SEN budget within the funding formula from April 2018 meant very few, if any, schools would trigger the targeted high needs contingency funding even though for some schools the additional costs of meeting the £6,000 commitment to their high needs pupils will more than offset the overall gain received through the funding formula based on the NFF values.
16. Schools Forum agreed that for the 2018-19 financial year, the 2017-18 values for AWPU contribution, FSM, IDACI and low prior attainment were to be used to calculate a schools Element 2 funding for determining additional targeted high needs contingency allocations to schools from the High Needs Block of the DSG. This ensured consistency of funding for schools and allowed time to fully review the basis for calculating Element 2 of a school's notional SEN budget under the new NFF values within the funding formula for 2019-20 onwards.
17. A review of the basis for calculating Element 2 of a school's notional SEN budget has not yet taken place and so it is recommended that the current calculation basis continues for the 2019-20 financial year to ensure consistency of funding.
18. **Schools Forum is recommended to approve this approach for 2019-20.**

### **Movement between Funding Blocks**

19. The schools block of the DSG will be ring-fenced again in 2019-20, but local authorities will retain limited flexibility to transfer up to 0.5% of their schools block funding into another block, with the approval of Schools Forum.
20. In 2018-19 Shropshire's schools block fully funded the transitional NFF for Shropshire schools, including the transitional funding floors and gains caps, and had just short of the maximum allowable 0.5%, £784k, available to transfer with Schools Forum approval into the High Needs block to support significant cost pressures on meeting the needs of high needs pupils and students in Shropshire.

21. Until the actual October 2018 dataset is run through the local funding formula for 2019-20 it isn't known whether there will be any schools block funding remaining in 2019-20.
22. However, if there is schools block funding remaining **it is recommended Schools Forum agree to its transfer, up to the maximum 0.5% allowable, into the High Needs block to offset significant cost pressures in this area, as in 2018-19.**

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

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