



# CABINET

Monday, 15th July, 2019  
at 6.00 pm

Council Chamber Hackney Town Hall, Mare Street, London E8 1EA

## MAYOR AND CABINET (The Executive)

### Councillors:

Mayor Philip Glanville (Chair)

Mayor of Hackney

Councillor Anntoinette Bramble (Vice-Chair)

Deputy Mayor of Hackney and Cabinet Member for Education, Young People and Children's Social care

Councillor Christopher Kennedy

Cabinet Member for Families, Early Years and Play

Councillor Jon Burke

Cabinet Member for Energy, Waste, Transport and Public Realm

Councillor Feryal Clark

Deputy Mayor and Cabinet Member for Health, Social Care, Leisure and Parks

Councillor Clayeon McKenzie

Cabinet Member for Housing Services

Councillor Guy Nicholson

Cabinet Member for Planning, Business and Investment

Councillor Rebecca Rennison

Finance and Housing Needs

Councillor Caroline Selman

Cabinet Member for Community Safety, Policy and the Voluntary Sector

Councillor Carole Williams

Cabinet Member for Employment, Skills and Human Resources

### Mayoral Advisers:

Councillor Sem Moema

Private Renting and Housing Affordability

**Tim Shields**

**Chief Executive**

Contact: Jessica Feeney, Governance Services Officer

Tel: 020 8356 3338

[jessica.feeney@hackney.gov.uk](mailto:jessica.feeney@hackney.gov.uk)

Tel: 020 8356 1226

5 July 2019

The press and public are welcome to attend this meeting

NOTICE OF INTENTION TO CONDUCT BUSINESS IN PRIVATE, ANY  
REPRESENTATIONS RECEIVED AND THE RESPONSE TO ANY SUCH  
REPRESENTATIONS

Whilst much of the business on the agenda for this meeting will be open to the public and media to attend, there will sometimes be business to be considered that contains, for example, confidential, commercially sensitive or personal information.

This is the formal 5 clear day notice under The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 to confirm that this Cabinet meeting will not be held partly in private.

The 28 clear day notice for this meeting was published last month in the Executive Meetings and Key Decisions Notice. This gave notice that there was no intention to meet in private after the public meeting to consider reports which contain exempt or confidential information.

## ADDITIONAL MEETING INFORMATION

### Meeting Dates

16 September 2019  
16 October 2019  
18 November 2019  
16 December 2019  
20 January 2020  
17 February 2020  
23 March 2020  
20 April 2020

### Public Involvement

The public have the right to ask questions or submit petitions or deputations to Cabinet meetings.

Contact Governance Services (Tel: 020 8356 1266) for further information on how this can be arranged. Or email: [Jessica.feeney@hackney.gov.uk](mailto:Jessica.feeney@hackney.gov.uk)

Further information can also be found within Part 4 of the Council's Constitution (which can be seen on the website [www.hackney.gov.uk](http://www.hackney.gov.uk) at this link –

<http://mginternet.hackney.gov.uk/documents/s36746/4.4%20-%20Executive%20Procedure%20Rules.pdf>

### Contact for Information

Jessica Feeney  
Tel: 020 8356 1226  
Email: [jessica.feeney@hackney.gov.uk](mailto:jessica.feeney@hackney.gov.uk)

# CABINET AGENDA

## Monday, 15th July, 2019

### ORDER OF BUSINESS

**1 Apologies for Absence**

Item No	Urgent Business				
2	The Chair will consider the admission of any late items of Urgent Business. (Late items of Urgent Business will be considered under the agenda item where they appear. New items of Urgent Business will be dealt with under Item 17 below. New items of exempt business will be dealt with at Item 19 below).				
<table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 50%;">Wards Affected</th> <th style="width: 50%;">Contact Officers</th> </tr> </thead> <tbody> <tr> <td></td> <td style="text-align: center;">Administrator</td> </tr> </tbody> </table>		Wards Affected	Contact Officers		Administrator
Wards Affected	Contact Officers				
	Administrator				

Item No	Declarations of Interest - Members to Declare as Appropriate				
3	<p>A Member with a disclosable pecuniary interest or a prejudicial interest in a matter who attends a meeting of the authority at which the matter is considered:</p> <p>(i) must disclose the interest at the start of the meeting or when the interest becomes apparent, and</p> <p>(ii) may not participate in any discussion or vote on the matter and must withdraw from the meeting room.</p> <p>A Member who discloses at a meeting a disclosable pecuniary interest which is not registered in the Register of Members' Interests or the subject of a pending notification must notify the Monitoring Officer of the interest within 28 days of the disclosure.</p> <p>Disclosable pecuniary interests, personal interests and prejudicial interests are defined at Paragraphs 8.1-15.2 of Section Two of Part 5 of the Constitution and Appendix A of the Members' Code of Conduct.</p>				
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Wards Affected	Contact Officers				
	Administrator				

Item No	Notice of Intention to Conduct Business in Private, Any Representations Received and the Response to Any such Representations

4

On occasions part of the Cabinet meeting will be held in private and will not be open to the public if an item is being considered that is likely to lead to the disclosure of exempt or confidential information. In accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (the "Regulations"), members of the public can make representations about why that part of the meeting should be open to the public.

This agenda contains exempt items as set out at **Item 18 : Exclusion of the Press and Public**. No representations with regard to these have been received.

This is the formal 5 clear day notice under the Regulations to confirm that this Cabinet meeting will be partly held in private for the reasons set out in this Agenda.

**Wards Affected**

**Contact Officers**

Administrator

5

**Questions/Deputations/Petitions**

**Item No**

**Unrestricted Minutes of the Previous Meeting of Cabinet Held on 17 June 2019**

6

To agree the minutes of the previous meeting of Cabinet held on 17 June 2019 **(Pages 1 - 6)**

**Wards Affected**

**Contact Officers**

Jessica Feeney  
Governance Services Officer  
Tel. 0208 356 1266

**Item No**

**Unrestricted Minutes of Cabinet Procurement Committee held on 11 June 2019**

7

To receive the minutes of the Cabinet Procurement Committee (CPC) held on 11 June 2019 - for noting only. **(Pages 7 - 14)**

**Wards Affected**

**Contact Officers**

Clifford Hart  
Governance Services Officer  
Tel. 0208 356 3597

<b>Item No</b>	<b>Report of the Local Government &amp; Social Care Ombudsman (LGSCO) – EHC PLANS (Reference 17 001 811 – Mr X)</b>	
<b>8</b>	This report advises Cabinet that The Local Government & Social Care Ombudsman (LGSCO) has issued a report (Appendix 1) following an investigation of a complaint against the Council. The complaint related to the initiation & completion of an Education, Health & Care (EHC) needs assessment and the subsequent management of the EHC plan for a child with special educational needs.	<b>(Pages 15 - 62)</b>
<b>Wards Affected</b>		<b>Contact Officers</b>
		Hilary Smith Head of Strategy, Policy & Governance, Hackney Learning Trust T. 020 8820 7036

<b>Item No</b>	<b>Report of the Local Government &amp; Social Care Ombudsman (LGSCO) – EHC PLANS (Reference 17 009 505 – Mrs B)</b>	
<b>9</b>	This report advises Cabinet that The Local Government & Social Care Ombudsman (LGSCO) has issued a report (Appendix 1) following an investigation of a complaint against the Council. The complaint related to the initiation & completion of an Education, Health & Care (EHC) needs assessment for a child with special educational needs, as well as the provision of support prior to completion of this assessment.	<b>(Pages 63 - 98)</b>
<b>Wards Affected</b>		<b>Contact Officers</b>
		Hilary Smith Head of Strategy, Policy & Governance, Hackney Learning Trust T. 020 8820 7036

<b>Item No</b>	<b>Capital Update Report - Key Decision No. FCR P92</b>	
<b>10</b>	This report on the capital programme for 2019/20 updates members on the capital programme agreed in the 2019/20 budget, and includes capital project approvals for Children, Adults and Community Health, Finance and Corporate Resources and Neighbourhoods and Housing (Non).	<b>(Pages 99 - 118)</b>
<b>Wards Affected</b>		<b>Contact Officers</b>
All Wards		Michael Honeysett, Director of Financial Management Tel: 020 8356 3611

<b>Item No</b>	<b>2019/20 Overall Financial Position, Property Disposals and Acquisitions Report - Key Decision No. P93</b>	
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<b>11</b>	This is the Overall Financial Position (OFP) report as at May 2019 and is based on detailed provisional outturn monitoring data from directorates. We are forecasting an overspend of £4,028k at year end.	<b>(Pages 119 - 160)</b>
<b>Wards Affected</b>		<b>Contact Officers</b>
All Wards		Russell Harvey, Senior Financial Control Officer Tel: 020 8356 3611

<b>Item No</b>	<b>Housing Company – Allocation Policy, Tenancy Conditions and Board of Directors - Key Decision No. NHQ15</b>	
<b>12</b>	This report seeks Cabinet’s approval to the Hackney Housing Company lettings policy which, subject to Resolution by the Company Board of Directors, will be adopted in order to prioritise applicants for Hackney Living Rent and Private Rent homes.	<b>(Pages 161 - 208)</b>
<b>Wards Affected</b>		<b>Contact Officers</b>
All Wards		James Goddard, Head of Housing Strategy & Policy Tel. 0208 356 3766

<b>Item No</b>	<b>A Place for Everyone - Hackney Voluntary and Community Sector Small Grants 2019/20 Second Round - Key Decision No. CE P85</b>	
<b>13</b>	This report outlines for Cabinet the recommendations for the second of two rounds of small grants awarded through the 2019/20 Voluntary and Community Sector (VCS) Grants Programme.	<b>(Pages 209 - 242)</b>
<b>Wards Affected</b>		<b>Contact Officers</b>
All Wards		Claire Witney, Community Investment and Partnerships Manager Tel: 020 356 3630

<b>Item No</b>	<b>Abney Park Restoration Project - Key Decision No. NH P55</b>	
<b>14</b>	This report seeks Cabinet’s endorsement for the restoration proposals for Abney Park, which will be submitted to the National Lottery Heritage Fund (NLHF) in 2019	<b>(Pages 243 - 274)</b>
<b>Wards Affected</b>		<b>Contact Officers</b>
Stoke Newington		Ian Holland, Head of Leisure and Green Spaces Tel: 0208 356 3810

<b>Item No</b>	<b>Cabinet Appointments to Outside Bodies 2019/20</b>	
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<b>15</b>	This report asks Cabinet to confirm the proposed appointments outside bodies for 2019/20.	<b>(Pages 275 - 276)</b>
<b>Wards Affected</b>		<b>Contact Officers</b>
		Tess Merrett, Governance Manager Tel: 020 8356 3432

<b>Item No</b>	<b>Schedule of School Governor Appointments</b>	
<b>16</b>	This report seeks Cabinet's consideration of nominees to School Governor vacancies.	<b>(Pages 277 - 278)</b>
<b>Wards Affected</b>		<b>Contact Officers</b>
		Tess Merrett, Governance Manager Tel: 020 8356 3432

<b>Item No</b>	<b>New Items of Unrestricted Urgent Business</b>	
<b>17</b>	To consider any items admitted at Item 2 above.	
<b>Wards Affected</b>		<b>Contact Officers</b>

<b>Item No</b>	<b>Exclusion of the Press and Public</b>	
<b>18</b>	<p><u>Note from the Governance Services Manager</u></p> <p>There are no other exempt items relating to matters being considered in the unrestricted part of the proceedings.</p> <p>In the event of there being any exempt items of urgent business the following resolution will be proposed by The Mayor.</p> <p><b>PROPOSED RESOLUTION:</b></p> <p>That the press and public be excluded from the remainder of the meeting as the exempt item(s) of urgent business to be considered at Item 19 contain exempt information, as defined under the exemption paragraphs of Part 1, Schedule 12A of the Local Government Act 1972.</p>	
<b>Wards Affected</b>		<b>Contact Officers</b>

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<b>Item No</b>	<b>New Items of Exempt Urgent Business</b>
<b>19</b>	To consider any EXEMPT items admitted at Item 2 above.
<b>Wards Affected</b>	<b>Contact Officers</b>

## Access and Information

### Location

Hackney Town Hall is on Mare Street, bordered by Wilton Way and Reading Lane.

**Trains** - Hackney Central Station (London Overground) - Turn right on leaving the station, turn right again at the traffic lights into Mare Street, walk 200 metres and look for the Hackney Town Hall, almost next to The Empire immediately after Wilton Way.

**Buses** 30, 48, 55, 106, 236, 254, 277, 394, D6 and W15.

### Facilities

There are public toilets available, with wheelchair access, on the ground floor of the Town Hall.

Induction loop facilities are available in the Assembly Halls, Rooms 101, 102 and 103 and the Council Chamber.

Access for people with mobility difficulties can be obtained through the ramp on the side to the main Town Hall entrance.

### Copies of the Agenda

The Hackney website contains a full database of meeting agendas, reports and minutes. Log on at: [www.hackney.gov.uk](http://www.hackney.gov.uk)

Paper copies are also from the Governance Services Officer whose contact details are shown on page 2 of the agenda.

### Council & Elections Website – [www.hackney.gov.uk](http://www.hackney.gov.uk)

The Council & Elections section of the Hackney Council website contains details about the democratic process at Hackney, including:

- Mayor of Hackney
- Your Councillors
- Cabinet
- Speaker
- MPs, MEPs and GLA
- Committee Reports
- Council Meetings
- Executive Meetings and Key Decisions Notice
- Register to Vote
- Introduction to the Council
- Council Departments

## DEMOCRATIC PROCESS

### Representation

Contact details for all Councillors are available on the website or by calling 020 8356 3373.

Ward Councillors may be contacted at their surgeries or through the Members' Room at the Town Hall (020 8356 3373).

You may also write to any Councillor or a member of the Cabinet c/o Hackney Town Hall, Mare Street, London E8 1EA.

### Scrutiny Procedures

Details are listed in Part 4 of the Council's constitution, see the website for more details or contact the Head of Overview and Scrutiny on 020 8356 3312

### Executive Meetings and Key Decisions Notice

The procedure for taking Key Decisions is listed in Part 4 of the Council's Constitution, available on the website ([www.hackney.gov.uk](http://www.hackney.gov.uk)).

The Executive Meetings and Key Decisions Notice showing Key Decisions to be taken is available on the Council's website. If you would like to receive a paper copy please contact Governance Services (Tel: 020 8356 6279). Or email: [governance@hackney.gov.uk](mailto:governance@hackney.gov.uk)

### Emergency Procedures

In case of fire or any other emergency the Head of Governance Services or his/her nominated officer will ensure orderly evacuation of all those present in the meeting room. All Members Officers and members of the public should proceed without delay to the assembly meeting point near the car park at the back of the Town Hall where the nominated officer will conduct a count of all who have been evacuated to ensure that all are safe.

### Advice To Members And Officers On Handling Exempt Papers

- Do not photocopy
- Store securely for as long as you hold it
- All papers can be given to Governance Services Officers who will dispose of them appropriately and arrange for them to be recycled
- Note that copies of all exempt papers are held by Governance Services staff.

## Rights of Press and Public to Report on Meetings

Where a meeting of the Council and its committees are open to the public, the press and public are welcome to report on meetings of the Council and its committees, through any audio, visual or written methods and may use digital and social media providing they do not disturb the conduct of the meeting and providing that the person reporting or providing the commentary is present at the meeting.

Those wishing to film, photograph or audio record a meeting are asked to notify the Council's Monitoring Officer by noon on the day of the meeting, if possible, or any time prior to the start of the meeting or notify the Chair at the start of the meeting.

The Monitoring Officer, or the Chair of the meeting, may designate a set area from which all recording must take place at a meeting.

The Council will endeavour to provide reasonable space and seating to view, hear and record the meeting. If those intending to record a meeting require any other reasonable facilities, notice should be given to the Monitoring Officer in advance of the meeting and will only be provided if practicable to do so.

The Chair shall have discretion to regulate the behaviour of all those present recording a meeting in the interests of the efficient conduct of the meeting. Anyone acting in a disruptive manner may be required by the Chair to cease recording or may be excluded from the meeting. Disruptive behaviour may include: moving from any designated recording area; causing excessive noise; intrusive lighting; interrupting the meeting; or filming members of the public who have asked not to be filmed.

All those visually recording a meeting are requested to only focus on recording councillors, officers and the public who are directly involved in the conduct of the meeting. The Chair of the meeting will ask any members of the public present if they have objections to being visually recorded. Those visually recording a meeting are asked to respect the wishes of those who do not wish to be filmed or photographed. Failure by someone recording a meeting to respect the wishes of those who do not wish to be filmed and photographed may result in the Chair instructing them to cease recording or in their exclusion from the meeting.

If a meeting passes a motion to exclude the press and public then in order to consider confidential or exempt information, all recording must cease and all recording equipment must be removed from the meeting room. The press and public are not permitted to use any means which might enable them to see or hear the proceedings whilst they are excluded from a meeting and confidential or exempt information is under consideration.

Providing oral commentary during a meeting is not permitted.

## ADVICE TO MEMBERS ON DECLARING INTERESTS

Hackney Council's Code of Conduct applies to **all** Members of the Council, the Mayor and co-opted Members.

This note is intended to provide general guidance for Members on declaring interests. However, you may need to obtain specific advice on whether you have an interest in a particular matter. If you need advice, you can contact:

- The Director, Legal & Governance;
- The Legal Adviser to the committee; or
- Governance Services.

If at all possible, you should try to identify any potential interest you may have before the meeting so that you and the person you ask for advice can fully consider all the circumstances before reaching a conclusion on what action you should take.

### 1. Do you have a disclosable pecuniary interest in any matter on the agenda or which is being considered at the meeting?

You will have a disclosable pecuniary interest in a matter if it:

- i. Is of a description specified in regulations made by the Secretary of State and either:
  - a) Is an interest of yours, or
  - b) Is an interest of
    - Your spouse or civil partner
    - A person with whom you are living as husband and wife, or
    - A person with whom you are living as if you were civil partners

And you are aware that that other person has that interest

### 2. If you have a disclosable pecuniary interest in an item on the agenda you must:

- i.
- ii. If you attend a meeting and are aware that you have a disclosable pecuniary interest in any matter to be considered, or being considered, at that meeting, you must subject to the sensitive interest rules, disclose that interest to the meeting and, unless you have obtained a dispensation, you cannot participate in any further discussion on the matter and must leave the meeting room whilst the matter is under discussion and takes place.
- ii. If you have, however, obtained dispensation from the Monitoring Officer or Standards Committee you may remain in the room and participate in the meeting. If dispensation has been granted it will stipulate the extent of your involvement, such as whether you can only be present to make representations, provide evidence or whether you are able to fully participate and vote on the matter in which you have a pecuniary interest.

### 3. Do you have any other interest on any matter on the agenda which is being considered at the meeting?

A Member will have 'other interests' in a matter if:

- i. A Member is a member of an external body, this must be disclosed on the interests form and declared at meetings.
- ii. When contractual, financial, consent, permission or licence matters are under consideration relating to an external body on which you sit as a Member, such an interest must be declared and you cannot participate in the meeting as a Member of the Committee and must leave the meeting whilst the matter is under discussion and takes place
- iii. When contractual, financial, consent, permission or licence matters are under consideration and you have actively engaged in supporting an individual or organisation on the matter, you cannot participate in the meeting as a member of the Committee and must leave the meeting whilst the matter is under discussion and takes place.
- iv. Where a Member has received a gift or hospitality with an estimated value of at least £25, this must be disclosed on the register of interests form and declared at meetings.

### 4. If you have other interests in an item on the agenda you must:

- i.
- ii. Declare the existence and nature of the interest (in relation to the relevant agenda item) as soon as it becomes apparent to you.
- iii. You may remain in the room, participate in any discussion or vote provided that contractual, financial, consent, permission or licence matters are not under consideration relating to the item in which you have an interest.
- iv. If you have an interest in a contractual, financial, consent, permission or licence matter under consideration, you must leave the room unless you have obtained a dispensation from the Monitoring Officer or Standards Committee. You cannot stay in the room or public gallery whilst discussion of the item takes place and you cannot vote on the matter. In addition, you must not seek to improperly influence the decision. Where members of the public are allowed to make representations, or to give evidence or answer questions about the matter you may, with the permission of the meeting, speak on a matter then leave the room. Once you have finished making your representation, you must leave the room whilst the matter is being discussed.
- v. If you have been granted dispensation, in accordance with the Council's dispensation procedure you may remain in the room. If dispensation has been granted it will stipulate the extent of your involvement, such as whether you can only be present to make representations, provide evidence or whether you are able to fully participate and vote on the matter in which you have a non pecuniary interest.

## Further Information

Advice can be obtained from Suki Binjal, Director of Legal and Governance on 020 8356 6234 or email [suki.binjal@hackney.gov.uk](mailto:suki.binjal@hackney.gov.uk)



**FS 566728**





## MINUTES OF A MEETING OF THE CABINET

HELD ON MONDAY, 17TH JUNE, 2019 AT  
COUNCIL CHAMBER HACKNEY TOWN HALL, MARE STREET, LONDON E8 1EA

**Present:** Mayor Philip Glanville in the Chair

**Councillors**  
Deputy Mayor Anntoinette Bramble (Vice-Chair)  
Cllr Christopher Kennedy  
Cllr Jon Burke  
Cllr Feryal Clark  
Cllr Clayeon McKenzie  
Cllr Guy Nicholson  
Cllr Caroline Selman  
Cllr Carole Williams

**Officers:** Ann Canning, Group Director Children, Adults and Community Health, CYPS  
Ian Williams, Group Director of Finance and Corporate Resources  
Dawn Carter-McDonald, Head of Legal & Governance  
Jessica Feeney, Governance Services Officer

**Apologies:** Councillor Rebecca Rennison

1.	<b>APOLOGIES FOR ABSENCE</b>
	Apologies for absence were received from Councillor Rennison, Tim Shields, Kim Wright and Suki Binjal.
2.	<b>URGENT BUSINESS</b>
	There were no items of urgent business.
3.	<b>DECLARATIONS OF INTEREST - MEMBERS TO DECLARE AS APPROPRIATE</b>
	There were no declarations of interest.
4.	<b>NOTICE OF INTENTION TO CONDUCT BUSINESS IN PRIVATE, ANY REPRESENTATIONS RECEIVED AND THE RESPONSE TO ANY SUCH REPRESENTATIONS</b>
	There were no representations received.

5.	<b>QUESTIONS/DEPUTATIONS</b>
	There were no questions/deputations.
6.	<b>UNRESTRICTED MINUTES OF THE PREVIOUS MEETING OF CABINET HELD ON 29 APRIL 2019</b>
	The unrestricted minutes of the previous meeting of Cabinet held on 29 April 2019 were approved.
7.	<b>UNRESTRICTED MINUTES OF CABINET PROCUREMENT COMMITTEE HELD ON 11 MARCH 2019 AND THE 8 APRIL 2019</b>
	The unrestricted minutes of Cabinet Procurement Committee held on 11 March 2019 and 8 April 2019 were noted.
8.	<b>SCHEDULE OF DELEGATED POWERS REPORT</b>
	Nothing to report.
9.	<b>CAPITAL UPDATE REPORT - KEY DECISION NO. FCR P90</b>
	<p>The Mayor introduced the report.</p> <p><b>RESOLVED:</b></p> <p><b>I. That the schemes for Children, Adults and Community Health as set out in section 9.2 were approved as follows:</b></p> <p><b>Final Devolved Formula Capital (DFC) Allocation and School Additional Capital Funding: Resource and spend approval of £1,217k in 2019/20 is requested in respect of the allocation of the DFC grant to individual schools maintained by Hackney Council for 2019/20 and of additional capital funding for schools provided by the government.</b></p> <p><b>II. That the schemes for Finance and Corporate Resources as set out in section 9.3 were approved as follows:</b></p> <p><b>Integral Access Control System (INVAC) Capital Project: Resource and spend approval of £185k in 2019/20 is requested to fund the new INVAC capital project to include the installation of speedlanes swing gates to the ground floor between the public and staff access of the Council's Hackney Service Centre (HSC); new CCTV cameras, installation of lockdown sounding system, installation of invasion control system to all passenger lifts, upgrade of radio systems and the replacement of floor carpet tiles.</b></p> <p><b>ICT Capital Projects: Virement and spend approval of £300k in 2019/20 is requested to fund additional capital refresh projects of the public access computing services in Hackney's libraries; upgrades to the equipment used by services as identified through a rolling programme of 'IT Health Checks'; and upgrades to the devices used by elected Members.</b></p>

	<p><b>III. That the schemes for Neighbourhoods and Housing (Non) as set out in section 9.4 were approved as follows:</b></p> <p><b>Daubeney Fields Park Entrances: Resource and spend approval of £48k in 2019/20 is requested to fund the redesign of the entrances to the park.</b></p> <p><b>IV. That the S106 schemes as set out in section 9.5 and summarised below were given resource and spending approval as follows:</b></p> <table border="1" style="margin-left: 40px;"> <thead> <tr> <th style="text-align: left;">S106</th> <th style="text-align: right;">2020/21 £'000</th> <th style="text-align: right;">Total</th> </tr> </thead> <tbody> <tr> <td></td> <td style="text-align: right;">£'000</td> <td style="text-align: right;">£'000</td> </tr> <tr> <td>Revenue</td> <td style="text-align: right;">1,467</td> <td style="text-align: right;">1,467</td> </tr> <tr> <td><b>Total S106 Resource and Spend approvals</b></td> <td style="text-align: right;"><b>1,467</b></td> <td style="text-align: right;"><b>1,467</b></td> </tr> </tbody> </table> <p><b>V. That the schemes outlined in section 9.6 be noted.</b></p>	S106	2020/21 £'000	Total		£'000	£'000	Revenue	1,467	1,467	<b>Total S106 Resource and Spend approvals</b>	<b>1,467</b>	<b>1,467</b>
S106	2020/21 £'000	Total											
	£'000	£'000											
Revenue	1,467	1,467											
<b>Total S106 Resource and Spend approvals</b>	<b>1,467</b>	<b>1,467</b>											

<b>10.</b>	<p><b>2019/20 OVERALL FINANCIAL POSITION, PROPERTY DISPOSALS AND ACQUISITIONS REPORT - KEY DECISION NO. FCR P91</b></p>
	<p>The Mayor introduced the report of behalf on Councillor Rennison as she was absent from the meeting.</p> <p><b>RESOLVED:</b></p> <p><b>That the Cabinet update the overall financial position for March 2019, covering the General Fund and the HRA, Capital and the earmarking by the Group Director of Finance and Corporate Resources of any underspend to support funding of future cost pressures and the funding of the Capital Programme.</b></p>

<b>11.</b>	<p><b>REDUCTION &amp; RECYCLING PLAN - KEY DECISION NO. NH P86</b></p>
	<p>Councillor Burke introduced the report highlighting the significant changes and the councils dedicated approach to waste management. Councillor Burke also thanked the talented officers who had worked on the plan.</p> <p><b>RESOLVED:</b></p> <p><b>That the Cabinet:</b></p> <ul style="list-style-type: none"> <li><b>I. Approved the Reduction &amp; Recycling Plan ahead of submission to the Greater London Authority</b></li> <li><b>II. Delegated authority to the Director of Public Realm, in consultation with the Lead Member, to make changes as necessary to the Reduction &amp; Recycling Plan following feedback from the Greater London Authority</b></li> <li><b>III. Agreed that a further report is provided for Cabinet to consider the</b></li> </ul>

	<b>financial modelling for the reasons as set out by the Group Director of Finance and Corporate Resources in Section 7 of this report.</b>
<b>12.</b>	<b>INTEGRATED COMMISSION FOR HEALTH AND SOCIAL CARE - KEY DECISION NO. CACH Q13</b>
	<p>Councillor Clark introduced the report to Cabinet. She explained that the report outlined how the council is looking to align and pool some services. Cabinet members were informed that there were only a few boroughs that had integrated services.</p> <p><b>RESOLVED</b></p> <p><b>That the Cabinet:</b></p> <ol style="list-style-type: none"> <li><b>i. Approved that the Council enter into a new overarching Section 75 Agreement (the “Agreement”) for integrated commissioning for health and social care with the NHS City and Hackney CCG as attached at Appendix 1.</b></li> <li><b>ii. Delegated authority to the Group Director for Children, Adults &amp; Community Health and the Group Director for Finance and Corporate Resources to finalise and complete the Agreement and all other associated contractual documentation with the NHS City and Hackney CCG.</b></li> <li><b>iii. Delegated authority to the Group Director for Children, Adults &amp; Community Health and the Group Director for Finance and Corporate Resources to be able to extend the Agreement further, and to agree further amendments and variations as necessary subject to consultation with the Lead Member for Health, Social Care, Transport and Parks.</b></li> </ol>
<b>13.</b>	<b>A PLACE FOR EVERYONE - LB HACKNEY VOLUNTARY AND COMMUNITY SECTOR GRANTS PROGRAMME 2019-2020 - KEY DECISION NO. CE P82</b>
	<p>Councillor Selman introduced the report.</p> <p><b>RESOLVED:</b></p> <p><b>That the Cabinet:</b></p> <ol style="list-style-type: none"> <li><b>I. Agreed the timetable for the Hackney Voluntary and Community Sector Open Grants Programme for 2020/21.</b></li> <li><b>II. Agreed that the following funding streams can be launched through the programme:</b> <ul style="list-style-type: none"> <li><b>• Hackney Main Grants including universal activities for grant awards of up to £60,000 per application (over two years).</b></li> <li><b>• Hackney Small Grants for grant awards of up to £5,000 per</b></li> </ul> </li> </ol>

	<p>application.</p> <ul style="list-style-type: none"> <li>• <b>Community Chest Grants of up to £1,000 for short term projects or one-off activities.</b></li> <li>• <b>To contribute to the London Boroughs Grants Scheme administered by London Councils.</b></li> </ul> <p><b>III. Noted the final decisions delegated by Cabinet in March to the Director of Strategy, Policy and Economic Development in regards to the allocations of funding for advice services, as set out in Appendix One.</b></p>
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<b>14.</b>	<b>NEW ITEMS OF UNRESTRICTED URGENT BUSINESS</b>
	There were no new items of unrestricted urgent business.

<b>15.</b>	<b>EXCLUSION OF THE PRESS AND PUBLIC</b>
	Members of the press and public were excluded so that the cabinet could consider exempt information in relation to item 16 and 17.

<b>16.</b>	<b>EXEMPT MINUTES OF THE PREVIOUS MEETING OF CABINET HELD ON 29 APRIL 2019</b>
	The exempt minutes of the previous meeting of Cabinet held on 29 April 2019 were approved.

<b>17.</b>	<b>EXEMPT MINUTES OF CABINET PROCUREMENT COMMITTEES HELD ON 11 MARCH AND 8 APRIL.</b>
	The exempt minutes of the Cabinet Procurement Committee held on 11 March and 8 April were noted.

<b>18.</b>	<b>NEW ITEMS OF EXEMPT URGENT BUSINESS</b>
	There were no new items of exempt urgent business.

**Duration of the meeting:** Times Not Specified

Mayor Philip Glanville  
Chair at the meeting on  
Monday, 17 June 2019

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## UNRESTRICTED MINUTES OF A MEETING OF THE CABINET PROCUREMENT COMMITTEE

**TUESDAY, 11TH JUNE, 2019**

<b>Chair</b>	<b>Councillor Rebecca Rennison in the Chair</b>
<b>Councillors Present:</b>	<b>Councillors Deputy Mayor Anntoinette Bramble, Cllr Caroline Selman and Cllr Jon Burke</b>
<b>Apologies:</b>	<b>Nil</b>
<b>Officers in Attendance</b>	<b>Mr Rotimi Ajilore – Head of Procurement Mr Anjam Ali - Director of Housing Services, Neighbourhoods and Housing Ms Clare Brennan – Category Lead Contracts and Environment Ms Zainab Jalal – Category Lead Social Care Ms Susan Carran - Category Lead (Corporate Services), Finance &amp; Corporate Resources Mr Patrick Rodger – Senior Lawyer – Procurement Ms Irina Mot - Neighbourhoods and Housing Mr Clifford Hart – Governance Services Officer</b>

**1 RATIFICATION OF THE APPOINTMENT OF THE CHAIR OF THE CABINET  
PROCUREMENT COMMITTEE FOR THE MUNICIPAL YEAR 2019/20**

**The Clerk to the Committee – Clifford Hart advised the meeting that as this was the first meeting of the Cabinet Procurement Committee for the Municipal Year 2019/20 he sought from Members present the proposed chairship of the Committee for the Municipal year 2019/20, as recommended at the Council annual general meeting on 22 May 2019.**

**Deputy Mayor Bramble nominated Councillor Rennison as Chair of the Cabinet Procurement Committee for the Municipal Year 2019/20.**

**There being no other nominations it was:**

**RESOLVED**

**that Cllr Rebecca Rennison be appointed Chair of the Cabinet Procurement Committee for the municipal year 2019-20.**

**2 APOLOGIES FOR ABSENCE**

**There were no apologies for absence.**

**NOTED**

3 URGENT BUSINESS

There were no items of urgent business.

**NOTED**

4 DECLARATIONS OF INTEREST - Members to declare as appropriate

There were no declarations of interests.

**NOTED**

5 NOTICE OF INTENTION TO CONDUCT BUSINESS IN PRIVATE, ANY REPRESENTATION RECEIVED AND THE RESPONSE TO ANY SUCH REPRESENTATIONS

There were no representations received.

**NOTED**

6 DEPUTATIONS/PETITIONS AND QUESTIONS

There were no deputations/petitions or questions.

**NOTED**

7 UNRESTRICTED MINUTES OF THE PREVIOUS MEETING OF CABINET PROCUREMENT COMMITTEE HELD ON 8 APRIL 2019

**RESOLVED**

**That the unrestricted minutes of the Cabinet Procurement Committee held on 8 April 2019 be confirmed as an accurate record of the proceedings.**

8 CONSTRUCTION CONTRACTS FOR PLANNED CAPITAL WORKS TO HACKNEY COUNCIL HOUSING - KEY DECISION NO. NH P78

The Chair asked for an introduction of the report.

The Director of Housing Services, Neighbourhoods and Housing, Mr Ajman Ali, advised the Committee that he was in attendance in the absence of Ms Sinead Burke - Head of Property & Asset Management, Neighbourhoods and Housing, who could not be present this evening.

Mr Ali advised the Committee that the report summarised the options appraisal for the re-procurement of two construction contracts, known as contract 1 and contract 4, to ensure ongoing service delivery of capital investment works in the Council's housing stock. The contracts covered external works programmes, planned internal works, specialist mechanical and electrical works. As contract 1 would come to an end in November 2019 and contract 4 ended in March 2019, officers had reviewed all the available options, including opportunities for in-sourcing and SMEs.

Mr Ali went on to explain that the approach to this procurement followed from the provisions of the Housing Asset Management Strategy 2019-2027, which was approved by Cabinet on 25 March 2019. This procurement exercise was an important aspect to implementing this strategy and embedding its ambitions into contracts, so that capital



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works contracts were aligned to this strategy. The proposed works would ensure that Hackney built on the successes of recent investment programmes in its homes. In the past three years the capital works programme had delivered £120m of investment, ensuring that thousands of residents across the borough benefitted new roofs, windows, and modern kitchens and bathrooms, as well as ensuring blocks were well-decorated and in good repair.

Mr Ali outlined the proposed approach moving forward, as set out in the Housing Asset Management Strategy 2019-2027, which was to deliver capital works in a more holistic manner and ensure homes which would continue to remain safe, compliant, more energy efficient, more accessible and people were proud to live in. The suite of contracts proposed under this strategy, provided the maximum opportunities for SMEs to work with Hackney, while still ensuring the council would effectively manage contracts. Their value would also ensure that there were significant social value benefits for local residents. Mr Ali commented that the primary reason for this decision was the need to re-procure existing construction contracts, to ensure ongoing service delivery of capital investment works in the Council's housing stock. This decision related to the re-procurement of two contracts, which were known as contracts 1 and 4, from a set of 9 works contracts let in 2015. Contract 1 was a framework, limited to four years, for general building works with three main contractors. The Term Partnering Contract (TPC 2005, as amended) was let in 11th November 2015 and would expire in November 2019, though the individual Project Partnering Contracts (PPC 2000, as amended) were renewed annually allowing works orders to be raised until August 2020. There was no option to extend the Term Partnering Contract. Contract 4 combined a Term Partnering Contract for planned electrical works with a Project Partnering Contract for responsive electrical repairs, both let to the same contractor. This was let on an initial five year contract and had ended on 4th March 2019.

Mr Ali further advised that the main reason for how this decision was being proposed, and also a factor in the timeline was the recent publication of the Housing Asset Management Strategy 2019-2027. The strategy had been set out to include consideration of:

- The need for the Council to fulfill its legal obligations as a landlord for the maintenance of its homes and estates;
- The opportunity for capital investment works to contribute to broader Council ambitions of creating a fairer, safer and more sustainable Hackney;
- The ambition to ensure our homes and estates are places residents are proud of.

Mr Ali stated that it was necessary, therefore, that any new procurement for capital works, was aligned with the objectives of that strategy, and this procurement exercise aimed to achieve that.

Mr Ali commented that in addition to setting out the broader strategy for capital investment, Section 5 of the Housing Asset Management Strategy 2019-2027 set out a capital delivery plan, which had identified three key work streams for capital works, and it established a seven year forward programme which included every Hackney Council home. The work streams were external works to blocks and estate grounds, internal works to tenants homes, and specialist mechanical and electrical works. The basis of this approach was to ensure that works could be delivered in a more holistic fashion and the benefits of this were detailed in Section 5.1 of the Housing Asset Management Strategy 2019-2027. The procurement strategy detailed in the report would ensure that the capital works contracts were aligned to this capital delivery plan.

Mr Ali outlined the key deliverables for proposed procurement as follows:

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- Procuring construction services to ensure the Council can invest in homes to fulfill its legal obligations as a landlord;
- Procuring contracts on terms that are in line with the provisions of the new Housing Asset Management Strategy 2019-2027;
- Provision of a cost efficient, quality driven related works across the entire housing stock, which are focussed on the greatest investment need, and meet all relevant technical standards;
- Procuring contracts which are suitably flexible in their scope to respond effectively to resident consultation suggestions for works to homes and estates;
- Maximising the indirect social value from these contracts through local employment, community investment and resident satisfaction with the quality of their homes and local area;
- Procuring contracts which maximise the opportunities for SMEs and in-sourcing of services, while ensuring that the risks associated with capital works delivery are appropriately managed;
- Ensuring that capital works can support the Council's broader sustainability objectives, such as the air quality action plan, as well as improving the energy efficiency of homes to reduce fuel poverty;
- Ensuring compliance with the Council Standing Orders, Regulatory Procedures, and the Council's Corporate Policy;
- Procuring long term contracts which allow for continuity of service delivery and long term sight of construction costs. This will contribute to ensuring that the works can be delivered within the capacity of the Housing Revenue Account (HRA) Business Plan.

Mr Ali also advised that in 2015 the Council awarded Contract 1, General Building Investment Works and Services, to three main contractors, and Contract 4, Electrical Specialist Works, to one contractor.

Mr Ali went on to outline, as part of the detailed development work of the procurement exercise, the consultation plan which had identified the following groups who would be consulted with:

- Tenants and Leaseholders;
- Tenancy Management Organisations (TMOs);
- Resident Liaison Group, and Area Panels;
- Elected representatives;
- Staff across the housing service who are affected by these contracts;
- Industry via a Meet the Buyer event;

Mr Ali informed the meeting that with regard to Resident Focus Groups, initial meetings were being arranged with internal consultation staff and senior management in tenancy and leasehold services to establish some resident focus groups, which would inform key areas of the contract provisions, with particular focus on those which most affect residents which would include:

- Establishing priorities for social value work delivered as part of the contracts.
- Developing the consultation requirements which will be expected of contractors as part of carrying out their works.
- Commenting on access procedures, Disclosure and Barring Service (DBS) checks and other working arrangements for operatives, especially within homes.
- Contributing to the range of resident choice options with general client briefs.
- Commenting on the level of survey work to be required as part of project development, particularly where replacement components are proposed, so that there is confidence that the necessary evidence is available to inform such decisions.
- Contributing to resident satisfaction survey methods to form the basis of associated KPIs under the contract.

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In conclusion Mr Ali advised that the contracts would also embed the consultation principles of the Housing Asset Management Strategy 2019-2027 into all contracts. This strategy set out seven defined work stages for all capital projects, and would note the resident engagement actions for each stage. These processes would be owned by Hackney Council staff, ensuring they would have full oversight of project development, and officers were currently starting to develop the detail documents and procedures so that these aims would be fully implemented for the new contracts.

The Chair, in thanking Mr Ali for his detailed introduction, placed on record her thanks to the report author Ms Burke and the report's content, and the evident considerable efforts of the service to provide such a comprehensive, succinct and clear strategy. The approach to this type of procurement strategy as detailed should be held as a marker of excellence of how a strategy of these proportions should be implemented.

The Chair asked if there were any further points of clarification from Members.

In welcoming the report Councillor Burke referred to the tendering process and stressed the need to ensure that selection was based not only on a 'tick box' performance criteria. He commented that in assessing those tendering, that officers should be mindful of past performance and any previous issues with contract provision, as well as ensuring that with such a large contract there would be a clear opportunity to build good relationships with successful bidders, as well as attracting bidding from locally based contractors, wherever possible.

In response Mr Ali advised that as part of the robust tender evaluation process, many factors were included in the mechanism of bidder assessment, and that it would be of primary concern to ensure the best contractors were selected.

There being no further points of clarification the Chair **MOVED** and it was:

**RESOLVED**

That approval be given to the procurement strategy for Construction Contracts for Planned Capital Works to Hackney Council Housing in a suite of six contracts which combine a framework for external works programmes, and term partnering contracts for planned internal, specialist mechanical and electrical works, as follows:

	<b>Contract Type</b>		<b>Preferred Contractor Number and Type</b>	<b>Works type</b>	<b>Estimated Value</b>
i	4 Year Framework	Lot 1	3 to 5 Large Main Contractors	Planned External Works	£30-£50m/ annum
		Lot 2	3 to 5 SME Main Contractor	Planned External Works	£8m/ annum
ii	Term Contract (4 years with potential extension up to 10 years)		1 SME Main Contractor	Planned Internal Works	£2m/ annum

iii	Term Contract (4 years with potential extension up to 10 years)	Specialist Contractor	Communal Electrical Supply	£1.5m/ annum
iv	Term Contract (4 years with potential extension up to 10 years)	Specialist Contractor	Fire Safety Systems to Large Blocks	£2.5m in total
v	Term Contract (4 years with potential extension up to 10 years)	Specialist Contractor	Fire Safety Systems to Street Properties	£500k in total
vi	Term Contract (4 years with potential extension up to 10 years)	Specialist Contractor	Communal Boilers	£7-8m over the next 5 years

## RELATED DECISIONS

March 2019: Approval of the Housing Asset Management Strategy 2019-2027, by Cabinet on 25 March 2019. This provides an overarching framework for investment decision-making across the Council's homes and estates. It sets out the ambitions that Hackney has for the quality of its homes and the priorities that will be established to ensure that the limited available resources are directed at the greatest need.

<http://mginternet.hackney.gov.uk/ieListDocuments.aspx?CId=111&MID=4332#AI32478>

June 2015: Approval to award the TPC and/or PPC contracts for lots 2, 3, 4, 5, 6, 8 and 9 for an initial five year term, with an option for the Council to terminate at year 3 and an option of extending the contracts for a further two years at year 5, and a further two years at year 7, up to a maximum of nine year contract terms, was taken by Cabinet Procurement Committee at its June 2015 meeting. The relevant minutes along with the full report can be downloaded from the attached:

<http://mginternet.hackney.gov.uk/ieListDocuments.aspx?CId=113&MID=3392#AI22646>

March 2015: Approval to award a four year framework agreement to three Main Constructors for a period of up to four years was taken by the Cabinet Procurement Committee on 30th March 2015. The relevant minutes along with the full report can be downloaded from the attached:

<http://mginternet.hackney.gov.uk/ieDecisionDetails.aspx?Id=332>

## 9 ANY OTHER UNRESTRICTED BUSINESS THE CHAIR CONSIDERS TO BE URGENT

There were no other items of unrestricted urgent business.

## NOTED

## 10 DATES OF CABINET PROCUREMENT COMMITTEE - MUNICIPAL YEAR 2019/20

## RESOLVED

That the dates of the Cabinet Procurement Committee for the remainder of the Municipal year 2019/20 to be held at 6.00pm, be noted as follows:

8 July 2019  
9 September 2019  
7 October 2019  
4 November 2019  
2 December 2019  
13 January 2020  
10 February 2020  
11 March 2020  
6 April 2020

**11 EXCLUSION OF THE PUBLIC AND PRESS**

The Chair advised that the following item<sup>12</sup> allowed for the consideration of exempt information in relation to agenda item 7.

**RESOLVED**

That the press and public be excluded from the proceedings of the Cabinet Procurement Committee during consideration of Exempt item 12 on the agenda on the grounds that it is likely, in the view of the nature of the business to be transacted, that were members of the public to be present, there would be disclosure of exempt information as defined in para 3 of Part 1 of Schedule 12A to the Local Government Act 1972 as amended.

**12 EXEMPT MINUTES OF THE PREVIOUS MEETING OF CABINET PROCUREMENT COMMITTEE HELD ON 8 APRIL 2019**

**RESOLVED**

That the exempt minutes of the Cabinet Procurement Committee held on 8 April 2019 be confirmed as an accurate record of the proceedings.

**13 ANY OTHER EXEMPT BUSINESS THE CHAIR CONSIDERS TO BE URGENT**

There were no other items of exempt urgent business.

**NOTED**

**Duration of the meeting:** 18:00- 18:25HRS

Contact:

Clifford Hart

Clifford.hart@hackney.gov.uk

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**REPORT OF THE LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN (LGSCO)  
– EHC PLANS (Reference 17 001 811 – Mr X)**

**Key Decision No.N/A**

<p><b>CABINET MEETING DATE (2018/19)</b></p> <p>15 July 2019</p>	<p><b>CLASSIFICATION:</b></p> <p>Open</p> <p>If exempt, the reason will be listed in the main body of this report.</p>
<p><b>WARD(S) AFFECTED</b></p> <p>All Wards</p>	
<p><b>CABINET MEMBER</b></p> <p>Cllr Kennedy</p> <p>Families, Early Years &amp; Play</p>	
<p><b>KEY DECISION</b></p> <p>No</p> <p><b>REASON</b></p> <p><a href="#">Click Here to Select</a></p>	
<p><b>GROUP DIRECTOR</b></p> <p>Anne Canning Group Director Children, Adults &amp; Community Health</p>	

## **1. CABINET MEMBER'S INTRODUCTION**

- 1.1. The Local Government & Social Care Ombudsman (LGSCO) has issued a report (Appendix 1) following an investigation of a complaint against the Council. The complaint related to the initiation & completion of an Education, Health & Care (EHC) needs assessment and the subsequent management of the EHC plan for a child with special educational needs.
- 1.2. The Ombudsman found that there had been fault on the part of the Council, and that this had, in their view, caused injustice to the complainant. We have apologised for the faults identified and have complied with all the recommendations set out in the LGSCO's report. Of the 8 recommendations made, to date, 5 have been completed with 2 due for completion by September 2019. The remaining recommendation is currently subject to reconciliation of evidence provided by the complainant in line with the LGSCO's direction.
- 1.3. The LGSCO report raises important issues which impact on the way Local Authorities undertake and complete EHC needs assessments which we will be raising with the Department for Education.

## **2. GROUP DIRECTOR'S INTRODUCTION**

- 2.1. The LGSCO investigation relates to a complaint raised by the father (Mr X) of a boy (child B), who first came to the attention of the Council in 2015 when he was 2 years old and shortly after being diagnosed with autism. The complaint raised issues with
  - Delay in considering a request to initiate an EHC needs assessment;
  - Delays in finalising the EHC Plan and not completing this within the statutory 20 week timeframe;
  - Not reviewing & amending the plan by 15 February in the year that B started primary school (as required by law);
  - Not reviewing the EHC plan in line with statutory requirements and timeframes; and
  - The way the complaint investigation was managed.
- 2.2. The LGSCO's investigation has been complex, taking 24 months to produce the final report (appendix 1). During this time, the Council has provided significant supporting information & legal comment to the LGSCO to explain its actions and the challenges faced as part of this case. The final report upheld the majority of concerns raised by the father, finding fault by the Council causing injustice.
- 2.3. Since Mr X first lodged his complaint with the Council at the end of June 2016, a number of reviews and audits regarding the EHC planning process have been undertaken. These were completed as part of ongoing service review and improvement and include:
  - A review, finalised in July 2017, of processes to initiate and complete assessments within 20 weeks, with follow up review in September 2018; and



- An internal audit, finalised in October 2017, with follow up audit review in June 2019.

- 2.4. The LGSCO report identifies a 41 week delay in issuing B's EHC Plan linked to consideration of the initial request to undertake an EHC needs assessment and co-production of the ultimate plan. The Council acknowledges that there were delays in the process but believe that many of the practices which led to delay were done so in line with advice set out in the SEND Code of Practice or as a pragmatic approach to producing an EHC Plan co-produced with the family. In addition, many of our practices are no different to those of most other local authorities and, as such, some of the conclusions in the report raise significant issues for all local authorities. The Department for Education has noted this and has been in touch to explore the issues further.
- 2.5. Furthermore, whilst the Council accepted and apologised for a number of avoidable delays as part of its own complaints process (providing £4,062 financial remedy at the resolution stage), we are concerned that the report did not reflect the time spent by officers working with the family to provide appropriate educational provision to meet B's identified needs. The findings and recommendations set out in the LGSCO report are, therefore, disappointing.
- 2.6. Notwithstanding the above, the Council acknowledges that there were some faults in the EHC needs assessment process and review of Child B's EHC plan. We have, therefore, accepted the report's findings and recommendations made.
- 2.7. This report sets out the LGSCO's recommendations in more detail and how the Council has responded, or intends to respond, to them in more detail. It also sets out the Council's case management approach in terms of this specific case.

### **3. RECOMMENDATION(S)**

- 3.1. The Cabinet is asked:  
To note the contents of the LGSCO report (appendix 1) and the Council's response as set out in this report (paragraphs 6 and 7).

### **4. REASONS FOR DECISION**

- 4.1. This report forms part of the Council's obligations under the Local Government Act 1974 to publicise receipt of an LGSCO report.
- 4.2. The LGSCO has concluded that there was fault by the Council which caused injustice to Mr X and to B and that the Council should take the action identified in the report to remedy that injustice.

### **5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

- 5.1. There is no right of appeal against an LGSCO decision. A complainant, Council or authority can, however, apply to the courts for a judicial review of a decision. We do not propose to take this course of action.
- 5.2. Exceptionally, the LGSCO has an internal review system in place where a

request can be made for a decision to be reviewed in very limited circumstances – where a decision was made based on important evidence that contained facts that were not accurate or if new and relevant information (that was not previously available) is provided which affects the decision made. In either circumstance, a request to review must be made within 1 month of the decision.

- 5.3. Whilst the Council provided robust information on many occasions over the 2 year investigation period, to explain its actions and, where appropriate, apologised at an early point in the complaint process for recognised delays, it was not felt appropriate at this stage to submit further challenge to the LGSCO decision. Furthermore, given the low threshold for requests to initiate EHC needs assessments and the statutory timeframe to complete assessments within 20 weeks, it was felt that there were insufficient grounds to apply for a judicial review.

## **6. BACKGROUND**

### **6.1. Investigation & findings of the LGSCO**

- 6.1.1. In September 2014, SEND legislation was significantly reformed. Part 3 of the Children & Families Act 2014 and the SEND Regulations 2014 set out new requirements for local authorities in relation to the identification & assessment of children with SEND. Alongside this legislation, the SEND Code of Practice 2014 was published providing statutory guidance on duties, policies and procedures relating to the new SEND legislation and regulations.
- 6.1.2. This new legislation placed a requirement on local authorities to identify & assess children & young people who may have special educational needs within a 20 week timeframe. The SEND Code of Practice breaks down the 20 week timeframe into constituent aspects of the assessment process (see appendix 2). Furthermore, where it is agreed that an EHC plan is required to meet a child or young person's SEND, local authorities must co-produce the plan with the families and/or young person.
- 6.1.3. The Council has a statutory responsibility to provide advice & guidance for families of children & young people with SEND through a Local Offer website. This includes advice & guidance for parents & carers in relation to the EHC needs assessment process and how to request an assessment. This website is subject to ongoing review and update to reflect customer feedback and current practice at the time.
- 6.1.4. Whilst the Council takes every step to meet the statutory 20 week deadline, the assessment and co-production process can be complex and delays do occur. Nationally, local authorities are struggling to issue EHC plans following assessment with the 20 week timeframe. In the 2018 calendar year, Hackney issued 42.4% EHC plans within 20 weeks; this compares to, nationally, 58% of plans being issued in 20 weeks and 53.4% of plans in inner London authorities being issued within 20 weeks<sup>1</sup>.
- 6.1.5. In this case, the LGSCO has considered whether the Council assessed &

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<sup>1</sup> Department for Education, "Statements of SEN & EHC Plans: England 2019"

identified Child B's needs and managed his EHC plan in line with statutory legislation and due process. As a result, they have made a series of recommendations to remedy the injustice caused to Mr X and to child B.

- i. Apologise in writing to Mr X:
- ii. Pay Mr X £22,448.47 (made up of £19,343 in recognition of the funding the Council would have paid had there been no delay to the EHC plan, £1,605.47 interest at the retail price index between June 2016 to February 2019, £1,000 to acknowledge distress caused to the family and £500 in recognition of the time and trouble caused to Mrs X in pursuing his complaint).
- iii. Review procedures to ensure that when notification is received under Section 24 of the Act that a child in its area may have special educational needs, the Council consults parents and other professionals so as to reach a decision about assessment within 6 weeks;
- iv. Provide guidance to parents / carers how requests for statutory assessments will be dealt with;
- v. Make available on the Council website a standard form for making requests for a statutory assessment;
- vi. Ensure panels making decisions about EHC needs assessment maintain proper records of their meetings, recording clear reasons for decisions and what information was provided to reach this decision.
- vii. Offer training to the Council complaints team in respect of EHC needs assessment processes and how to remedy avoidable delays.
- viii. Be willing to consider complaints raised by other parents in the light of the findings on this case with regard to delays in the process

## 6.2. **Notification that B may have SEND to EHC needs assessment initiation (delays in starting the assessment)**

- 6.2.1. Child B was formally diagnosed with autism in May 2015 by the Consultant Community Paediatrician. Prior to this diagnosis, Mr X chose to set up a programme of Pivotal Response Therapy (PRT), a form of educational provision for pre school children with autism spectrum disorder (ASD). At this point Mr X was funding the provision from his own resources.
- 6.2.2. In the meantime, over the summer term 2015, one of the Council's Area SEN Co-ordinators (SENCo) was working with Child B's nursery, family and Speech & Language Therapist to provide advice, guidance and training to support Child B's inclusion in the setting. In line with section 5 of the SEND Code of Practice, this work followed the graduated good practice, "Assess-Plan-Do-Review" approach to identifying needs in the early years.
- 6.2.3. The SEND Code describes how this approach reviews the effectiveness of interventions in enabling children to make progress, provides further information about the precise nature of their needs and informs the next steps to be taken. In the majority of cases, the Area SENCo will produce a support plan which is reviewed with the family, setting and other professionals on a monthly basis. This information then provides robust

evidence to inform any subsequent decision to initiate an EHC needs assessment or not.

- 6.2.4. The Council received a formal request to assess (completed by the Area SENCo and signed by Mrs X) on 14 October 2015. The Council took this date as day 1 of the EHC needs assessment process. The LGSCO, however, identifies 2 points earlier on whereby the Council should have considered initiation of an EHC needs assessment:
- i. Receipt of a standard (and following the SEND reforms in September 2014, redundant) form from the Community Paediatrician notifying the Council that Child B may have special educational needs; and
  - ii. A telephone call seeking advice with regard to the EHC needs assessment process made by Mr X on 15 May 2015.
- 6.2.5. We have acknowledged that there was some confusion around the advice given to Mr X on 15 May 2015. It was not clear to Mr X that if he wanted to formally ask the Council to request an assessment, this should be done in writing and that a standard template was available on Hackney's Local Offer to do this. In light of this, LGSCO determined that the assessment started on 1 June 2015 (2 weeks after Mr X telephoned the Council).
- 6.2.6. The Council acknowledges this fault and confirms that guidance to inform parents with regard to due process has already been reviewed and the Local Offer updated. Council officers will also be reminded to signpost parents / carers to the relevant sections of the Local Offer website if they wish to formally request an EHC needs assessment.
- 6.2.7. Notwithstanding the above, following receipt of the written request to assess on 14 October 2015, the Council determined that sufficient evidence had not been provided to initiate an EHC needs assessment. Parents were issued with a right of appeal against this decision on 6 November 2015 and the Council determined that the assessment process had stopped.
- 6.2.8. On 18 November 2015, the Council received what it believed to be new evidence and, on 30 November 2015, agreed to initiate an EHC needs assessment. The LGSCO investigation, however, determined that in the light of additional evidence being provided soon after the decision not to assess was taken, the Council was wrong to state that the assessment started afresh on 18 November. As such, the LGSCO found that the assessment started on 1 June 2015, 2 weeks after Mr X contacted the Council for advice.
- 6.3. **EHC needs assessment to issue of EHC plan (delays in completing the assessment)**
- 6.3.1. As set out above, the Council must complete statutory assessments within 20 weeks. By determining that the assessment start date was 1 June 2015, the LGSCO has calculated that the assessment took 61 weeks to complete.
- 6.3.2. The Council had believed in good faith that the assessment period started on 30 November 2015 giving a due date for completion of 6 April 2016. For Child B, however, the plan was finalised on 2 August 2016; some 37 weeks

from the date the Council received new information.

- 6.3.3. Following agreement to initiate the EHC needs assessment, evidence was requested and collated in line with statutory requirements. Unfortunately, there was confusion regarding the date of the medical evidence submitted to the Council. This led to an initial decision not to issue an EHC plan. Upon receipt of updated medical advice, this decision was overturned and a final EHC plan ultimately issued on 2 August 2016. The Council's investigation at resolution stage of its complaints process accepted that an error in the medical report should have been picked up sooner. We apologised for this error and provided financial remedy of £4,062 (equivalent to 7 weeks funding of the provision set out in the final EHC Plan to offset the identified delay).
- 6.3.4. Further delay occurred as a result of ongoing dialogue between Mr X and the Council in line with the co-production process and in a bid to agree the content and resources set out in the EHC Plan. It is clear that this dialogue was complex and prolonged and, whilst it ultimately led to a significantly increased resource provision in the plan, it did lead to further delay to the 20 week process.
- 6.3.5. The Council is firmly committed to co-producing EHC plans with parents and wants to ensure that it hears the representations of parent/carers and, wherever possible, reach agreement regarding a child's needs and provision. It is important to acknowledge that true co-production between a local authority and parent/carers can occasionally take longer than the timeframes stipulated in the Code of Practice. Where a case is more complex, it can be in the interests of the child for the Council to spend more time considering and reviewing representations, rather than seeking resolution through the SEND Tribunal. The alternative would be to issue a low quality plan at 20 weeks, which both parents and Council do not agree with and which would contravene the spirit of co-production.
- 6.3.6. In this case, therefore, a pragmatic approach was taken by the Council to prolong the co-production discussion in a bid to secure agreement over the plan. The Council, however, acknowledges the LGSCO's interpretation that assessments must be completed within the statutory 20 week timeframe and apologises for the further delay which occurred at this point.
- 6.3.7. It is of note that the Council monitors the completion of EHC needs assessments on a quarterly basis and acknowledges the challenges with meeting the 20 week timeline. Irrespective of this case, in 2017 both an audit and a review of the EHC needs assessment process were completed in acknowledgement of ongoing challenges to meet the 20 week timeframe. This review identified a number of recommendations to improve and strengthen the process including steps to streamline consideration of assessment requests. A review of these actions was undertaken in September 2018 and a follow up audit review completed in 2019. In light of this report, the Council has agreed to revisit these recommendations again to ensure assessment requests are being considered in a timely manner.
- 6.4. **Process to review & amend B's EHC plan in advance of transfer to primary school in September 2017**

- 6.4.1. The SEND Regulations 2014 stipulate that a local authority must review and amend a child or young person's EHC plan by 15 February in the calendar year the child transfers to primary or secondary school or educational setting.
- 6.4.2. The Council updated Child B's EHC plan on 15 February to reflect his agreed primary school placement in September 2017. There was, however, confusion regarding the parental address as we had been given a number of addresses and the LGSCO has ruled that, on the balance of doubt, the amended plan issued on 15 February was not sent to Mr X and the family, therefore, did not receive their right of appeal to challenge the contents. Whilst the Council maintains that the plan was produced, we acknowledge the LGSCO's findings and apologise that the family did not receive this EHC plan within statutory timeframes.
- 6.4.3. A review of Child B's EHC plan issued in August 2016 was held in March 2017 and a further amended plan issued on 29 June 2017 setting out provision to meet Child B's identified needs in his primary school. As part of the complaint process, the Council acknowledged and apologised for a number of faults and delays which occurred in completing the review and issuing the final amended plan. We accept the LGSCO findings in this aspect and again apologise for any distress caused.
- 6.5. **Management of Mr X's complaint**
- 6.5.1. The Council provided response to Mr X at both resolution and review stage of its complaints process and aimed to explain decisions taken in light of current working practices. The issues being raised were complex and required significant investigation which the Council believes was undertaken objectively and followed due process.
- 6.5.2. It is evident from dialogue with the LGSCO and information provided over the course of the 24 month investigation that the case was a complex one and that there were clear differing opinions in terms of the requirements of local authorities as set out in SEND legislation and statutory guidance.
- 6.5.3. In accepting the findings of the LGSCO report, we believe that this exposes a juxtaposition between legal determination of the Children & Families Act and the SEND Code of Practice with regard to the initiation of statutory assessments and the process to gather sufficient information to inform this. It is also true to state that the Council has always tried to balance the requirement to assess and issue EHC plans within 20 weeks against a pragmatic approach to co-production that maintains open (but occasionally prolonged) dialogue in a bid to produce a higher quality plan which is agreed by both parents and Council.
- 6.5.4. We note that the LGSCO investigation has challenged practices used by the Council (and other local authorities) and has highlighted a number of issues – some of which have already been reviewed and amended (e.g., information regarding the EHC needs assessment process and how to request an assessment) and some which will be subject to further review (e.g., co-production in line with issuing plans within 20 weeks). We will also discuss the implications of the issues raised by the LGSCO report with the Department for Education.

- 6.5.5. The Council, however, apologises for any distress caused to Mr X in pursuing his complaint through the LGSCO.
- 6.6. **Policy Context**
- 6.6.1. As set out above, this report is made in the context of regulations governing the role and functions of the LGSCO.
- 6.7. **Equality Impact Assessment**
- 6.7.1. The report identifies that there were issues regarding the accessibility and transparency of information to understand the EHC process at the time that Mr X moved into the area. Work already undertaken to improve processes, as well as further review and follow up in light of the LGSCO's recommendations, will improve transparency of process and accessibility of information for parents / carers seeking support and provision for their children who have or may have SEND.
- 6.7.2. Notwithstanding this, equality impact assessments will be completed, as appropriate, where EHC planning processes are reviewed and amended.
- 6.8. **Sustainability**
- 6.8.1. Not applicable.
- 6.9. **Consultations**
- 6.9.1. Section 30 of the 1974 Local Government Act requires the Council to make a public notice in more than one newspaper within two weeks of receiving the LGSCO report, and to make the report available at one or more of the Council's offices for 3 weeks. These actions have been undertaken with publication in both the Hackney Gazette and Hackney Today week beginning 27 May 2019. Copies of the LGSCO report were also made available to the public at key Council reception points.
- 6.10. **Risk Assessment**
- 6.10.1. The LGSCO's report concludes that current legislation and case law sets out a low threshold for considering and agreeing EHC needs assessments. Furthermore, whilst the Assess-Plan-Do-Review graduated approach used by Hackney to test out interventions in schools and settings (as set out in the SEND Code of Practice) will provide evidence for the Council to make robust decisions about whether to initiate an EHC needs assessment, the LGSCO report suggests that this process should not be considered ahead of consideration of any such decision.
- 6.10.2. Where robust evidence to warrant initiation of an EHC needs assessment does not exist, there is a risk that a higher number of assessment requests will need to be considered. Alongside this, an increase in the numbers of appeals to the SEND Tribunal is also likely if assessments are not agreed due to insufficient evidence.
- 6.10.3. The Council will mitigate these risks through continued review of processes to ensure EHC needs assessments are considered in a timely way and in line with statutory requirements, alongside regular performance monitoring reported to the Director of Education.
- 6.10.4. Officers will also continue to work with parents to co-produce EHC Plans.

However, this must be balanced against the LGSCO's strong message that EHC needs assessments must be completed within the statutory 20 week timeframe. This carries a reputational risk as the quality of plans acknowledged in the 2017 SEND inspection may be affected.

Furthermore, whilst Council officers will continue to work with parents to produce high quality EHC Plans agreed by both parties, if strong co-production with parents cannot be balanced against the requirement for local authorities to meet their responsibilities to complete EHC needs assessments in 20 weeks, the potential for parents / carers to lose faith and confidence in Council officers will increase; especially if we cannot afford the time to consider views and maintain dialogue.

- 6.10.5. Compromising co-production by issuing plans in those circumstances where additional dialogue is required to reach agreement, will also lead to an increased number of appeals lodged with the SEND Tribunal as the Council may not be able to reach agreement with parents / carers on EHC plans prior to finalisation.

## 7. CONCLUSIONS

- 7.1. The Council apologises for the difficulties and delays in initiating & completing Child B's EHC needs assessment, reviewing & amending his EHC plan and investigating his complaint. With regard to the specific recommendations made by the LGSCO, we have responded as follows:

- i. **Apologise in writing to Mr X** – A letter of apology was sent to Mr X on 4 July 2019.
- ii. **Pay Mr X £22,448.47** – at the time of writing this report, payment to Mr X of 20,948.47 is currently subject to review of itemised receipts and proof of expenditure provided by Mr X. Payment will be made following satisfactory reconciliation of all evidence received. Payment of £1,500 in lieu of the family's distress through the process and time & trouble pursuing their complaint was made on 5 July 2019.
- iii. **Review procedures to ensure that when notification is received under Section 24 of the Act, the Council consults parents and other professionals so as to reach a decision within 6 weeks** – The 6 week statutory timeframe is set out in detail in appendix 2. This is a statutory requirement and forms part of the 20 week overall timeframe if assessment is agreed

Hackney processes looking at notification were reviewed in 2017, with recommendations to improve the process subsequently implemented. Furthermore, fieldwork undertaken between March and June 2019 for an Internal Audit follow up report was satisfied that assessment requests were being considered within statutory timeframes. This issue is also a focus of the work of the SEND Partnership Board (a borough wide multi agency group overseeing delivery of SEND services in Hackney) and will be subject to discussion between the Council and the Department for Education

- iv. **Provide guidance to parents / carers how requests for statutory assessments will be dealt with;** and



- v. **Make available on the Council website a standard form for making requests for a statutory assessment**  
 Hackney's Local Offer website is subject to ongoing review and is updated regularly to reflect user feedback and changes to process. In this respect, the website already holds detailed information with regard to the [EHC process](#), as well as [template forms for parents](#) to complete should they wish to request an assessment
- vi. **Ensure panels making decisions about EHC needs assessment maintain proper records of their meetings, recording clear reasons for decisions and what information was provided to reach this decision** – Although the LGSCO finding in this respect was based on sight of one panel minute, current meeting minutes and records of EHC panel decisions, however, will be revisited and reviewed as appropriate by September 2019.
- vii. **Offer training to the Council complaints team in respect of EHC needs assessment processes and how to remedy avoidable delays** – The local authority's SEND Service (who provide EHC related training to other service areas within the organisation and partner agencies) will offer training to the Complaint Team on the EHC needs assessment process and statutory timeframes. This will be completed by September 2019.
- viii. **If other parents, because of this report, complain to the Council about delays in their child's EHC Plan process, the Council should be willing to consider these in the light of the findings on this case** – The Council always considers and responds to concerns raised in line with its complaints policy.

## **8. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES**

- 8.1. The immediate financial implication for the Council is the £22k payment due to Mr X. £1.5k of this is for distress caused and has been paid. The balance is to reimburse Mr X for expenses he has incurred. The HLT Finance team are providing support regarding identifying & assessing suitable evidence of expenses before payment is released.
- 8.2. The review of assessment processes undertaken in 2017 have resulted in improvements. This should reduce the risk of further financial penalties in the future. However, we are not yet in line with the national or inner-London average, so there is still a real risk of further complaints.
- 8.3. Other recommendations by LGSCO are not expected to result in further financial implications for the Council.

## **9. VAT Implications on Land & Property Transactions**

Not applicable

## **10. COMMENTS OF THE DIRECTOR, LEGAL & GOVERNANCE SERVICES**

- 10.1. The Report to Cabinet sets out the outcome of the investigation by the

Local Government and Social Care Ombudsman (LGSCO) into the complaint by Mr X. The complaint relates to the way the LA initiated and completed the Education Health and Care Assessment of Child B and the delay arising from this. Mr X also complained about the way the complaint process was handled.

- 10.2. Part 3 of the Children and Families Act 2014 sets out the law in regards to special educational needs. Section 24 of the Children and Families Act 2014 states that an LA becomes responsible for a child if he or she is brought to its attention as someone who has or may have special educational needs. Regulation 3 of the SEND Regulations 2014 provides that the LA must consult with the family upon receiving a request or becoming responsible for a child in accordance with the S24 Children and Families Act 2014 before determining whether it may be necessary for special education provision to be made in accordance with an EHC plan.
- 10.3. The threshold to undertake such an assessment is low and the duty appears to be triggered where a child is brought to the LA's attention. It should be noted that this threshold is lower than what is outlined in the SEND Code of Practice.
- 10.4. Where there is an alleged breach of the duty to assess, parents and young people will have recourse to the complaint process including referral to the LGSCO.
  - 10.4.1. Part III of the Local Government Act 1974 (sections 26 (1) and 26A(1) empowers the LGSCO to investigate complaints about 'maladministration' and 'service failure', consider the adverse impact on the person making the complaint and where this has caused injustice, suggest a remedy.
  - 10.4.2. Whilst the LGSCO has no power to force the LA to follow their recommendations, it is always advisable for the authority to give due consideration to their recommendations and in the majority of cases, LA's tend to accept the LGSCO recommendations to remedy complaints.
- 10.5. The LA have set out in section 7, conclusions, above how they propose to respond to each of the recommendations made by the LGSCO.

#### **APPENDICES – None**

- **Appendix 1:** Report of the Local Government & Social Care Ombudsman – EHC Plans (Ref: 17 009 811)
- **Appendix 2:** Statutory timescales for EHC needs assessment and EHC plan development (SEND Code of Practice 2014)

**EXEMPT – Not applicable**

#### **BACKGROUND PAPERS**

**In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required**

**Description of document (or None)**

None

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# **Cabinet**

**15 JULY 2019**

**REPORT OF THE  
LOCAL GOVERNMENT &  
SOCIAL CARE OMBUDSMAN  
(LGSCO) – EHC PLANS  
(Reference 17 001 811 – Mr X)**

## **Appendix 1**

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**Report by the Local Government and Social Care  
Ombudsman**

**Investigation into a complaint against  
London Borough of Hackney  
(reference number: 17 001 811)**

**18 April 2019**

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## The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

### Key to names used

Mr X	The complainant
Child B	His younger son
Officer C	Head of Education, Health and Care Planning



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## Report summary

### Special Educational Needs and Education, Health and Care Plans

Mr X complains that the Council has delayed in issuing an Education, Health and Care Plan (EHC Plan) for his son. As a result, the complainant has had to pay for the educational support his son required.

### Finding

Fault causing injustice and recommendations made

### Recommendations

To remedy the injustice caused, the Council should, within three months of the date of this report:

- apologise to Mr X and his family for the faults we have identified;
- reimburse him £19,343.00, to recognize the money the Council would have paid had it not delayed in completing the EHC Plan. This payment is contingent on itemized receipts and proof of expenditure from Mr X. Interest should be paid to this at the retail price index rate for the period from June 2016, when Mr X first raised a complaint about the backpayment, to February 2019 (this is the date the most recent retail price index figure is available). This amounts to an uplift of 8.3% and a total payment of £20,948.47;
- pay £1,000 for Mr X and his family's distress caused by its avoidable delays and its failures in the review and complaints process;
- pay £500 for Mr X's time and trouble in pursuing his complaint with the Council. This is more than we would normally recommend in recognition of the efforts, which Mr X has had to go to, in challenging the Council's complaint responses and highlighting its legal obligations;
- review its procedures when it receives a notification under Section 24 of the *Children and Families Act 2014* that a child in its area may have special educational needs, to ensure that it consults parents and other professionals so to reach a decision within 6 weeks;
- explain, on its website and in written guidance to parents/carers, how requests for a statutory assessment, be they made by telephone or in writing, will be dealt with in accordance with the legislation and *Special Educational Needs Code of Practice*. If the Council wants a request for an EHC needs assessment in writing, this must be explained to the applicant, with reference to its written policy. Where an applicant has difficulty in submitting a written request, the Council should have procedures to help the applicant complete the required form;
- make available on its website its standard form for making requests for a statutory assessment; The test for whether the Council should consider whether to carry out a statutory assessment of SEN is that a child *may* have special educational needs which require provision. It does not need to establish that the child does have such needs. The threshold is low, and the Council should reflect this in its local offer, and on its website.
- ensure that its Panels, which make key decisions about whether to proceed with an EHC needs assessment or not, or whether to issue an EHC Plan, keep

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proper records of their meetings, provide clear reasons for their decisions and they record the information and reports they have considered;

- offer training to its complaint team in respect of the statutory timescales for EHC assessments and how it should remedy avoidable delays in its EHC Plan process, taking into account the findings made in this report;
- if other parents, because of this report, complain to the Council about delays in their child's EHC Plan process, the Council should be willing to consider these in light of the findings in this case.

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## The complaint

1. The complainant, Mr X, complained to the Council in 2016 and 2017 about its assessment of his son's (Child B's) special educational needs and about the way in which the Council had investigated his concerns.
2. Child B was formally diagnosed with an autistic spectrum disorder (ASD) on 14 May 2015. Mr X requested an assessment from the Council of Child B's special educational needs by telephone on 15 May 2015. Before that, the Council had received notification from a Consultant Community Paediatrician dated 7 April 2015 that Child B may have special educational needs.
3. Hackney's Learning Trust is a department of the Council and is responsible for assessing and providing for Child B's special educational needs.
4. A summary of Mr X's complaints is as follows.

**Complaint (a)** - The Council took 69 weeks to complete an Education, Health and Care Plan (EHC Plan).

**Complaint (b)** - The Council failed to issue an amended final ECH Plan by 15 February in the year of Child B's transfer to primary school.

**Complaint (c)** - There were faults by the Council in the annual review process.

**Complaint (d)** - There were faults in the way the Council considered Mr X's complaints.

## The Ombudsman's role and powers

5. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
6. SEND is a tribunal that considers special educational needs. (*The Special Educational Needs and Disability Chamber of the First Tier Tribunal ('SEND')*)
7. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a), as amended*)
8. We cannot investigate a complaint if someone has appealed to a tribunal or a government minister or started court action about the matter. (*Local Government Act 1974, section 26(6), as amended*)

## Legal and administrative background

### Assessments

9. The *Children and Families Act 2014* (the Act), the *Special Educational Needs Code of Practice 2015* (the Code) and the *Special Educational Needs and Disabilities Regulations 2014* (the Regulations) contain detailed guidance to councils about how they should manage the EHC Plan process.
10. Section 24 of the Act provides that a local authority (council) is responsible for a child or young person if he or she is in the authority's area and has been-

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(a) identified by the authority as someone who has or may have special educational needs, or

(b) brought to the authority's attention by any person as someone who has or may have special educational needs.

11. Section 36(8) provides that an Education Health and Care (EHC) needs assessment must be carried out if the council considers that a child has or may have special educational needs and it may be necessary for provision to be made available to the child or young person.
12. Section 34(4) provides that a council should consult the parents as soon as practicable after receiving a request or after the child has been brought to its attention.
13. A child has special educational needs (SEN) if they have a learning difficulty or disability which calls for special educational provision to be made. Special educational provision means educational or training provision that is additional to, or different from, that made generally for others of the same age in mainstream schools or maintained nursery school. Only when an assessment has been carried out, does a council have to decide whether it is necessary to provide special educational provision under an EHC Plan.
14. Paragraph 9.3 of the *Code* states "*the factors a local authority should take into account in deciding whether it needs to undertake an EHC needs assessment are set out in paragraphs 9.14 to 9.15 and the factors a local authority should take into account in deciding whether an EHC Plan is necessary are set out in paragraphs 9.53 to 9.56.*"
15. Paragraphs 9.14 and 9.15 of the *Code* says the council should pay particular attention to:
  - evidence of a child's academic attainment and rate of progress;
  - information about the nature, extent and context of the child's SEN;
  - evidence of the action already being taken by a school to meet a child's SEN;
  - evidence that, where progress has been made, it has only been as the result of much additional intervention and support over and above that which is usually provided;
  - evidence of the child or young person's physical, emotional and social development and health needs, drawing on relevant evidence from clinicians and other health professionals and what has been done to meet those needs by other agencies.
16. In *Cambridgeshire County Council v FL-J [2016] UKUT 0225* the Judge said:

*"The authority or tribunal does not have to decide at this initial stage whether special educational provision 'is necessary'... that question only arises when an assessment has been made... the issue at the initial state is a provisional and predictive one; it is only when an assessment has been made that a definitive decision has to be made."*
17. The *Code* (paragraph 9.16) says that councils may develop criteria as a guide to help it decide when it is necessary to carry out an EHC needs assessment but councils must be willing to depart from those criteria where there is compelling reason to do so. The *Code* (paragraph 4.30) says a council must publish its 'Local Offer' which, among other things, should include details of how parents and

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young people can request an assessment and arrangements for identifying and assessing young people's SEN and this should include the arrangements for EHC needs assessments. Councils should keep the Local Offer under review.

18. A request under Section 36(1) of the Act for an assessment may be made by the child's parent, by a young person over the age of 16 but under 25 and a person acting on behalf of a school, ideally with the agreement of the parent or young person. The term request is not defined in the legislation and the guidance stipulates that only a request has to be made.
19. Once an assessment has been made, a council must determine whether it is necessary for special educational provision to be made to the child. Where the council decides that an EHC Plan is not necessary, it must notify the child's parent and provide reasons for its decision.
20. If an assessment determines that special educational needs provision is required for a child with special educational needs, the council has a duty to ensure it is in place and is maintained. The courts have decided that councils can ask other agencies to make the provision on their behalf but the duty to make sure it is in place remains with the council. The child's needs and provision should be set out in the EHC Plan.

### **Timescales**

21. Paragraph 9.39 of the Code provides that *"local authorities should ensure that they have planned sufficient time for each step of the process, so that wherever possible, any issues or disagreements can be resolved within the statutory timescales"*.
22. Paragraph 9.40 states that: *"The whole process of EHC Plan needs assessment and EHC Plan development, from the point when an assessment is requested (or a child or young person is brought to the local authority's attention) until the final EHC Plan is issued, **must** take no more than 20 weeks (subject to exemptions set out below)"*.
23. The following specific requirements apply (paragraph 9.41):
  - a) *"Local authorities must give their decision in response to any request for an EHC Plan assessment within a maximum of 6 weeks from when the request was received or the point at which a child or young person was brought to the local authority's attention"*
  - b) *When local authorities request information as part of the EHC needs assessment process, those supplying the information must respond in a timely manner and within a maximum of 6 weeks from the date of the request*
  - c) *If a local authority decides, following an EHC needs assessment, not to issue an EHC Plan, it must inform the child's parent or the young person within a maximum of 16 weeks from the request for a EHC needs assessment, and*
  - d) *The child's parent or young person must be given 15 calendar days to consider and provide views on a draft EHC Plan and ask for a particular school or other institution to be named in it"*.
24. There are rights of appeal to the Special Educational and Disability (SEND) First Tier Tribunals for parents where a local authority refuses, at week six, to carry out

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a statutory assessment, or where a council decides, at week sixteen, not to issue an EHC Plan, or when parents disagree with the contents of the final Plan.

### **Reviews**

25. Regulation 18 requires that, where a child is within 12 months of a transfer between phases of education, the council must review and amend, where necessary, the child's EHC Plan before 15 February in the calendar year of a child's transfer. This gives time for parents to appeal to the SEND Tribunal before the start of the school year.
26. Regulations 21 and 22 set out the requirements for reviews where the child or young person does not attend a school or other institution. The council must invite key professionals to the review meeting and give them two weeks' notice. It must obtain advice and information about the child and circulate this two weeks in advance.
27. Paragraph 9.177 of the *Code* says the council must send a note of the meeting to those who attended. This should set out recommendations on any amendments and should refer to any difference of opinion between the council's recommendations and of others attending the meeting.
28. A council must decide whether to maintain the EHC Plan, amend it or cease to maintain the Plan and must notify the parents of its decision within four weeks of the review meeting.
29. Where a council proposes to amend the Plan, it should send the parents, without delay, a copy of the EHC Plan, together with a notice specifying the proposed amendments along with copies of any evidence which supports those amendments. Parents have 15 days to make representations. A council should send the final amended Plan as soon as practicable and in any event within eight weeks of the council sending the Plan and notice of amendments.
30. There is statutory provision in paragraphs 9.178 of the *Code* which says councils should consider reviewing an EHC Plan for a child under five at least every three to six months. Such reviews would complement the duty to carry out a review annually. But councils are not required to undertake reviews every three to six months; they are required to consider doing so.

### **Provision and appeals**

31. Paragraph 9.61 of the *Code* sets out the principles for preparing an EHC Plan. Decisions about the content should be made openly and collaboratively with the parents, child and young person.
32. Councils are not obliged to provide what each parent requests. However, they should ensure that parents are involved properly in the decision making and be able to explain clearly why they consider a suggested provision meets the assessed needs of any individual child.
33. Where the child or young person has an EHC Plan it is open to the council to offer a personal budget to allow the young person or his parents to arrange the special educational needs provision themselves. The council should include details of the proposed personal budget in the draft EHC Plan.
34. The SEND Tribunal deals with disputes about assessments and provision for special educational needs. This means we cannot normally look at a council's decisions not to carry out an assessment or provide an EHC Plan. Once the SEND Tribunal has made an order to amend an EHC Plan, the council must do so within five weeks.

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35. Even if a complainant is appealing against the provision specified or the named placement, the council still has a duty to provide the support specified during that period.
36. The Court of Appeal confirmed in *R v Commission for Local Administration, ex parte Field [1999] EWHC 754 (Admin)* that we cannot consider a complaint when the complainant has pursued an alternative remedy, even if it does not provide a complete remedy to the claimed injustice. This means we cannot consider a complaint about the suitability of education arranged by a council when someone has appealed to the SEND Tribunal about the provision named in an EHC Plan. But, where there has been a delay in issuing an EHC Plan, we may consider whether any additional provision ordered by the Tribunal could have been made sooner but for the council's delay.

### **The Council's procedures**

37. Information about the Council's assessment process is available on its website. Its guidance of December 2016 explains to parents that they do not have to prove that an EHC Plan is necessary to obtain an assessment; they just have to show it may be necessary. So, if parents consider that their child needs more help than the school can provide, they can ask for an assessment.
38. The Council's guidance refers to a graduated approach to support the special educational needs of children and young people. It states that only a few pupils will require an EHC Plan. The early stages include: assess; plan; do; review; signpost (to a specialist). Following the implementation of this cycle, the Council's guidance says that some children may still be making less than expected progress. The evidence should demonstrate that, although the setting has responded to external advice, it is clear the child requires support beyond that which can be reasonably provided by the setting.
39. The Council's guidance refers to the timeline for an EHC needs assessment process as follows:
- Stage 1 is between 0-6 weeks, or earlier if possible, and refers to a request for an EHC needs assessment;
  - Stage 2 is 7-16 weeks when the Council will seek further advice from professionals and the guidance suggests a meeting at week 14; and
  - Stage 3 is 16-20 weeks and is the final stage. The Council's guidance says that if there is a dispute about provision and/or placement, the Council should finalise the EHC Plan to enable the parent to consider mediation or appeal.
40. The Council believes that a notification under Section 24 of the Act is not a direction to initiate an assessment.
41. The Council's 2016 guidance states that parents can request a statutory assessment in writing although Mr X says that, in 2015, this information was not on the Council's website.

### **Pivotal Response Treatment (PRT)**

42. This is a form of educational provision for children with ASD. Mr X considers this is the best provision for his son and he has provided evidence to the Council supporting his views. The provision is best provided both in an educational setting and at home so that there is consistency between the two settings.

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43. The Council says that PRT treatment has a limited evidence base within the UK. The Council says that there is no evidence that Mr X discussed this matter with the Council before starting the PRT for Child B.

## **How we considered this complaint**

44. We are investigating the Council's actions since April 2015.
45. We have produced this report following the examination of the Council's computer records, an interview with Mr X and an interview with the Head of Education, Health and Care Planning, Officer C. We issued a previous draft report and have taken into account the comments received in response. We have also received legal advice.

## **What happened**

### **Complaint (a): Assessment of Child B's special educational needs and issue of an EHC Plan**

#### **Events from March to May 2015**

46. In March 2015, the Speech and Language Therapist (SALT) referred Child B for an assessment to the Neurological Department at the Complex Communications Clinic because of concerns he had features of autism. On 7 April 2015, the Consultant Community Paediatrician notified the Council's Learning Trust on its referral form called 'Notification to the Learning Trust of a Child Under 5 Years who has or may have special educational needs'. The Council received this although it is not clear of the date of receipt.
47. The Consultant provided the name of the parent, his address and the name of the General Practitioner (GP). He referred to Child B's severe speech and language development, social communication and behaviour, emotional and social developmental difficulties. The Consultant ticked the boxes: statement, action, action plus and statutory assessment. He stated that the parent was supportive of the referral to the Council and that Child B was receiving speech and language therapy and early support and he provided the name of the Speech Therapist.
48. The Council says that these notification forms are now rarely used and the Council has a Multi-Agency Referral (MAR) form. Cases will be discussed at a multi-disciplinary meeting with the Council's Early Years Team. The Council did not take any action when it received the Consultant's notification.
49. Mr X says that the Complex Communications Clinic carried out a multi-disciplinary assessment of Child B and completed its report on 14 May 2015, sending a copy to the Learning Trust. The report noted that Child B's behaviours were consistent with a diagnosis of autism.

#### **Analysis and findings**

50. There is no requirement for a council to agree that a child or young person may have special educational needs. But the notification from the Consultant Community Paediatrician fell within Section 24(1)(b) of the Act. He identified Child B as a child, who may have special educational needs and he provided relevant information to support his concern. The fact that the Consultant Community Paediatrician used a form, which the Council now rarely uses, is immaterial. We are satisfied that this was a notification to the Council that Child B may have special educational needs and was therefore capable of forming the start point for the 20 week time limit.



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51. On 15 May 2015, Mr X received the formal diagnosis that Child B had ASD and Mr X told the Council this on the telephone. Mr X says that this diagnosis came within the 6-week initial assessment period, albeit close to the end, and this added detail to Child B's difficulties. Mr X does not consider it was new evidence and, even if it was, the Council could have considered this evidence during week 6 to 16 of the EHC process.
  52. The Council, when it received the notification of 7 April 2015, should have consulted Mr and Mrs X, the Nursery and the Speech and Language Therapist in accordance with paragraph 9.14 of the *Code*. It then had 6 weeks (to 19 May 2015) to decide whether to carry out a statutory assessment and to tell the parents its decision. It failed to do this and we are satisfied that this amounts to fault by the Council.
  53. Mr X says that, during this six week period to 14 May, the Council would have had the notification from the Pediatrician, information from the Nursery and from SALT and it should have asked for a report from the Special Educational Needs Coordinator (SENCO).
  54. We consider, however, that it is likely that the Council would have refused to assess Child B based on the 7 April notification alone. Mr X could have appealed this decision and therefore he lost this opportunity, an injustice in its own right. But we consider that it is unlikely Mr X would have done so given he had just received the formal ASD diagnosis and it is likely he would have asked the Council to have reviewed its decision in the light of this new information.
  55. We consider that a subsequent request for a statutory assessment can provide a fresh trigger for the 20-week timeframe. Neither the Council nor Mr X had the formal ASD diagnosis at the time of the Consultant Community Pediatrician's 7 April 2015 notification. It was relevant information and it confirmed Mr X and other professionals' suspicions about Child B's difficulties. But, based on what we know about the Council, it seems more likely it would have refused to conduct an assessment, particularly given the amount of evidence it says it requires to agree to an assessment.
  56. We consider the ASD diagnosis in mid-May was a material change of circumstances which warranted a new request for an assessment. We therefore conclude that this formal diagnosis triggered, in the particular circumstances of this case, a new start date for the assessment process.

### **Events of May to July 2015**

57. Child B was attending a non-maintained nursery (the Nursery). Child B has severe language and social communication difficulties, he can be highly distractible and easily fixates on specific interests or sensory stimulation, he can have restricted motivation towards engaging with learning materials and he lacks the communication and interaction skills to make adequate progress in the absence of targeted and personalised support. Outside school, Child B is easily emotionally dis-regulated resulting in challenging and maladaptive behaviours.
58. Mr X decided that it was necessary to put the PRT in place early on. Mr X and his wife therefore started this treatment for Child B, which they funded themselves. This entailed one to one support for Child B at Nursery, and at home, while waiting for an assessment and provision from the Council.
59. Mr X says that he and his wife had to borrow money on credit cards and re-mortgage their property to consolidate this debt and make other changes to fund the PRT programme. Mr X says that there have been significant

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- improvements in Child B's communication skills and behaviours because of this provision. Mr X and his wife believe that, putting in this expert educational package early, which has been proven to be effective, was in Child B's best interests. It is a demanding programme which requires commitment from all those working with Child B including themselves.
60. The Council says that Mr X and his wife started this programme in the absence of an agreed EHC Plan and therefore did so at their own risk and volition.
61. Mr X says he requested an assessment of Child B by telephone on 15 May 2015. Mr X has named the two case officers within the Council's SEN department with whom he spoke and has evidence from his telephone bill of these calls. He says he was told that there must be three support plans from Child B's Nursery before the Council could begin the statutory assessment process. Mr X says that the Council claimed this to be a legislative requirement when it was the Council's preferred internal process. Mr X says that this meant he did not write to the Council at this point because he thought he needed the three support plans from the Nursery. At this stage, Mr X was new to the special educational needs legislation although, over the following months, he became more knowledgeable.
62. Mr X says that the Nursery also believed that three support plans were necessary before the Council would begin an EHC needs assessment. The support plans set out what additional support the educational setting had provided.
63. The Council accepts that there is no legislative requirement for three support plans. However, the Council has regard to the SEN Code which sets out the kind of evidence which should be provided to demonstrate that a child would not be able to make expected progress, alongside any evidence provided by an early years provider. The Council says it is entitled to set out the criteria it will use to help it make such decisions and this is explained on its website as part of its Local Offer. The Council tells us that it will depart, however, from its normal approach when this is necessary.
64. The Council says that one of its case officers in the SEN department recalls speaking to Mr X. Although reference was made to three support plans, the Council says this was done in the context of explaining to him the need to provide robust information to support his request. The Council believes that its staff provided Mr X with appropriate and correct information in May 2015. However, the Council accepts the process to request an EHC assessment may not have been made sufficiently clear to Mr X.
65. Over the 2015 summer term, the Council's special educational needs co-ordinator (SENCO) for the Nursery worked with Mrs X and the Nursery to support Child B. The Council says that the likelihood of an EHC needs assessment being agreed is much less without sufficient supporting evidence.
66. The Council maintains that there was no valid statutory assessment request from Mr X in May 2015; to initiate an assessment, based on a telephone call, would be inappropriate. The Council says it also has a responsibility to ensure that any request it receives is made by an appropriate and legally responsible adult. That is why the Council says it asks for requests for a statutory assessment to be made formally in writing. It has a standard form for this: 'Request for Statutory Education Health and Care Needs Assessment'.
67. Mr X says that they were reliant on the Council to provide them with this form and it was not available for them to download from the Council's website.
68. The Council's standard form requests:

- information from health services and social care services;
  - details of the educational provision;
  - copies of relevant reports or referrals;
  - the interventions in place to support the child at the educational setting and their impact;
  - the weekly timetable of support and early years stage; and
  - the form also asks whether the Head of the educational establishment attended supports the request.
69. The Council says that a diagnosis of autism would not necessarily warrant automatic agreement for an EHC needs assessment given the breadth of the autistic disorder and, in any event, interventions were taking place at the Nursery to meet Child B's needs. The Council also does not consider the duty to assess is triggered at the point that it becomes aware that a child may have special educational needs.
70. Mr X says the Council was entitled to tell him its preferences for evidence but it should have correctly advised him that there was no legal obstacle to him submitting a written application for an EHC needs assessment that day. In addition to the formal diagnosis of ASD, there was the notification from the Consultant of April 2015, sent to the Council, that Child B may have special educational needs.

### **Analysis and findings**

71. It is accepted that Mr X telephoned the Council on 15 May 2015 on receiving Child B's diagnosis. On the balance of probabilities, it is likely that Mr X was asking about how he could obtain support from the Council for his son's special educational needs. Further, the mention by the SEN case officer of needing three support plans from the Nursery would not have arisen unless Mr X had been asking about receiving support from the Council. His only purpose in telephoning the Council on 15 May was to clarify the EHC Plan process and he relied upon the Council to provide him with accurate information.
72. The Council says that the requirements of the *Code* allows it to set criteria for the kind of information it should seek when making decisions about requests for a statutory assessment. The *Code* provides guidance on the factors a council can consider in deciding whether to undertake an EHC needs assessment but, in circumstances where the council is seeking additional information, the relevant timescales, which councils are required to meet, do not change.
73. The intention behind the EHC Plan process was not to impose disproportionate administrative burdens on parents and children. As such, we consider the Council's request for three support plans, in this case, was disproportionate and not supported by legislation. The Council has not accepted this point so far during the course of the investigation.
74. There is subsequent evidence, after 15 May 2015, that Mr X was formalising his request for an assessment. In mid-July 2015, he again sought clarity about the process and timeframe. We cannot see that the Council provided him with a clear answer at this time, or earlier on 15 May when he telephoned, and this was recognised in the Council's consideration of his complaint in July 2016.
75. We consider that the Council should have sent Mr X its standard form requesting an EHC statutory assessment promptly, after he telephoned on 15 May 2015. Or

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it could have advised him to write formally requesting an assessment. Its failure to do so is fault.

76. Had the Council provided the form to Mr X, following the telephone conversation on 15 May 2015, we consider – on the balance of probabilities – that he would have completed the Council’s request for a statutory assessment form promptly or made a written request for an EHC needs assessment. It would have been possible for Mr X to have done this without the SENCO’s input (although that might have affected the Panel’s decision) given he had Child B’s medical diagnosis and a SALT report as well as the Nursery’s support for such a request.
77. We consider it is reasonable to conclude that Mr X would have, had he known to do so, written to the Council within two weeks of 15 May formally requesting a statutory assessment and providing relevant information as required. In view of the Council’s failure to provide Mr X with accurate information about the Council’s EHC process, we consider Mr X’s request for a statutory assessment would have been made sooner than the Council now claims (14 October 2015). So, we will take 01 June 2015 as the date when the Council should have started the Council’s statutory assessment of Child B’s special educational needs

### **Events of July to November 2015**

78. On 8 July 2015, the SENCO emailed Mr X to say that she would not be able to see Child B before the end of the term. She explained that they could meet the following term to discuss requesting an EHC Plan assessment. Mr X replied, stating he thought the assessment had started and that they were keen to get the EHC assessment process underway as *“we are privately funding a programme of PRT and Speech and Language Therapy (SALT) but I am not really up on what steps and timeframe are, what we need to be doing now to assemble our case and if the onus is on us to drive it”*.
79. The Council says that the SENCO was clear that there was an understanding that the EHC needs assessment process had not started until she received Mr X’s email of 8 July 2015 stating that he understood it had.
80. Mr X says that he was then told in September 2015 that the assessment had not started and that he had to submit a written application to trigger the process. On 9 October Mrs X completed the Council’s form, this having been provided to her by the SENCO.
81. On 14 October 2015, the Council received the Area SENCO’s written request for an EHC needs assessment which Mrs X had signed. Accompanying the request was the Hospital Paediatrician’s report dated 15 May 2015; a Speech and Language report dated 12 March 2015; the PRT Supervisor’s report dated April 2015 and the Early Support Officer/Area SENCO’s report dated September 2015. The Head of the Nursery supported the request, stating that Child B would not be able to access any activities without support.
82. The application referred to three support plans to date and that the PRT provision had started in April 2015 with daily sessions and one to one support to Child B at home and one to one support at the Nursery each Friday as from June 2015. The Council says that three support plans were required.
83. On 6 November 2015, the Council’s EHC Panel (the Panel) met to discuss Mr X’s request for an EHC needs assessment. The Panel was made up of a range of personnel including the interim Head of SEN/Learning Consultant and the Inclusion and Specialist Support Team Leader. The minutes do not refer to what documents the Panel considered and do not record any discussion which the

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Panel might have had. The minutes simply recorded its decision as follows: *“Panel did not agree assessment as the child does not currently meet the criteria to assess due to lack of evidence if the setting has been able to provide extra support”*. It was recommended that the SEN case officer looked to funding from the Early Years Fund to provide support.

84. On 6 November 2015, the Council wrote to Mr and Mrs X explaining the Panel’s decision, stating that there was not sufficient evidence of the interventions used over time to support Child B at the Nursery. The Council advised that the Nursery could seek additional resources from its Early Years Fund and that, after Child B had been in his educational setting for longer, his difficulties would be more apparent in an educational setting. The Council also informed Mr X of his right of appeal, provided information about mediation and it referred to paragraph 9.14 of the *Code* as the relevant evidence required to make its decision.
85. On 11 November 2015, the Area SENCO advised Mr and Mrs X to speak to the SEN Manager about the Panel’s decision. On 23 November, Mr X met her. He says, she told him the decision not to assess had been made in error and she apologised.
86. On 18 November 2015, the Speech and Language Therapist (SALT) wrote to the SEN Manager raising concern about the Panel’s decision, explaining that she was concerned that the decision had been made without considering all the evidence of interventions in place for Child B. She explained that Mr and Mrs X were paying for the professional support, both at home and Nursery, and that Child B had made marked progress because of the provision. She stated that she supported the family raising a query about the Panel’s decision.
87. In the spirit of working with parents, the Council says it was open to reviewing its decisions, and it did so, in light of the new evidence provided by the Nursery and by SALT. The Council says this evidence was not available previously. Mr X says that the Council was in possession of the evidence of the Nursery’s interventions because the plans had been co-produced with the Council’s SENCO. And that, if the Council had not made this evidence available to the Panel, that was fault by it.
88. On 30 November 2015, the Panel reviewed the request and it decided to proceed with an EHC needs assessment.
89. The Council says that its legal advice is that the 20 week timescale clock stopped at the point the Panel refused to assess on 6 November 2015. The process restarted when either the Panel reviewed and reversed its decision or when a SEND Tribunal reversed the decision.
90. Officer C says that, in these circumstances, the EHC process restarts at week one and that an officer from the Department of Education had advised the Council, at a training event, that this was the correct approach. Officer C was not sure if the process returned to week one if the Council refused to issue an EHC Plan, at week sixteen, but later reviewed its decision. The Council says that, while there may not be any specific reference in the statutory guidance that the timeframe can stop and start, it considers it is clear, from the points at which the right of appeal to the SEND Tribunal is triggered, that this can be considered as a stop point. If new information is provided following a refusal to assess, as in Child B’s case, the Council says that it is reasonable to consider that this is a new request to assess.
91. The Council says it always strives to issue EHC Plans in 20 weeks but for a variety of reasons it may not manage this. It considers that this is a national

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problem. The Council has worked to improve its timescales and, in the last two SEN returns, the Council met the 20 week timeframe better than other inner London councils.

### **Events of November 2015 to March 2016**

92. Between November 2015 and March 2016, there was various correspondence between Mr X and the Council. On 15 March 2016 Mr X provided a breakdown of the costs of the provision for Child B.
93. On 16 March 2016, the Council's Panel considered the available evidence. It declined to issue an EHC Plan for Child B. Mr X was informed of his right of appeal to the SEND Tribunal.
94. Mr X raised concerns about this decision and the PRT Consultant wrote to the Council as well as raising her concerns. Mr X says that it transpired that the Council had lost a key medical report from Child B's Hospital Paediatrician. When this error came to light, the Panel reversed its decision on 14 April 2016.
95. The Council says that there was some confusion about the medical report. The Council subsequently apologised for this and it determined that the clock had not stopped.
96. On 14 April 2016, the Council issued a draft EHC Plan and it had four weeks to finalise it. Mr X says he was told by the SEN Learning Consultant that, should the Council exceed the timeframe to issue a final EHC Plan, it would backdate the provision. The Council cannot find any evidence to support Mr X's claim. But there are emails from Mr X to the SEN Learning Consultant referring to this undertaking

### **Analysis and findings**

#### **Mr X's rights of appeal and our jurisdiction**

97. Mr X had two points in these events when he had a right of appeal to the SEND Tribunal. In early November 2015, when the Council refused to conduct an EHC needs assessment and, in March 2016, when the Council refused to issue an EHC Plan.
98. We must consider whether it was reasonable for the complainant to have resorted to the SEND Tribunal at these points. Where an appeal right exists, we generally expect parents to use that remedy unless it is or was unreasonable for them to do so.
99. When making this decision, we consider the individual circumstances that led to the refusal to assess or proceed to an EHC Plan and the complainant's reasons for not proceeding to appeal. Our remit is focused on the fault of the processes, particularly around the administrative requirements surrounding the development and delivery of any EHC Plan.
100. If the complaint is about a judgement that has been properly made, then the matter is for the SEND Tribunal. But, if the complainant alleges fault in the way a council reaches a judgment, it may not be reasonable to expect or to have expected the complainant to have gone to appeal.
101. There are a range of factors which may weigh on our assessment; for example: whether any anticipated costs of litigation would have been disproportionate; whether the parents felt that there was administrative fault by a council in making its decision and therefore they had a good prospect of changing the council's decision through negotiation and whether a council's review of its original decision

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was reversed within a short time period and as a result of fault in the original decision making.

102. On both appeal opportunities, we consider that it was reasonable for Mr X not to exercise his appeal rights in circumstances where steps were taken to successfully resolve the matter, without the need to appeal, and the Council reversed both decisions within a short period of time and before the deadline for appealing had even expired and, crucially, on the basis of evidence which had already previously been brought to its attention. Essentially there was no reason for Mr X to need to exercise his right of appeal.
103. We are therefore satisfied that it is right to exercise our discretion to investigate as there is evidence of administrative fault by the Council in the decision-making process in November 2015 and in March 2016.

### **Statutory timescale of 20 weeks**

104. The Council considers the statutory timeframe of 20 weeks to complete an EHC Plan stops and starts when the parent has a right of appeal to the SEND Tribunal. If the decision is overturned at the point that the Council refuses to undertake an EHC needs assessment (at week six), the Council's advice is that the statutory process starts again at week one.
105. The Council is correct to say decisions not to assess or not to issue an EHC Plan can stop the clock on the assessment framework because they start the clock on the time limits for appeal. So, a council's decision, at these points, stands until set aside by a Tribunal, by judicial review or by the council reversing its decision, as in this case.
106. It may be reasonable for a council to agree to review, in the light of fresh evidence, and change its view thereby saving the parents and council the costs of an appeal. Or for a council to take a defensible decision but subsequently decide to limit its risks in Tribunal proceedings by conceding its position. But we do not conclude that these considerations apply in this case.
107. If a council reverses its decision, the question is whether this can be regarded as part of the original decision-making process (and subject to the 20 week timeframe) or a response to a new request for assessment, which is what the Council contends. This is principally a question of fact. But, where a council reverses its original decision because it failed to take into account relevant information, or there is some other fault, the 'revised' decision should, in our view, still be regarded as a response to the original request and fall within the original, timeframe without pauses or interruptions.
108. We have explained why we conclude that the Council made errors at the Panels of 6 November 2015 and March 2016 and subsequently, as a result, reversed its original decisions both in November 2015 and March 2016. Therefore, we do not agree with the Council that its decisions, at these points, which could have been appealed by Mr X, has the effect of stopping the 20 weeks from running for the following main reasons.
- There is no provision for this in the legislation or guidance.
  - This would potentially allow councils to benefit from their own errors in circumstances where a defective decision is made and subsequently overturned, at the Council's own motion, such as in this case.

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- There is no reason why the statutory process should start at week one if a decision has already been made to assess and a council would have a further 14 weeks to prepare and finalise the EHC Plan.
  - The Council has not published its policy in this regard, contrary to good practice.
109. While the requirement to consult parents with the aim to co-produce EHC needs assessments and/or Plans is appropriate, the Council must make sure that it manages these negotiations within the statutory timescales set down in the legislation. Overall the Council has tended to look at what was reasonable for the Council to do rather than consider its actions in the light of the legal requirements on it.
110. The Council at times also sought to attribute blame to Mr X for the Council's delays when it has responsibility for the management of the EHC assessment process and it should ensure timeframes are met. There are opportunities within the process to negotiate with parents/carers about provision but that should not mean that the statutory timeframe is not met. What is required is for meetings with parents, and responses to queries, to be arranged or provided in a timely manner. When the process overruns, as in this case, it leads to delay in implementing provision for the child, and prevents parents from pursuing timely appeals to the SEND Tribunal.
111. We consider the Council should have completed the EHC Plan process within 20 weeks from 1 June 2015 which means a final EHC Plan should have been completed by 19 October 2015. But the Council did not issue the final EHC Plan until 2 August 2016. That amounts to 41 weeks of avoidable delay over and above the statutory 20 weeks limit. The Council is therefore at fault and it has failed to abide by the legal requirements in the assessment of Child B's special educational needs and provision.
112. The Council has allowed some backdating of provision in consequence of its delay. But it has only allowed for seven weeks of delay. This is not a suitable remedy for the loss of provision and avoidable time, trouble and distress to Mr X and his family by the Council's prolonged delay. In addition, it means that there are 34 weeks of avoidable delay, during which Mr X financed the PRT programme, and which Child B's final EHC Plan eventually endorsed as appropriate but for which the Council has provided no financial support.

### **Events of April to September 2016**

113. The Council asked Mr X to attend a meeting but the earliest the SEN Learning Consultant could offer was five weeks after the Panel had decided to issue an EHC Plan.
114. On 16 May 2016 Mr X met the Council's SEN Consultant. The Council generally allocates high needs top up funding to EHC Plans for children and young people, attending mainstream school, according to five funding levels. In Mr X's case, the Council agreed that level four funding (£12,034 a year) was appropriate to meet Child B's needs. Mr X explained that the cost of the PRT package was considerably more a year. The SEN Consultant agreed to reconsider the Council's financial offer.
115. On 22 June 2016, the SEN Consultant wrote to Mr X to say that it would fund Child B's package for 25 hours a week for 39 weeks a year and it would fund the full cost of the PRT Therapist, Consultant and supervision. This amounted to £20,432. The SEN Consultant stated that the start date of the assessment was



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- 30 November 2015 when the Panel agreed to assess and the timeline of 20 weeks begun at this point. Mr X replied stating that the clock starts from “*when an assessment is requested not when the Council deigns to begin it*”.
116. The Council subsequently offered a budget of £25,000 a year and later increased this to £29,593.91. The Council issued a final EHC Plan on 2 August 2016. After protracted complaint consideration the Council offered seven weeks of backdated provision at a cost of £4,062, effectively providing funding from 14 June 2016.
117. On 27 July 2016, the Council wrote to Mr X, stating that the timeframe started on 14 October 2015 when it received Mrs X’s written request for an EHC needs assessment. It accepted that the Council had failed to ensure appropriate checks and follow ups were in place when gathering information from the professional network for the March 2016 Panel meeting and it said the clock did not stop between 16 March and 14 April 2016 as originally stated.
118. On 12 August 2016, the Council wrote to Mr X to say that there was evidence that he had made a more formal request for an EHC needs assessment in July 2015.
119. The Council’s Business Analysis and Complaints Team reviewed the complaint, concluding there was uncertainty regarding the implications when councils do not meet the 20 week timeframe. But its legal advice was that the law was silent on what happened if there was a failure to adhere to the 20 week timeframe. The Council referred to the fact that the dialogue between Mr X and the Council allowed it to work with Mr X “*at every point in the process and for [him] to successfully argue the case outside of SEND Tribunal formalities and resulted in a significant shift in allocated funding but, to some degree, at the cost of expediency*”. Mr X refutes that this was the case; instead the Council sought to stall the EHC process.
120. The Council decided, in these circumstances, that the offer of seven weeks additional financial support covering the period mid-June to 2 August 2016 was reasonable.
121. On 13 September 2016, the Acting Group Director of Children, Adults and Community Health sent to Mr X a copy of Business Analysis and Complaints Team’s review report. She confirmed that this was the Council’s final offer. The Council stated that Mr X had chosen to prolong the EHC Plan process and that Mr X had committed to specific provision ahead of the Council’s decisions as part of the EHC needs assessment process. Mr X says he had assumed that the Council would agree to assess Child B and devise an EHC Plan within 20 weeks as the law requires it to do.
122. The Council considers flexibility is required to ensure the principles of co-production of Plans are maintained and which, in turn, provide the preferred provision that appropriately meets the child’s needs. The Council says it does not want to apportion blame in this case because the process is two-way and some delay is symptomatic of the process.
123. The alternative, the Council says, is for it to issue EHC Plans that are not co-produced, are of poor quality, and destabilise working relationships between parents/carers and the Council and which will inevitably be challenged through appeal. In any event, the Council did agree eventually to fund a PRT programme while Child B was at Nursery.
124. Mr X says that by taking 16 weeks to finalise the EHC Plan, it cost him a further £5,876 in provision which otherwise the Council would have had to pay to support Child B. Mr X says that the Nursery was not willing to have Child B attend without

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full time one to one support. He thought the Council had agreed to this at the draft EHC Plan stage.

125. Mr X could have appealed to the SEND Tribunal in respect of content and provision in the final EHC Plan of 2 August 2016. But he decided that the appeal costs were prohibitive. The Council says the appeal process is not as onerous as he has implied and that costs should not be an issue in determining whether to lodge an appeal or not. The Council considers that many parents lodge an appeal without any cost to the parent being incurred and that the choice to bring in experts was Mr X's choice rather than this being required.

### **Analysis and findings**

126. Mr X had a right of appeal in respect of the final EHC Plan of 2 August 2016. Mr X was concerned about the financial shortfall (estimated by Mr X at about £1,000 a month) of what the PRT cost with what the Council was offering. This is a matter about which he could have appealed. Mr X had to consider the benefit of spending additional money on pursuing an appeal when he had at least achieved some provision.
127. Mr X says the cost of mounting an appeal would have required expert assessments and legal costs, amounting to around £15,000, and paid upfront. The cost to him of making up the shortfall was less and was required on a monthly basis and therefore was easier to finance. So, he decided to accept the final EHC Plan of 2 August 2016.
128. Mr X considers that our discretion to consider this aspect of his complaint is a vital protection that was put in place for parents in his situation. Parents, who in the best interests of their child, are ensuring that the early intervention required for Child B's condition is provided to maximise his long-term interests. Further, the Council's delay in completing the EHC Plan process has caused financial difficulties for Mr X which justify us exercising discretion in his favor. Mr X says the case concerned a final Plan with several complex areas of need, provision and case law and he could not have conducted an appeal without expert reports and legal advice.
129. We understand the financial pressures but our understanding is that the SEND Tribunal strives to be as accessible as possible for parents. There does not seem to be any exceptional reasons, in this case, beyond Mr X's choice of approach, that would make the SEND Tribunal process more costly or inaccessible for him than for others. Mr X has exercised that right subsequently in relation to the later version (June 2017) EHC Plan. So, he has demonstrated that he is willing and capable of using the appeal process. Moreover, it is possible for applicants, in certain circumstances, to seek their costs of appeal where it can be shown that a council has acted unreasonably. We understand that Mr X is seeking to do so.
130. We have decided that, on balance, it was reasonable for Mr X to have appealed to the SEND Tribunal if he considered the Council's offer in the 2 August 2016 EHC Plan remained inadequate to meet all of Child B's needs. He had a choice between paying for an appeal, at this stage, or making up a financial shortfall in the subsequent months. Mr X decided on the latter.
131. The period between 2 August 2016 and 15 February 2017 was capable of appeal and therefore falls outside our jurisdiction. In the circumstances, we are satisfied it was reasonable for Mr X to have resorted to the SEND Tribunal.

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## **Complaint (b): Child B's transfer to primary school**

### **Events from February to April 2017**

132. An EHC Plan must be completed by 15 February in the calendar year of a significant transfer. Child B was due to start school in September 2017. A final EHC Plan should have been completed by 15 February 2017.
133. The Council says it issued an EHC Plan on 15 February 2017, naming the Nursery to the end of August and School Y as from September 2017. School Y was Mr X's first preference school as his older son attends this school. The Council says Child B's EHC Plan was one of 49 sent out on 15 February 2017. No other parent/carer has complained that they did not receive their Plan on time.
134. Child B's EHC Plan stated that funding was for 51 weeks and the Council would provide a personal budget of £29,593.91 for the period of 14 June 2016 to 2 August 2017.
135. Mr X says he never received the EHC Plan in February 2017. The Council has no proof of postage or receipt. But the Council says that there is a creation date on its computer system of 15 February 2017 and Officer C recalled asking the case officer to ensure that the EHC Plan was issued and she showed our investigator email proof of her request. The Council says that the Plan was sent to an address provided by School Y.
136. However, by this stage, the Council had three addresses on its system for Mr and Mrs X and the Plan was sent to an address where Mr and Mrs X were not living and which was different to the address recorded on the EHC Plan.
137. The Council's covering letter, accompanying the Plan, also stated that a school place had been allocated for Child B at School Y and Child B's Plan had been amended. The named enclosure referred to in the letter was: 'What to do if you are unhappy with Hackney Learning Trust decision'. The letter did not refer to enclosing the EHC Plan.
138. The Council says that this is its standard primary transfer letter and Mrs X confirmed that they had received the Plan at the review meeting on 24 March 2017 although this is denied by the parents. However, the Council is now reviewing its administrative processes in the light of the issues this case has raised.
139. Mr X says that the Council had used the correct address for the previous nine months and furthermore the Council had usually emailed correspondence (although the Council has explained that it uses a different process at transfer stage to day to day casework).
140. Mr X says the Council had a duty to consult him under the *Code* (Paragraph 9.179) and a duty to review the EHC Plan before it issued the amended final EHC Plan of 15 February 2017. It was not just about naming the school placement for September 2017. The Council had to explain what support would be available for Child B at School Y.
141. The February 2017 EHC Plan referred to support at the Nursery. The reports informing the Plan were dated early 2016 except the report from the Nursery which was dated 6 and 14 October 2016. The funding was recorded as being from June 2016 to August 2017. There was no reference in the February 2017 Plan to what support the Council would provide to Child B when he started at School Y in September 2017.

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142. In addition, Mr X claims that the Council backdated the EHC Plan ‘working document’ of April 2017 with a date of February 2017 when it provided evidence to us. This – he says – is shown by the fact there is information in the document which was only available after the March 2017 review. Mr X alleges the Council did this to mislead us into concluding it had met its obligation to issue the EHC Plan by the 15 February deadline. He has also provided evidence from his previous landlord confirming that, after they left the property, no post arrived for them and the School also did not receive the EHC Plan.
143. The Council says the EHC Plan sent on 15 February 2017 was amended to name the parents’ preferred primary school in Section I. The Council says the original copy is no longer available and that it can only conclude that it overwrote the February 2017 Plan when it was drafting the April 2017 working document. The Council has provided witness statements from an officer and senior manager stating they dispatched an amended EHC plan in February 2017.
144. Had Mr X received the EHC Plan in February 2017, he says that he would have appealed at this point. Officer C disputed this on the basis that he had not appealed earlier on receipt of the 2 August 2016 Plan and he knew then that the Council’s PRT funding only went up to 2 August 2017. Officer C says that the main difference between the 2 August 2016 and 15 February 2017 Plans was that a primary school had been named in the latter.
145. Subsequently, the Council issued a final amended EHC Plan on 29 June 2017, after the review of March 2017, setting out the provision to meet Child B’s needs at School Y. The Plan reflected the information provided at the review of March 2017 and the Council says it amended the earlier EHC Plan of 15 February 2017.
146. Mr X appealed to the SEND First Tier Tribunal in respect of the content and provision set out in the 29 June 2017 EHC Plan.

### **Analysis and findings**

147. Para 9.179 of the *Code* provides that “*an EHC plan must be reviewed and amended in sufficient time prior to a child or young person moving between key phases of education, to allow for planning for and, where necessary, commissioning of support and provision at the new institution.*”
148. The legislation states that a final EHC Plan should be issued by 15 February in the year of a transfer. Child B was due to transfer to school in September 2017. The Council should have issued a final EHC Plan by 15 February 2017, having reviewed the August 2016 Plan and setting out the support available in the next educational setting, regardless of any other consideration. We cannot see that the Council explained this requirement to Mr X even though it would have been fully aware of this deadline in the year of a transfer.
149. The Council says it did issue a final EHC Plan by 15 February 2017 which named Child B’s school placement for September 2017. Mr X says he did not receive it. The Council had three different addresses on its system and it will be looking at improving its procedures here.
150. We consider it is more likely than not that the Council did not send Mr X the 15 February 2017 EHC Plan. This was fault. We have reached this view on the basis of the evidence that School Y did not receive it, and Mr X’s evidence that no post arrived for them after they left their previous address. We consider it is highly unlikely that two recipients would not receive an item of post.

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151. On the balance of probabilities, we do not consider the Council tried to mislead us by backdating the EHC Plan, as Mr X has claimed. It has provided witness statements and contemporaneous emails which indicate an amended EHC Plan existed in February 2017, albeit Mr X did not receive a copy at the time. We also consider it plausible that the original document was overwritten when updates were made to it following the review in March 2017. However, the Council was at fault for not keeping a copy of the final February 2017 plan on its records. This represents poor record keeping.
152. If Mr X received the final EHC Plan on 15 February 2017 we consider it likely he would have appealed against its contents, as he would have considered it deficient. We say this because the Council should have reviewed the EHC Plan before it was issued on 15 February. Given that the purpose of undertaking a review at the point the child transfers between phases of education is to facilitate planning and the commissioning of support and provision at the new institution, simply changing the name of the school in the February 2017 EHC Plan was not sufficient. The Council should have referred to the support that would be available to Child B when he started primary school.
153. On this basis, we are satisfied that Mr X would have appealed to the SEND Tribunal had he received the Plan in February 2017 (as he did regarding the final Plan of 29 June 2017) because it made no reference to the provision and support for Child B once he started at School Y.
154. The SEND Tribunal is now hearing appeals within 12 weeks from the date the appeal is registered. So, it is likely that the SEND Tribunal would have considered the merits of content and provision by about June 2017 and before Child B started school in September 2017. However, Mr X successfully appealed to the Upper Tribunal, following the First Tier Tribunal decision, and the matter was remitted back to the First Tier Tribunal.

### **Complaint (c): The annual review process**

155. The Council says that, for children transferring to school in September 2017, it normally carries out review meetings in December 2016. However, in Child B's case, his EHC Plan of 2 August 2016 had only been in place for a short period and therefore it thought it too early to review the Plan. Mr X points out that the *Code* recommends reviews every three to six months for pre-school children.
156. The Council had responsibility for organising the review process. It had two weeks to send the annual review papers to those attending the review meeting. But these were not received until 24 March 2017, the day of the annual review meeting.
157. The minutes of this meeting noted improvements in Child B's social, language and emotional regulation skills. It was agreed that amendments were required to the phrasing of outcomes with school transition in mind. Mr and Mrs X asked for prompt decisions to be made as the funding agreed by the Council only ran to 2 August 2017.
158. Mr X says the Council failed to issue a report within two weeks after the review meeting, setting out the views of all relevant parties at the meeting. The Council should then have informed him within four weeks of the review meeting whether it would amend, cease or not change the Plan. If amendments were required, the Council should have sent him a notice specifying the proposed changes, the evidence for them and a draft EHC Plan. He then had 15 days to make representations.

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159. On the other hand, the Council says its responsibility is to inform parents of its intention to maintain the EHC Plan, amend or cease it. On 13 July 2017, the Council wrote to Mr X, upholding the complaint that the Council had not sent him a copy of the existing EHC Plan or an accompanying notice setting out all the proposed changes as required. In addition, the Council stated that the responses from the EHC Planning Team could have been clearer. In the Council's response to our enquiries, the Council says that there is no requirement to send a notice specifying the proposed changes. It also thought that the minutes of the review meeting were sufficient to inform those attending the review of the various views.
160. The Council says that Mr X advised the Council not to issue a final EHC Plan until certain queries about funding were answered. The Council responded to these on 16 and 19 June 2017. Mr X says the Council's responses were factually incorrect and therefore he asked the Council to issue the final Plan so that he could bring an appeal.
161. The Council says that the whole process from review to the final EHC Plan should take 12 weeks. Mr X says that this is not correct. The four weeks deadline (after the annual review meeting) is for the Council to announce its intentions. The eight weeks deadline is to finalise the EHC Plan. Mr X says they are distinct milestones in the review process and cannot be rolled together.
162. On 26 June 2017, Mr X complained about the delay in issuing the amended EHC Plan. On 29 June, the Council issued a final EHC Plan and on 16 July 2017 the Council responded to Mr X's complaint about this, accepting there had been some delay.

### **Analysis and findings**

163. There were faults in the annual review process by the Council in that it did not circulate reports two weeks in advance of the annual review of March 2017, it did not issue a report two weeks after the review and it did not issue a notice of its intentions to amend or provide the supporting evidence.
164. We are satisfied that there are failures in the review process which the Council has partly recognised and apologised for. These have contributed to Mr X's avoidable distress and time and trouble and which we will recognise when making recommendations about appropriate remedy.

### **Complaint (d): The Council's complaints process**

165. Mr X considers the Council's investigation of his complaints at the final stage of its process has been a "whitewash". Further, even when complaints were upheld, there was no recognition of the resulting injustice or a suitable remedy suggested, albeit general improvements were sometimes recommended for the benefit of all children.
166. Mr X says he has spent many hours challenging the Council's findings on his complaint. The Council also says it has invested considerable time and effort into providing full responses to Mr X's representations. The Council says that, when complainants are dissatisfied with a council's findings, they can complain to us as a remedy. Mr X has now done this.

### **Analysis and findings**

167. We do not consider it would be proportionate to respond to each of Mr X's concerns about the way his complaints were handled, only to say we consider it was a shortcoming that the complaints process did not recognise or adequately remedy the injustice caused by the faults in the ECH process which this

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investigation has identified. The consequential injustice has now largely been addressed by this independent investigation, but we recognise this fault also caused avoidable time and trouble to Mr X.

## Conclusions

168. The Council was at fault because it:

- failed to respond to the Consultant Community Pediatrician's notification of 7 April 2015 that Child B may have special educational needs and failed to view this as a start point for an EHC needs assessment and tell the parents its decision within 6 weeks;
- failed to respond properly to Mr X's enquiries about the EHC Plan process in May 2015, specifically failing to tell him that it required a written request for a statutory assessment, completed on its form, before the process could begin;
- delayed unreasonably in completing the EHC assessment and issuing a final EHC Plan for Child B by 41 weeks over the statutory timescale of 20 weeks from the date (1 June 2015) we have concluded the process should have started;
- misunderstood the statutory timeframe for assessments, allowing a stop/start approach when there is nothing in the legislation or guidance which permitted this in the particular circumstances of this case;
- failed to ensure that its Panel meetings properly recorded the rationale for their decisions or to identify which documents they relied upon to inform their decisions;
- failed to review Child B's Plan before issuing the 15 February 2017 Plan, failed to send a copy to Mr X, and failed to keep an original copy on its records;
- failed also to ensure that the EHC Plan of 15 February 2017 set out the support which the Council would provide to Child B when he transferred to primary school in September 2017. This is not a comment about the merits of the provision which are a matter for the Tribunal. Only that it is good administrative practice for the Council to specify the support, which would be made available at the new educational setting, so that parents can make informed decisions about appeals;
- failed to ensure the EHC review process was carried out in accordance with *Regulations 21 and 22*; and
- failed to recognise the above errors as part of the complaints process.

## Claimed injustice

169. Mr X has made a detailed financial claim for the monies he has spent on ensuring Child B received the full educational provision required, for his time and trouble and avoidable distress, for interest on required loans, for penalties on the early redemption of his mortgage and for loss of earnings.

170. Mr X says that there is a loss of 36 weeks of unremedied delay (taking the assessment start date from his telephone call of 15 May 2015) with more weeks of delay if the start date is taken from 7 April 2015. Mr X says that he had to pay for the provision and the money sat on his credit card for two years accruing compound interest at a rate of 16% and the interest amounts to over £5,000. He has also spent around 800 hours dealing with the Council's fault and obstruction

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and this equates to about £40,000 in lost income. The loss of income, in turn, which he says occurred in the latter half of 2017, caused further financial difficulties and created problems when trying to re-mortgage to consolidate the debt and to raise more funds for Child B more cheaply. Specifically, Mr X incurred a penalty for re-mortgaging early, only because of the Council's delays in issuing Child B's EHC Plan and providing funding.

171. In addition, Mr X says the Council should reimburse him the money he paid between September 2017 and January 2018, caused by the delayed Tribunal hearing in relation to the February/June 2017 EHC Plans.

### **Consideration of Mr X's injustice**

172. The primary injustice is a financial one. But we also recognise the avoidable strain and distress caused to Mr X and his family by the faults identified.
173. Mr X has paid for his son's educational support which the Council, but for its delay of 41 weeks, would have had to provide. Based on the annual personal budget of £29,593 agreed on 02 August 2016, we calculate this lost support amounts to £19,343.00, based on a pro-rata calculation of 34 weeks of lost financial support (the Council having already reimbursed Mr X for 7 weeks of delay).
174. In addition, Mr X claims that he has had to borrow money on his credit card with compound interest. He has also had to re-mortgage his property, with financial penalties for early redemption to consolidate the debt at more favorable interest rates. Because of the time and effort he has had to take in ensuring a reluctant Council provide appropriately for his son, he has lost opportunities to work.
175. It is apparent that Mr X has sought to achieve the best for his son. We understand that he has incurred costs which he argues have only risen because of fault by the Council. Had an EHC Plan been issued by the date it should have been, 19 October 2015, we accept that Mr X would have been in a better financial position. He would only have had to make up the shortfall (rather than the full cost of the PRT) between what the Council agreed to provide with what he considered was necessary for his son.
176. We will consider claims of unnecessary costs incurred where there is a direct link between a council's fault and the claimed costs. But there must be a very clear and direct link. The costs must only have arisen because a complainant had no other choices available or no other cheaper way to raise the necessary funds to provide the support the council should have paid for.
177. In respect of loss of earnings, it is the case that parents often are required to make difficult choices in meeting their family's needs or find themselves working but also challenging a council to make appropriate provision. We do not underestimate the struggles for parents in these circumstances. But it is in the nature of family life that sometimes parents find themselves juggling the demands on their time.
178. In circumstances where a parent has no other choice but to give up work to care fulltime for a dependent, which a council should be providing for, we may recommend a payment for loss of earnings. But Mr X was not in this position; he had a choice and he would have been aware that a loss of income, while also financing special provision for his son, would cause financial hardship. So, we cannot conclude that we should make any recommendations in respect of Mr X's loss of earnings.



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179. We accept, however, that Mr X paid for the PRT treatment for Child B between 19 October 2015 and 2 August 2016 because of the delay by the Council in finalising the Plan. We recommend a reimbursement of this cost of £19,343.00, contingent on Mr X providing itemised receipts and evidence of expenditure for this period. The financial figure is based on the pro-rata budget the Council would have made available for the provision had it not delayed in completing the EHC Plan.
180. However, Mr X 's interest on his credit cards and the penalty charges for an early redemption of his mortgage, were not caused solely by the Council's fault. The loss of an income would have had a significant bearing on the family finances, albeit the effects of this may not have been felt immediately. There was also a shortfall between what the Council agreed to finance and the actual cost of providing the PRT treatment both at school and at home. Mr X had to meet this shortfall but, without working, this was likely to cause financial hardship at some point. We cannot therefore conclude that Mr X's loan or re-mortgaging costs have occurred solely and directly because of the Council's faults.
181. But, we recognise that the value of the money Mr X has paid for his son's provision is now less. Mr X considers that we should put him back in the position he would have been, but for the Council's faults. Therefore, we should recommend the repayment of the actual cost of borrowing for him. But our guidance on remedies recommends interest on repayments at the retail price index and, in the circumstances of this case, is a fair approach.
182. We recognise the avoidable distress caused by the Council's fault and this will be reflected in the recommended remedy for this injustice. Our guidance is normally for payments between £300 to £1000 and depends on the severity and length of time of the avoidable distress. We consider that the circumstances of this case fall within the higher end of that scale.
183. The failure to issue a statement in February 2017, which complied with the requirements of the *Code* has caused injustice, as it meant Mr X could not pursue a timely appeal.

## Recommendations

184. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet, or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
185. We understand the Council has started to amend information about its local offer on its website. Within three months of the final report, we also recommend the following:
- a) The Council should apologise to Mr X and his family for the faults we have identified;
  - b) The Council should reimburse him £19,343.00, to recognise the money the Council would have paid had it not delayed in completing the EHC Plan. This payment is contingent on itemised receipts and proof of expenditure from Mr X. Interest should be paid to this at the retail price index rate for the period from June 2016, when Mr X first raised a complaint about the backpayment, to February 2019 (this is the date the most recent retail price index figure is available). This amounts to an uplift of 8.3% and total payment of £20,948.47;

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- c) The Council should pay £1,000 for Mr X and his family's distress caused by its avoidable delays and its failures in the review and complaints process;
  - d) The Council should pay £500 for Mr X's time and trouble in pursuing his complaint with the Council. This is more than we would normally recommend in recognition of the efforts, which Mr X has had to go to, in challenging the Council's complaint responses and highlighting its legal obligations;
  - e) The Council should review its procedures when it receives a notification under Section 24 of the *Children and Families Act 2014* that a child in its area may have special educational needs, to ensure that it consults parents and other professionals so to reach a decision within 6 weeks;
  - f) The Council should explain, on its website and in written guidance to parents/carers, how requests for a statutory assessment, be they made by telephone or in writing, will be dealt with in accordance with the legislation and *Special Educational Needs Code of Practice*. If the Council wants a request for an EHC needs assessment in writing, this must be explained to the applicant, with reference to its written policy. Where an applicant has difficulty in submitting a written request, the Council should have procedures to help the applicant complete the required form;
  - g) The Council should make available on its website its standard form for making requests for a statutory assessment. The test for whether the Council should consider whether to carry out a statutory assessment of SEN is that a child *may* have special educational needs which require provision. It does not need to establish that the child does have such needs. The threshold is low, and the Council should reflect this in its local offer, and on its website.
  - h) The Council should ensure that its Panels, which make key decisions about whether to proceed with an EHC needs assessment or not, or whether to issue an EHC Plan, keep proper records of their meetings, provide clear reasons for their decisions and they record the information and reports they have considered;
  - i) The Council should offer training to its complaint team in respect of the statutory timescales for EHC assessments and how it should remedy avoidable delays in its EHC Plan process, taking into account the findings made in this report; and
  - j) If other parents, because of this report, complain to the Council about delays in their child's EHC Plan process, the Council should be willing to consider these in the light of the findings on this case.

## Decision

186. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mr X and his son. The Council should take the actions we have recommended to remedy that injustice.

# **Cabinet**

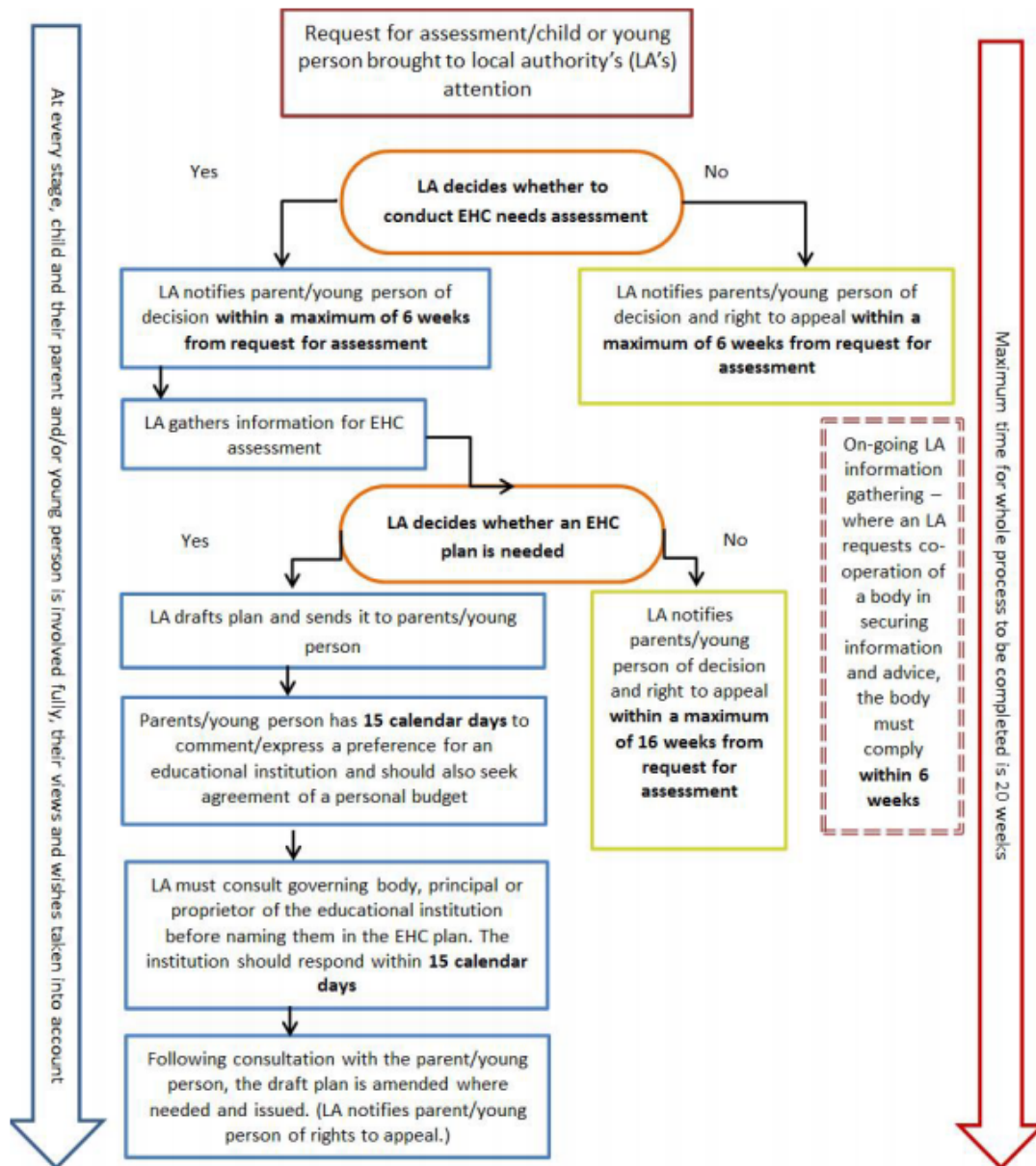
**15 JULY 2019**

**REPORT OF THE  
LOCAL GOVERNMENT &  
SOCIAL CARE OMBUDSMAN  
(LGSCO) – EHC PLANS  
(Reference 17 001 811 – Mr X)**

## **Appendix 2**

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**Appendix 2 - Statutory timescales for EHC needs assessment and EHC plan development (SEND Code of Practice 2014)**



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**REPORT OF THE LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN (LGSCO)  
– EHC PLANS (Reference 17 009 505 – Mrs B)**

**Key Decision No.N/A**

<p><b>CABINET MEETING DATE (2018/19)</b>  15 July 2019</p>	<p><b>CLASSIFICATION:</b>  Open  If exempt, the reason will be listed in the main body of this report.</p>
<p><b>WARD(S) AFFECTED</b>  All Wards</p>	
<p><b>CABINET MEMBER</b>  Cllr Kennedy  Families, Early Years &amp; Play</p>	
<p><b>KEY DECISION</b>  No  <b>REASON</b>  Click Here to Select</p>	
<p><b>GROUP DIRECTOR</b>  Anne Canning Group Director Children, Adults &amp; Community Health</p>	

## **1. CABINET MEMBER'S INTRODUCTION**

- 1.1. The Local Government & Social Care Ombudsman (LGSCO) has issued a report (Appendix 1) following an investigation of a complaint against the Council. The complaint related to the initiation & completion of an Education, Health & Care (EHC) needs assessment for a child with special educational needs, as well as the provision of support prior to completion of this assessment. Further details of the complaint are set out in this report.
- 1.2. The Ombudsman found that there had been fault on the part of the Council, and that this had, in their view caused injustice to the complainant. We have apologised for the faults identified and have complied with all recommendations set out in the LGSCO's report.
- 1.3. The LGSCO report raises important issues which impact on the way Local Authorities undertake and complete EHC needs assessments which we will be raising with the Department for Education.

## **2. GROUP DIRECTOR'S INTRODUCTION**

- 2.1. The LGSCO investigation relates to the process undertaken to initiate and complete an Education, Health & Care (EHC) needs assessment for a 2 year old boy (child C) with Down Syndrome who moved into the area in September 2015.
- 2.2. In summary, the LGSCO's report identifies issues with regard to provision of support for a child who has special educational needs (prior to an EHC needs assessment), these are:
  - a) Delay in considering an EHC needs assessment,
  - b) Child C's EHC Plan not being issued within statutory 20 weeks, and
  - c) Social care advice not being provided as part of the EHC needs assessment.
- 2.3. The case has been complex, taking 18 months for the LGSCO to investigate and produce the final report. During this time, the Council has provided significant supporting information & legal comment to the LGSCO.
- 2.4. The LGSCO's investigation raised issues with regard to the legal interpretation of the provision of support for a child who has or may have SEND. In this case, the Council felt that provision and reasonable adjustments were put in place with Child C's nursery to include him and support his attendance within the setting. We do, however, acknowledge that there may have been a lack of clarity with regard to the Council's processes to consider EHC needs assessment at the time Child C came to the Council's attention. The Council's understanding of the legal provisions governing when an assessment should be undertaken by a local authority meant that an assessment was not undertaken at that time. This led to a delay in an EHC needs assessment being initiated.
- 2.5. Since the mother of Child C, Mrs B, first lodged her complaint with the Council, a number of reviews and audits regarding the EHC planning



process have been undertaken. This is part of ongoing service review and improvement. These include:

- A review, finalised in July 2017, of processes to initiate and complete assessments within 20 weeks, with a follow up review in September 2018; and
- An internal audit, finalised in October 2017, with follow up audit review in June 2019.

- 2.6. Notwithstanding this, the Council will revisit its processes in light of the LGSCO report to ensure these remain robust and that information for parents is clear and accessible.
- 2.7. The LGSCO's report also queries the nature and the use of the Supported Childcare Fund, discretionary funding available at the time to support settings meet the needs of a small number of children with emerging or undiagnosed needs. This funding was replaced by the Early Years Inclusion Fund in 2017 following implementation of the new national Early Years Funding Formula. Whilst the processes for allocating this funding were reviewed and strengthened at this point, we have agreed to review the processes again in light of the report. Given the unique and complex nature of this case, we do not think that, as suggested in the LGSCO's recommendation, other families who could not access the discretionary Supported Childcare Fund at that time have suffered an injustice. We have, however, agreed to write to a family who was not able to receive this funding to invite them to make a case showing that injustice was caused.
- 2.8. With respect to 2.2 a) above and the delay linked to consideration of the initial request to undertake an EHC needs assessment (and co-production of the ultimate plan), the Council believes that statutory guidance set out in the SEND Code of Practice was followed. However, the Code of Practice requirements are not in line with the statutory requirements identified by the LGSCO (set out in the Children & Families Act). This issue has more wide ranging implications than this complaint because many of the practices scrutinised by the LGSCO report are no different to those of most other local authorities. As such, some of the conclusions in the report have raised significant issues for all local authorities. The Department for Education has noted this and has been in touch to explore the issues further.
- 2.9. In respect of 2.2 b) above, the report identifies a 48 week delay in issuing Child C's EHC Plan. The Council acknowledged a number of avoidable delays in the EHC needs assessment process and apologised for these at the resolution and review stages of the Council's complaints process. The Council also acknowledges that once the assessment had commenced, the dialogue with the parent at the co-production stage of the EHC needs assessment took significantly longer than the 20 week period set out in the SEND Code of Practice's statutory timescales. Whilst we believe that this dialogue with the parent contributed to the quality of the plan, we acknowledge that this resulted in delays in the statutory 20 week assessment process.
- 2.10. This report sets out the LGSCO's recommendations in more detail and how the Council has already responded, or intends to respond, to them. It also

sets out the Council's case management approach in terms of this specific case.

### **3. RECOMMENDATION(S)**

#### **3.1. The Cabinet is asked:**

To note the contents of the LGSCO report (appendix 1) and the Council's response as set out in this report (paragraphs 6 and 7).

### **4. REASONS FOR DECISION**

4.1. This report forms part of the Council's obligations under the Local Government Act 1974 to publicise receipt of an LGSCO report.

4.2. The LGSCO has concluded that there was fault by the Council which caused injustice to Mrs B and to Child C and that the Council should take the action identified in the report to remedy that injustice.

### **5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

5.1. There is no right of appeal against an LGSCO decision. A complainant, Council or authority can, however, apply to the courts for a judicial review of a decision. We do not propose to take this course of action.

5.2. Exceptionally, the LGSCO has an internal review system in place where a request can be made for a decision to be reviewed in very limited circumstances – where a decision was made based on important evidence that contained facts that were not accurate or if new and relevant information (that was not previously available) is provided which affects the decision made. In either circumstance, a request to review must be made within 1 month of the decision.

5.3. Whilst the Council provided robust information to explain its actions and, where appropriate, apologised at an early point in the complaint process for recognised delays, it was not felt appropriate at this stage to submit further challenge to the LGSCO decision. Furthermore, given the low threshold for requests to initiate EHC needs assessments and the statutory timeframe to complete assessments within 20 weeks, it was felt that there were insufficient grounds to apply for a judicial review.

### **6. BACKGROUND**

#### **6.1. EHC legislation and Investigation & findings of the LGSCO**

6.1.1. In September 2014, SEND legislation was significantly reformed. Part 3 of the Children & Families Act 2014 and the SEND Regulations 2014 set out new requirements for local authorities in relation to the identification & assessment of children with SEND. Alongside this legislation, the SEND Code of Practice 2014 was published providing statutory guidance on duties, policies and procedures relating to the new SEND legislation and regulations.

- 6.1.2. This new legislation placed a requirement on local authorities to identify & assess children & young people who may have special educational needs within a 20 week timeframe. The SEND Code of Practice breaks down the 20 week timeframe into constituent aspects of the assessment process (see [appendix 2](#)). Furthermore, where it is agreed that an EHC plan is required to meet a child or young person's SEND, local authorities must co-produce the plan with the families and/or young person.
- 6.1.3. The Council's [Local Offer](#) provides advice & guidance for parents & carers in relation to the EHC needs assessment process and how to request an assessment. This website is subject to ongoing review and update to reflect customer feedback and current practice at the time.
- 6.1.4. Whilst the Council takes every step to meet the statutory 20 week deadline, the assessment and co-production process can be complex and delays do occur. Nationally, local authorities are struggling to issue EHC plans following assessment within the 20 week timeframes. In the 2018 calendar year, Hackney issued 42.4% EHC plans within 20 weeks; this compares to, nationally, 58% of plans being issued in 20 weeks and 53.4% of plans in inner London authorities being issued within 20 weeks<sup>1</sup>.
- 6.1.5. In this case, the LGSCO has considered whether the Council assessed & identified Child C's needs in line with statutory legislation and due process. As a result, they have made a series of recommendations to remedy the injustice caused to Mrs B and to Child C.
- i. Apologise in writing to Mrs B;
  - ii. Pay Mrs B £4,150 (£3,000 in recognition of the delay in receiving the provision Child C was entitled to, £1,000 to acknowledge distress caused to the family and £150 in recognition of the time and trouble caused to Mrs B in pursuing her complaint).
  - iii. Review procedures to ensure that when notification is received under Section 24 of the Act that a child in its area may have special educational needs, the Council consults parents and other professionals so as to reach a decision about assessment within 6 weeks;
  - iv. Review and streamline processes to meet the 20-week timescale required to finalise EHC plans;
  - v. Review the arrangements for the new early years inclusion fund to ensure it will not allow for the faults identified by this investigation to be replicated;
  - vi. Write to the parents of all children who were placed on the waiting list for (supported childcare) funding to explain the faults identified by this investigation and provide a remedy for those families on the same basis as that provided in this case.
  - vii. Be willing to consider complaints raised by other parents in the light of the findings of this case with regard to delays in the process
- 6.2. **Notification that Child C may have SEND to EHC needs assessment initiation**

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<sup>1</sup> Department for Education, "Statements of SEN & EHC Plans: England 2019"

- 6.2.1. When Mrs B moved into the area in September 2015, Child C's case was considered by the Multi Agency Referral Service meeting to determine local support & interventions to support his Down Syndrome. The meeting allocated a key worker to support the family and Mrs B and Child C subsequently attended Portage drop in sessions.
- 6.2.2. Once Child C started attending nursery in November 2015, one of the Council's Area SEN Co-ordinators (SENCo) started to work with the nursery, family and other professionals (e.g. speech & language therapist) to provide advice, guidance & training to support Child C's inclusion in the setting. In line with section 5 of the SEND Code of Practice, this work followed the graduated, good practice "Assess-Plan-Do-Review" approach to identifying needs in the early years.
- 6.2.3. The Code describes how this approach reviews the effectiveness of interventions in enabling children to make progress, provides further information about the precise nature of their needs and informs the next steps to be taken. In the majority of cases, the Area SENCo will produce a support plan which is reviewed with the family, setting and other professionals on a monthly basis. This information then provides robust evidence to inform any subsequent decision to initiate an EHC needs assessment or not.
- 6.2.4. As well as the support provided by the Area SENCo, the nursery made a series of reasonable adjustments to support Child C's inclusion in the setting. These included (but were not limited to) placement of Child C within a room with a higher staff:child ratio (1:3 instead of 1:4) as well as intervention, training and support from the Area SENCo and Speech & Language Therapist. Whilst the Council and nursery believed that these adjustments supported Child C's inclusion in the nursery, the LGSCO's report references concerns raised by Mrs B that her son's needs were not being met.
- 6.2.5. The nursery also made an application to the education service for funding to support Child C from the Supported Childcare Fund (SCF). This was discretionary funding provided at the time by the Council to support settings to meet the needs of a small number of children with emerging or undiagnosed needs. SCF was not available for children who held an EHC plan.
- 6.2.6. By its discretionary nature, the SCF was a set budget capped at an agreed level of expenditure. Unfortunately, funding from this budget was fully committed at the point Child C was referred for support. As such, resources could only be released if another child in receipt of this funding moved on or received funding through an EHC Plan. Therefore, Child C continued to receive support from his nursery through reasonable adjustments and from the Area Special Educational Needs Coordinator and the Specialist Teacher pending availability of additional resource from the SCF.
- 6.2.7. At this point in time, allocation of support from the SCF was not an acknowledgement that an EHC needs assessment may be required. As such, whilst the 'Assess-Plan-Do-Review' approach was being followed, referral for assessment was not felt to be appropriate at this stage. The

LGSCO, however, does not agree with this interpretation and has stated that a child waiting for SCF should have met the threshold for an EHC plan and funding from the Council's high needs budget. As such, this was another point at which an assessment should have been considered and, if not agreed, parents offered their right of appeal.

- 6.2.8. This fund has since been replaced by the Early Years Inclusion Fund. Whilst this is still a capped budget, available resources are more flexible. In addition, referral and allocation processes for this fund have been strengthened with a panel with wider representation to ensure robust allocation of resources and that it is targeted at the most vulnerable children. Where appropriate, an EHC needs assessment may be considered, although resources from the Early Years Inclusion Fund are only available up until the point an EHC plan is finalised. In light of the LGSCO's report, the Council will review current procedures to ensure these are robust and meet legal requirement.
- 6.2.9. At the point the SCF ceased, there were 4 children (including Child C) who did not receive allocated funding. The LGSCO believes that there may have been an injustice caused to these families if the Council failed to consider whether an EHC needs assessment was required or where the EHC assessment process took more than 20 weeks. As such, the LGSCO recommends that the Council write to these families to explain the faults identified by this investigation and provide a remedy in line with that set out in this case.
- 6.2.10. Every request for support is different and it cannot be assumed that other children who were awaiting SCF directly compare with the unique circumstances and needs of this case. The Council considers that the needs of these children were being met through reasonable adjustments within their settings and that we were working with parents to support their child. Of the 3 eligible children who did not receive SCF, 2 (including Child C) subsequently received an EHC plan. The third child moved out of the area shortly after requesting SCF and we are informed that their needs are currently being met without recourse to an EHC plan. In light of this, we will contact the family of the additional child who remained resident in the borough and who did not receive support through the SCF, inviting them to make a case showing that injustice was caused.
- 6.2.11. Although funding was not available through the SCF, as set out above, reasonable adjustments were in place and the Council supported Child C through provision of intervention, guidance & review from the Council's Area SENCo. Mrs B has, however, stated to the LGSCO that she believed that an EHC needs assessment had been initiated at this stage and was surprised to learn that it had not.
- 6.2.12. A formal request to initiate a statutory assessment was submitted to the Council by the nursery on 6 June 2016 and this was agreed 9 days later. The LGSCO's report concludes that, despite the interventions and ongoing work with Child C in the nursery setting, there were a number of points where the Council should have considered an EHC needs assessment earlier than it did – including at the point that the GP wrote to the Community Paediatrician in September 2015 (and when this was

considered at the Multi Agency Referral meeting), when Child C was awaiting support from the SCF and when Mrs B raised concerns that the assessment had not been initiated. We have accepted this view and apologise for not considering the assessment sooner.

**6.3. EHC needs assessment process & issue of the EHC plan**

- 6.3.1. As set out above, the Council must complete statutory assessments within 20 weeks. Taking receipt of the GP letter in September 2015 as the starting point for the assessment, the LGSCO has calculated that the assessment took 68 weeks to complete.
- 6.3.2. The Council had believed in good faith that the assessment period started on 6 June 2016 when the request for assessment was received from the nursery, with a due date for completion of 24 October 2016. For Child C, however, the plan was finalised on 16 February 2017; some 37 weeks after the Council received the request to initiate assessment from the nursery.
- 6.3.3. Some of the delay was attributable to late professional advice, with further delay resulting from ongoing discussion to produce the EHC plan, in the spirit of co-production, with the parent.
- 6.3.4. The Council monitors the completion of EHC needs assessments on a quarterly basis and acknowledges the challenges with meeting the 20 week timeline. Irrespective of this case, in 2017 both an audit and a review of the EHC needs assessment process were completed in acknowledgement of ongoing challenges to meet the 20 week timeframe. This review identified a number of recommendations to improve and strengthen the process including steps to streamline consideration of assessment requests. Further follow up to this review was undertaken in September 2018. In light of this report, the Council has agreed to revisit these recommendations again to ensure assessment requests are being considered in a timely manner.
- 6.3.5. The Council is firmly committed to co-producing EHC plans with parents and wants to ensure that it hears the representations of parent/carers and, wherever possible, reach agreement regarding a child's needs and provision. It is important to acknowledge that true co-production between a local authority and parent/carers can occasionally take longer than the timeframes stipulated in the Code of Practice. Where a case is more complex, it can be in the interests of the child for the Council to spend more time considering and reviewing representations, rather than seeking resolution through the SEND Tribunal. The alternative would be to issue a low quality plan at 20 weeks, which both parents and Council do not agree with and which would contravene the spirit of co-production.
- 6.3.6. In this case, the Council chose a pragmatic approach: to continue discussion with the parents in a bid to secure agreement over the plan. Unfortunately, it was not possible to reach agreement and the parents requested the plan be finalised, so that they could exercise their right to appeal to the SEN & Disability Tribunal (SENDIST).
- 6.3.7. The Council has previously acknowledged and apologised for delays caused as a result of late receipt of professional advice, as well as further delay compounded when the process became protracted whilst we worked

with Mrs B with the intention of co-producing a plan agreed by both parties. We will further apologise to Mrs B in light of the LGSCO's finding with regards to the delay in initiating and completing the assessment process.

#### **6.4. Advice from Social Care / Requirement to undertake an assessment under S17 of the Children Act 1989**

- 6.4.1. As part of the EHC needs assessment, Councils are required to seek advice and information in relation to social care. When an EHC needs assessment is initiated, the Council approaches its First Access & Screening Team (FAST) to determine if the child or young person is known to Children's Social Care or Disabled Children's Service (DCS). Where a child is known, the allocated Social Worker is asked to draft a report contributing to the assessment process. Where the child is not known to statutory social care services, social care advice and information is taken from others who know the child well (including their family, the child as appropriate and other involved professions such as SENCo, keyworkers & universal providers). This approach is confirmed in the Council for Disabled Children (CDC's) guidance, "[Securing good quality social care advice for EHC plans](#)".
- 6.4.2. In this case, Children's Social Care were approached for advice, but as Child C was not known to the service at the time, there was no clear evidence to suggest that a care needs assessment (under section 17 of the Children Act 1918) was required. Instead, the Council acknowledged that there was no current social care involvement and, as with other EHC needs assessments, would draw social care needs from other professional advice provided (as set out above and as recommended by the CDC).
- 6.4.3. In this case, following a self-referral by Mrs B, a S17 assessment was ultimately completed for C by the Council's Disabled Children's Service in September 2016. Following assessment, 3 hours per week for social activities through direct payments was recommended.
- 6.4.4. In light of the LGSCO report, the Council's Family Intervention & Support Service will review screening processes for notifications of EHC assessments for children not known to them and how best children's social care can contribute to the EHC needs assessment process and where S17 assessments may be necessary.

#### **6.5. Policy Context**

- 6.5.1. As set out above, this report is made in the context of regulations governing the role and functions of the LGSCO.

#### **6.6. Equality Impact Assessment**

- 6.6.1. The report identifies that there were issues regarding the accessibility and transparency of information to understand the EHC process at the time that Mrs B moved into the area. Work already undertaken to improve processes as well as further review and follow up in light of the LGSCO's recommendations will improve transparency of process and accessibility of information for parents / carers seeking support and provision for their children who have or may have SEND.

6.6.2. Notwithstanding this, equality impact assessments will be completed, as appropriate, where EHC planning processes are reviewed and amended.

6.7. **Sustainability**

6.7.1. Not applicable.

6.8. **Consultations**

6.8.1. Section 30 of the 1974 Local Government Act requires the council to make a public notice in more than one newspaper within two weeks of receiving the LGSCO report, and to make the report available at one or more of the Council's offices for 3 weeks. These actions have been undertaken with publication in both the Hackney Gazette and Hackney Today week beginning 27 May 2019. Copies of the LGSCO report were also made available to the public at key Council reception points.

6.9. **Risk Assessment**

6.9.1. The LGSCO's report concludes that current legislation and case law sets out a low threshold for considering and agreeing EHC needs assessments. Furthermore, whilst the Assess-Plan-Do-Review graduated approach used by Hackney to test out interventions in schools and settings (as set out in the SEND Code of Practice) will provide evidence for the Council to make robust decisions about whether to initiate an EHC needs assessment, the LGSCO report suggests that this process should not be considered ahead of consideration of any such decision.

6.9.2. Where robust evidence to warrant initiation of an EHC needs assessment does not exist, there is a risk that a higher number of assessment requests will need to be considered. Alongside this, an increase in the numbers of complaints, requests for mediation and appeals to the SEND Tribunal are also likely if assessments are not agreed due to insufficient evidence.

6.9.3. The Council will mitigate these risks through continued review of processes to ensure EHC needs assessments are considered in a timely way and in line with statutory requirements, alongside regular performance monitoring reported to the Director of Education.

6.9.4. Officers will also continue to work with parents to co-produce EHC Plans. However, this must be balanced against the LGSCO's strong message that EHC needs assessments must be completed within the statutory 20 week timeframe. This carries a reputational risk as the quality of plans acknowledged in the 2017 SEND inspection may be affected. Furthermore, whilst Council officers will continue to work with parents to produce high quality EHC Plans agreed by both parties, if strong co-production with parents cannot be balanced against the requirement for local authorities to meet their responsibilities to complete EHC needs assessments in 20 weeks, the potential for parents / carers to lose faith and confidence in the Council will increase; especially if we cannot afford the time to consider views and maintain dialogue.

6.9.5. Compromising co-production by issuing plans in those circumstances where additional dialogue is required to reach agreement, will also lead to



an increased number of appeals lodged with the SEND Tribunal as the Council may not be able to reach agreement with parents / carers on EHC plans prior to finalisation.

## 7. CONCLUSIONS

- 7.1. The Council apologises for the difficulties and delays in initiating and completing Child C's EHC needs assessment. With regard to the specific recommendations made by the LGSCO, we have responded as follows:
- i. **Apologise in writing to Mrs B** – A letter of apology was sent to Mrs B on 4 July 2019.
  - ii. **Pay Mrs B £4,150** – payment to Mrs B was made on 28 June 2019.
  - iii. **Review procedures to ensure that when notification is received under Section 24 of the Act, the Council consults parents and other professionals so as to reach a decision within 6 weeks** – The 6 week statutory timeframe is set out in detail in appendix 2. This is a statutory requirement and forms part of the 20 week overall timeframe if assessment is agreed  

Hackney processes looking at notification were reviewed in 2017, with recommendations to improve the process subsequently implemented. Furthermore, fieldwork undertaken between March and June 2019 for an Internal Audit follow up report was satisfied that assessment requests were being considered within statutory timeframes. This issue is also a focus of the work of the SEND Partnership Board (a borough wide multi agency group overseeing delivery of SEND services in Hackney) and will be subject to discussion between the Council and the Department for Education
  - iv. **Review and streamline processes to meet the 20-week timescale required to finalise EHC plans** - Processes looking at notification were reviewed in 2017 with recommendations to improve the process implemented. Furthermore, performance regarding the 20 week timeframe is reported quarterly to Hackney Learning Trust's Senior Leadership Team. In light of the LGSCO investigation and findings, this issue is also a focus of the work of the SEND Partnership Board and will also be subject to discussion between the Council and the Department for Education. The outcome of these discussions will inform ongoing review of our processes,
  - v. **Review the arrangements for the new early years inclusion fund** – Robust processes for allocation of the Inclusion Fund were developed to manage the fund when it was implemented in 2017. Information provided on the Local Offer has already been reviewed as part of this implementation. In light of the LGSCO investigation and findings, however, supporting information has already been revisited and reviewed to ensure the application process is clear and that parental & setting expectations are set.
  - vi. **Write to the parents of all children who were placed on the waiting list for (supported childcare) funding** – Where funding could not be

received, settings have a legal responsibility to meet that child's needs. Due to the unique and individual nature of each case, therefore, it cannot be automatically assumed that other children suffered an injustice as a result of not receiving agreed supported childcare funding. The Council wrote to the relevant family on 1 July 2019 asking them if they wished to make a case showing that injustice was caused. We will consider any responses received outside of the complaints process.

- vii. **If other parents, because of this report, complain to the Council about delays in their child's EHC Plan process, the Council should be willing to consider these in the light of the findings on this case** – The Council always considers and responds to concerns raised in line with its complaints policy.

## **8. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES**

- 8.1. The financial implications of the recommendations made by LGSCO, which the Council is accepting, is initially the £4k payment to Mrs B. As indicated in the report, this payment has been processed.
- 8.2. As per the 6th recommendation regarding writing to specific families, there could be further potential liabilities. At this stage, the maximum potential liability, if there was a conclusion that an injustice has been caused and if the Council were to offer a remedy in line with this case, is expected to be no greater than £3k.
- 8.3. As per the 7th recommendation regarding the impact of the LGSCO report, there could be further potential liabilities for the Council. At this stage, this would be difficult to quantify. The review of assessment processes undertaken in 2017 have resulted in improvements. This should reduce the risk of further financial penalties in the future. However, we are not yet in line with the national or inner London average, so there is still a real risk of further complaints.
- 8.4. The recommendations have minimal financial impact on ongoing routine expenditure. The review of processes regarding the discretionary supported childcare fund (2.7) have made processes more robust & transparent. As it stands, those changes are not expected to result in the Council needing to make additional payments.

## **9. VAT Implications on Land & Property Transactions**

Not applicable

## **10. COMMENTS OF THE DIRECTOR, LEGAL & GOVERNANCE SERVICES**

- 10.1. The Report to Cabinet sets out the outcome of the investigation by the Local Government and Social Care Ombudsman (LGSCO) into the complaint by Mrs B. The complaint relates to the way the LA initiate and complete the Education Health and Care Assessment of Child C.

- 10.2. Part 3 of the Children and Families Act 2014 sets out the law in regards to special educational needs. Section 24 of the Children and Families Act 2014 states that an LA becomes responsible for a child if he or she is brought to its attention as someone who has or may have special educational needs. Regulation 3 of the SEND Regulations 2014 provides that the LA must consult with the family upon receiving a request or becoming responsible for a child in accordance with the S24 Children and Families Act 2014 before determining whether it may be necessary for special education provision to be made in accordance with an EHC plan.
- 10.3. The threshold to undertake such an assessment is low and the duty appears to be triggered where a child is brought to the LA's attention. It should be noted that this threshold is lower than what is outlined in the SEND Code of Practice.
- 10.4. Where there is an alleged breach of the duty to assess, parents and young people will have recourse to the complaint process including referral to the LGSCO.
- 10.4.1. Part III of the Local Government Act 1974 (sections 26 (1) and 26A(1) empowers the LGSCO to investigate complaints about 'maladministration' and 'service failure', consider the adverse impact on the person making the complaint and where this has caused injustice, suggest a remedy.
- 10.4.2. Whilst the LGSCO has no power to force the LA to follow their recommendations, it is always advisable for the authority to give due consideration to their recommendations and in the majority of cases, LA's tend to accept the LGSCO recommendations to remedy complaints.
- 10.5. The LA have set out above in section conclusions above how they propose to respond to each of the recommendations made by the LGSCO.

#### **APPENDICES –**

- **Appendix 1:** Report of the Local Government & Social Care Ombudsman – EHC Plans (Ref: 17 009 811)
- **Appendix 2:** Statutory timescales for EHC needs assessment and EHC plan development (SEND Code of Practice 2014)

**EXEMPT –** Not applicable

#### **BACKGROUND PAPERS**

**In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required**

**Description of document (or None)**

None

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# **Cabinet**

**15 JULY 2019**

**REPORT OF THE  
LOCAL GOVERNMENT & SOCIAL  
CARE OMBUDSMAN (LGSCO) –  
EHC PLANS  
(Reference 17 009 505 – Mrs B)**

## **Appendix 1**

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**Report by the Local Government and Social Care  
Ombudsman**

**Investigation into a complaint against  
London Borough of Hackney  
(reference number: 17 009 505)**

**17 April 2019**

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## The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

### Key to names used

Mrs B	The complainant
C	Mrs B's son

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## Report summary

### Education – Special educational needs provision and Education, Health and Care plans

Mrs B complains about multiple failings by the Council in connection with the provision of an Education, Health and Care (EHC) plan for her child.

### Finding

Fault found, causing injustice, and recommendations made.

### Recommendations

We recommend the Council should, within three months of the date of this report:

- apologise in writing to Mrs B;
- pay Mrs B £3,000 to be used for C's educational benefit in the way she considers most appropriate, to recognise the delay he sustained in receiving the provision he was entitled to;
- pay Mrs B £1,000 to acknowledge the significant distress caused to the family by the faults identified;
- pay Mrs B £150 in recognition of the time and trouble caused to her in pursuing this complaint;
- review its procedures to ensure that when it receives a notification under Section 24 of the Children and Families Act 2014 that a child in its area may have special educational needs, it consults parents and other professionals so as to reach a decision within 6 weeks;
- review and streamline its processes to meet the 20-week timescale required by law to finalise EHC plans; review the arrangements for the new early years inclusion fund to ensure it will not allow for the faults identified by this investigation to be replicated; and
- write to the parents of all children who were placed on a waiting list for funding for special educational provision to explain the faults identified by this investigation and provide a remedy for those families on the same basis as that provided in this case;

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (Local Government Act 1974, section 31(2), as amended)

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## The complaint

1. Mrs B complained about multiple failings by the Council in connection with an Education, Health and Care (EHC) plan for her child. In particular she complained the Council:
  - failed to provide appropriate interim support to meet her child's needs while awaiting EHC plan;
  - failed to initiate an EHC plan promptly despite clear evidence it was necessary;
  - failed to communicate clearly and adequately about the EHC plan process, in particular about when the EHC plan process started;
  - failed to provide an education report which met the professional standard required, failing to clearly specify needs and provision;
  - has an EHC plan assessment criteria which is higher than the legal standard;
  - failed to complete the EHC plan promptly, within the statutory timescale;
  - failed to obtain professional advice in relation to social care;
  - failed to be as specific as it should have been when drafting the provision section of the EHC plan; and
  - failed to provide adequate early years provision prior to her child starting nursery.

## What we have investigated

2. We have investigated the Council's actions in respect of provision for the child where these do not relate to those parts of the EHC plan which carried a right of appeal.

## Legal and administrative background

3. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)
5. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal such as the First Tier Tribunal (Special Educational Needs and Disability) ('the Tribunal'). However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a), as amended*)

## The Children Act 1989

6. This legislation sets out the Council's duties in respect of the provision of services for children in need and their families. A child is deemed to be in need if they are disabled. (*The Children Act 1989, section 17*)

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## The Children and Families Act 2014

7. The Children and Families Act 2014 (the Act), the Special Educational Needs Code of Practice 2015 (the Code) and the Special Educational Needs and Disabilities Regulations 2014 (the Regulations) contain detailed guidance to councils about how they should manage the EHC Plan process.
8. Section 20 of the Act provides that a child has special educational needs if they have a learning difficulty or a disability which calls for special educational provision to be made for them. Special educational provision means educational or training provision that is additional to, or different from, that made generally for others of the same age in mainstream schools or maintained nursery school. A child under compulsory school age has a learning difficulty or disability if they are likely, when reaching compulsory school age, to have a significantly greater difficulty in learning than the majority of others of the same age, or a disability which prevents or hinders them from making use of facilities of a kind generally provided to others of the same age in mainstream schools.
9. Section 24(1) of the Act provides that a local authority (council) is responsible for a child or young person if he or she is in the authority's area and has been—
  - (a) identified by the authority as someone who has or may have special educational needs, or
  - (b) brought to the authority's attention by any person as someone who has or may have special educational needs.
10. Section 36 of the Act refers to the assessment of education, health and care needs. It states:
  - (1) *A request for a local authority in England to secure an EHC needs assessment for a child or young person may be made to the authority by the child's parent, the young person or a person acting on behalf of a school or post-16 institution.*
  - (2) *An "EHC needs assessment" is an assessment of the educational, health care and social care needs of a child or young person.*
  - (3) *When a request is made to a local authority under subsection (1), or a local authority otherwise becomes responsible for a child or young person, the authority must determine whether it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.*
  - (4) *In making a determination under subsection (3), the local authority must consult the child's parent or the young person.*
  - (5) *Where the local authority determines that it is not necessary for special educational provision to be made for the child or young person in accordance with an EHC plan it must notify the child's parent or the young person—*
    - (a) *of the reasons for that determination, and*
    - (b) *that accordingly it has decided not to secure an EHC needs assessment for the child or young person.*
  - (6) *Subsection (7) applies where—*
    - (a) *no EHC plan is maintained for the child or young person,*
    - (b) *the child or young person has not been assessed under this section or section 71 during the previous six months, and*
    - (c) *the local authority determines that it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.*
  - (7) *The authority must notify the child's parent or the young person—*
    - (a) *that it is considering securing an EHC needs assessment for the child or young person, and*

- (b) that the parent or young person has the right to—
- (i) express views to the authority (orally or in writing), and
- (ii) submit evidence to the authority.
- (8) The local authority must secure an EHC needs assessment for the child or young person if, after having regard to any views expressed and evidence submitted under subsection (7), the authority is of the opinion that—
- (a) the child or young person has or may have special educational needs, and
- (b) it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.
- (9) After an EHC needs assessment has been carried out, the local authority must notify the child's parent or the young person of—
- (a) the outcome of the assessment,
- (b) whether it proposes to secure that an EHC plan is prepared for the child or young person, and
- (c) the reasons for that decision.
- (10) .....

### Statutory guidance

11. Supporting the legislation, statutory guidance for organisations which work with and support children and young people who have special educational needs or disabilities is set out in the Special educational needs and disability code of practice: 0 to 25 years published in 2014 ('the Code'). This includes information about early years funding, EHC plans and the assessment process.
12. In respect of funding for SEN support in the early years, the Code notes that councils must ensure that all providers delivering funded early education places meet the needs of children with SEN and disabled children, and in order to do so should make sure funding arrangements for early education reflect the need to provide suitable support for these children.
13. Paragraph 9.3 of the Code states "the factors a local authority should take into account in deciding whether it needs to undertake an EHC needs assessment are set out in paragraphs 9.14 to 9.15 and the factors a local authority should take into account in deciding whether an EHC Plan is necessary are set out in paragraphs 9.53 to 9.56.
14. Paragraphs 9.14 and 9.15 of the Code say the council should pay particular attention to:
  - evidence of a child's academic attainment and rate of progress;
  - information about the nature, extent and context of the child's SEN;
  - evidence of the action already being taken by a school to meet a child's SEN;
  - evidence that, where progress has been made, it has only been as the result of much additional intervention and support over and above that which is usually provided; and
  - evidence of the child or young person's physical, emotional and social development and health needs, drawing on relevant evidence from clinicians and other health professionals and what has been done to meet those needs by other agencies.
15. In *Cambridgeshire County Council v FL-J* [2016] UKUT 0225 the Upper Tribunal held:
 

*"The authority or tribunal does not have to decide at this initial stage whether*

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*special educational provision 'is necessary'... that question only arises when an assessment has been made... the issue at the initial state is a provisional and predictive one; it is only when an assessment has been made that a definitive decision has to be made".*

16. Councils have responsibility for completing EHC plans for children where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made in accordance with an EHC plan. This would include where special educational provision required to meet a child's needs cannot be provided from within the resources available to mainstream early years provision. The EHC plan is a legal document which sets out a description of a child's needs. It says what education, health and social care support will meet those needs.
17. Councils may develop criteria as guidelines to help them decide when it is necessary to carry out an EHC needs assessment but must be prepared to depart from those criteria where there is good reason to do so. To inform its decision, a council should pay particular attention to factors such as a young child's developmental milestones; information about the nature and extent of their SEN; and their physical, emotional and social development and health needs.

### **Timescales**

18. Paragraph 9.39 of the Code provides that "local authorities should ensure that they have planned sufficient time for each step of the process, so that wherever possible, any issues or disagreements can be resolved within the statutory timescales".
19. Paragraph 9.40 states that: "The whole process of EHC Plan needs assessment and EHC Plan development, from the point when an assessment is requested (or a child or young person is brought to the local authority's attention) until the final EHC Plan is issued, must take no more than 20 weeks (subject to exemptions set out below)". None of the exemptions specified in the Code applied in this case. The 20-week time limit is set out in Regulation 13(2) of the Special Educational Needs and Disability Regulations 2014.
20. Paragraph 9.41 of the Code states:
  - "Local authorities **must** give their decision in response to any request for an EHC Plan assessment within a maximum of 6 weeks from when the request was received or the point at which a child or young person was brought to the local authority's attention;
  - When local authorities request information as part of the EHC needs assessment process, those supplying the information **must** respond in a timely manner and within a maximum of 6 weeks from the date of the request;
  - If a local authority decides, following an EHC needs assessment, not to issue an EHC Plan, it **must** inform the child's parent or the young person within a maximum of 16 weeks from the request for an EHC needs assessment, and
  - The child's parent or young person **must** be given 15 calendar days to consider and provide views on a draft EHC Plan and ask for a particular school or other institution to be named in it".
21. There are rights of appeal to the Special Educational and Disability (SEND) First Tier Tribunals for parents where a local authority refuses, at week six, to carry out

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a statutory assessment, or where a council decides, at week sixteen, not to issue an EHC Plan, or when parents disagree with the contents of the final Plan.

## **How we considered this complaint**

22. This report has been produced following the examination of relevant documents from the complainant and the Council. We also made written enquiries of the nursery the child attended and took account of the responses received.
23. The complainant and the Council had the opportunity to comment on a draft of this report and all comments received have been taken into account.
24. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share the decision on this complaint with Ofsted.

## **What We found**

### **Background**

25. Mrs B and her husband were living abroad with their three children. The youngest child, C, has Down's Syndrome. It affects many aspects of his life including his mobility, respiration, and speech and language: he has extensive needs. In July 2015, when C was almost three years of age, Mrs B contacted the Council in anticipation of the family's move to the area, and requested referral to its Portage service.

### **The Local Offer and Portage services**

26. The Local Offer is the Council's publication of all the provision it expects to be available across education, health and social care for children and young people in their area who have special education needs (SEN) or are disabled, including those who do not have an EHC plan. The Council's Local Offer includes a Portage service. Portage is a specialist educational home visiting service for pre-school children who have special needs. The service helps young children whose development is delayed, and it works closely with other professionals including speech and language therapists. Parents can refer themselves to the service. The Council says it confirmed it was happy to accept a referral once the family were residing in their Hackney address.
27. The referral was subsequently made via a multi-agency meeting on 15 September 2015. Invitations to Portage drop-in sessions were issued and Mrs B and her son attended sessions on 28 September and 12 October 2015. At the session on 12 October, a senior officer from the Portage team gave Mrs B information about a group (Group Z) run by the Early Support Team for children with Down's Syndrome. C began attending nursery in November 2015 after the October half-term break, and he began attending Group Z sessions when these became available in January 2016.
28. Mrs B and her son did therefore have some support from Portage prior to the start of C's attendance at nursery. Although C did not have one to one support from Portage, there was only a short period between when the referral was made and when he began attending nursery, so we consider that any resultant injustice to C from that is limited.



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## Nursery

29. Once C began attending nursery, in November 2015, the nursery made an application to the Council for funding for a one-to-one support worker for him, for two days a week.
30. The Council acknowledges that some nursery settings may experience difficulties supporting children with highly complex disabilities where there is no funding provided through an EHC plan and it therefore offered supported childcare funding on a discretionary basis. Responding to our enquiries the Council said that as its resources are limited, once these were committed for the year it operated a waiting list until more resources were released: it then allocated resources on a 'first come, first served' basis.
31. The Council has since said that the term 'waiting list' is misleading and that it had incorrectly stated that the 'waiting list' was operated on a first come, first served basis. It asserts the 'waiting list' was a list of names ordered according to the timing of the applications for funding; that allocations were based on need; and that needs were met within the setting until such a time as allocations were made. But the evidence in this case does not support the assertion that C's needs were being fully met within the setting, while he awaited funding.
32. The Council refers applications for supported funding to a panel which sits every six weeks. The nursery's application for supported funding was considered at a panel meeting on 10 December 2015, and on 14 December the nursery was notified in writing that the panel had decided to offer a place on a 'waiting list' for the funding it had requested. So, C was put on the 'waiting list', but the funding was never awarded.
33. The Council says there is no statutory requirement for interim resourcing for children prior to an EHC assessment being requested or while the assessment is being completed. But there is no option for a council to only meet some of a child's SEN even if they are aged under five years. Special educational provision is what is considered necessary to give children with SEN the same opportunities as children with no SEN, and the duty to meet a child's SEN and consider an EHC plan applies from birth. The Council has said the needs of all children on its 'waiting list' for funding from the supported childcare budget were complex. By implication acceptance onto the 'waiting list' must have been because of unmet needs: there would be no grounds to award discretionary funding if needs were already being met or could be met from the setting's existing resources. The Council accepted C qualified for supported childcare funding for one-to-one staffing.
34. When a child in an early-years setting has SEN there are three possibilities:
  - that their needs can be met from the setting's own resources; or
  - that their needs cannot be met from the setting's own resources but can be met through non-statutory funding from the Council's supported childcare budget; or
  - that their needs cannot be met from the setting's own resources or additional funding from the supported childcare budget.
35. In this final scenario, the child must meet the test for an EHC plan. Therefore, any child on the waiting list who has unmet needs must by definition meet the threshold for an EHC plan and funding from the Council's high needs budget.

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36. By putting C and other children on a 'waiting list', the Council was acknowledging those children had needs which could not be met within their settings without additional funding for extra resources. Acknowledgment of unmet needs should have highlighted the need for assessment for an EHC plan. The use of a waiting list in the circumstances described was fault.

#### **Failure to carry out assessment of need**

37. As set out above, C was brought to the Council's attention as a disabled child with Down's Syndrome and associated needs while the family was still living abroad. Then, once the family had moved to the Council's area, on 11 September 2015 the Council received a letter from C's GP addressed to the community paediatrician asking them to see C as a child with Down's Syndrome needing access to different services. C's case was considered at multi-agency meeting four days later.
38. A local authority is not obliged to start the statutory assessment process every time it receives a referral from a GP. But the referral from C's GP fell within Section 24(1)(b) of the Act as set out at paragraph 9 above. C was identified in the referral as a child with Down's Syndrome, and that should have put the Council on notice that he might have special educational needs. Being so alerted, the Council should then have decided if it was necessary to carry out an EHC needs assessment, bringing with it an obligation to formally consult with Mrs B and to seek her views on it. If the Council had considered the matter and had decided it would not carry out a needs assessment at that time, it should within six weeks have notified Mrs B of this decision and of her right to appeal against that decision to the SEND Tribunal. It failed to do this, and we are satisfied that this amounted to fault by the Council.
39. The Council had a further opportunity to take the action set out above in November 2015 when C started at nursery. If the Council had considered the matter and decided C's needs could be met at nursery with an early support plan, it should have notified that decision to Mrs B within six weeks and advised her of her right of appeal. During the period C was in nursery and being observed by the Special Educational Needs Co-ordinator (SENCO) prior to the nursery making a formal request for assessment, responding to an enquiry from C's keyworker the EHC plan coordinator said:
- "As far as I am aware there is not a set period of time for observation, however when making a decision as to whether or not to agree to an assessment Hackney Learning Trust like to see at least two terms of relevant and purposeful action. This should include Individual Education Plans/support plans, interventions from external agencies, evidence of how the setting have applied the recommendations from professionals and a provision map including costings".*
- For the reasons set out above this approach is flawed: it disregards the relevant six-week timescale for decision-making in the Regulations.
40. Further, at the multi-agency meeting the Council's social care department was put on notice that C was a child in need in its area, having disabilities and special educational needs, and that assessment for services under S17 of the Children Act 1989 could be appropriate.

#### **What happened next**

41. Once C was attending nursery, the SENCO drew up an early years support plan for him. The first plan, dated 23 November 2015, noted that C needed assistance with feeding and physical support to enable access to the toddler room, and with communication including a need for staff to use Makaton sign language. The plan

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- noted the nursery was applying for an SEN worker to support him in the toddler room and especially with eating and outside play.
42. The support plan was updated on 21 March 2016, noting C was to have one to one support to access the outside space, and was to be supervised at mealtimes as he often did not finish a mouthful of food before putting more in. The plan was updated again on 9 May 2016, and again included reference to mealtime supervision and the need for staff to remind C to clear his mouth before taking more food.
43. Mrs B reports that the lack of supervision when her son's keyworker was not present meant C was put at risk of choking, and that the lack of training for staff in Makaton sign language disadvantaged her son since he relied on this method of communication. Mrs B felt the nursery did not have sufficient resources to offer the appropriate level of supervision and support. Mrs B's concerns about her son's safety at mealtimes were particularly significant. Although the nursery has stated it was aware of only one occasion when C's parents had raised concern about him being unsupported at mealtimes, Mrs B reports that she and her husband found him unsupervised on three occasions, leaving him at risk of choking and inhaling food into his lungs. Although initially the plan had been for him to remain at the nursery until July 2017, she made the decision to withdraw him a year early and move him to an alternative nursery from September 2016.
44. At nursery, C was supported by the nursery SENCO and a key worker. There were occasional visits from the area SENCO and a physiotherapist, and advice was received from a dietician on how to support his feeding. We are satisfied that staff working with C were trained in Makaton communication and used relevant resources when working with him. Assessment by a speech and language therapist (SALT) noted C was at risk as a child with Down's Syndrome and significant respiratory issues and required monitoring: no incidents of choking were noted by the nursery. It is though the case that the SENCO and key worker in addition to supporting C had several other children to support, and this professional advice and support did not amount to the full-time one-to-one support the nursery considered C needed, and for which it had requested the funding. As set out in paragraph 32, the nursery was advised C had been placed on the 'waiting list' for funding for this support.

#### **Formal request for EHC Plan**

45. On 26 May 2016, the nursery made a formal written request to the Council for an EHC assessment. The Council received this on 6 June 2016, and on 15 June wrote to Mrs B to confirm the request for assessment had been agreed and the process had formally begun.
46. Mrs B had believed the assessment process had been started by the SENCO much earlier, soon after C had started at nursery. She felt that given her son's clear disabilities it would have been obvious that assessment would be needed. The Council says the SENCO had explained the EHC plan process to Mrs B during the second support plan meeting in February and had subsequently found out from another SENCO that Mrs B had expressed the view at a Group Z session that she believed the assessment process had begun. This was a further opportunity for the Council to notify Mrs B in writing that it was not doing an assessment and to give her notice of her appeal rights, but it did not do so and that was fault.

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### **The EHC plan process – lack of advice from social care**

47. An EHC plan must specify any social care provision reasonably required by the young person's learning difficulties and disabilities which result in them having special educational needs. The EHC assessment must therefore include a consideration of care needs. Where the child is not previously known to social care services, the Council has to identify whether they have social care needs and in some cases it may be necessary to proceed to a formal assessment carried out by a social worker.
48. In this case the Council's EHC plan coordinator contacted children's social care on 15 June and it responded the following day saying C was not known to the service. However, C is a child with disabilities and is therefore a child in need, less likely to achieve without extra help. The Council has said that in C's case there was no immediate evidence to suggest that he was living in anything other than a caring and stable home environment. But a child may be living in a caring and stable environment and still have support needs for which they are entitled to receive services. The Council's failure to properly consider whether assessment under S17 of the Children Act 1989 was appropriate was fault.
49. When a S17 assessment was completed later, after Mrs B requested it in September 2016, it resulted in three hours support a week for social activities for C. The Council accepts this support may have been offered sooner if the assessment had been completed at an earlier stage.

### **The EHC plan - time taken from request to completion**

50. Unless specific exemptions apply, the 20-week maximum timescale permitted for the process of EHC needs assessment runs from the point assessment is requested, or a child is brought to the Council's attention if sooner, until the final EHC plan is issued.
51. In this case, the formal request for assessment was made by the nursery at the end of May 2016 and received by the Council on 6 June. The final EHC plan was issued on 13 February 2017.
52. If, having received the GP's letter and held the multi-agency meeting in September 2015, the Council had acted without fault and had made a decision on whether or not it would assess C for an EHC plan within six weeks, it would have either begun the assessment at that point (by the end of October 2015), or notified Mrs B that it was not going to do so, giving rise to her right of appeal. If the Council had decided it would not assess, we are satisfied on the evidence that Mrs B would have exercised her right of appeal. However, on balance it is more likely than not in the circumstances of this case that the Council would have decided to assess C. He was a child with Down's Syndrome and numerous associated difficulties, and the SEN Code of Practice sets out the importance of avoiding delay in the early years, stating:  
*"It is particularly important in the early years that there is no delay in making any necessary special educational provision. Delay at this stage can give rise to learning difficulty and subsequently to loss of self-esteem, frustration in learning and to behaviour difficulties. Early action to address identified needs is critical to the future progress and improved outcomes that are essential in helping the child to prepare for adult life".*
53. If the Council had decided, at the six-week date, that it would assess C, the timescale of 20 weeks for assessment and completion of the EHC plan would have been triggered. The EHC plan should therefore have been completed by 15

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March 2016. But it was not completed until 13 February 2017, a delay of some 48 weeks. The delay was fault. Exceptional circumstances did not apply.

54. Mrs C then exercised her right of appeal against the provision specified in her son's EHC plan. Her appeal was successful and led to increased and improved provision, including one-to-one support from a teaching assistant for 32.5 hours a week, 16 hours specialist teacher support, increased speech and language therapy, and Makaton and Down's Syndrome training for staff.
55. If the fault identified by this investigation had not occurred, we are therefore satisfied that the final EHC plan would have been completed much sooner; Mrs B would have therefore exercised her right of appeal and secured the necessary increased provision for C sooner.

### **The Council's current arrangements**

56. In April 2017, the Council introduced new arrangements for early years funding, replacing the discretionary supported childcare fund and its associated waiting list with an 'early years inclusion fund'. The Council says that at the end of March 2017 there were no children on the waiting list for supported childcare funding and that all applications for funding meeting the criteria since April 2017 have been approved and settings have received appropriate funding. However, the Council's budget for the fund is still capped.

## **Conclusions**

57. The Council was at fault when it:
- placed C and other children with SEN requiring special educational provision on a 'waiting list' for resources, rationing services based on available resources instead of identified need;
  - failed to make a decision within six weeks of 11 September 2015 (the date the Council received the letter from the GP referring to C's disability), or at the latest 15 September 2015 (the date of the multi-agency meeting), whether it would carry out an EHC assessment of need for C, and then to notify Mrs B of that decision and her right of appeal;
  - failed to consider whether it was appropriate to carry out an assessment under S17 of the Children Act 1989 when C was brought to its attention as a disabled child; and
  - delayed in issuing C's EHC plan by 48 weeks.
58. These faults led to the injustice of:
- delay in C receiving the provision he was entitled to;
  - distress for Mrs B and her family; and
  - frustration and time and trouble for Mrs B in pursuing her complaint.

## **Recommendations**

59. To remedy the injustice caused to Mrs B and to C, within three months of the date of this report the Council should:
- apologise in writing to Mrs B;

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- pay Mrs B £3,000 to be used for C’s educational benefit in the way she considers most appropriate, to recognise the delay he sustained in receiving the provision he was entitled to;
  - pay Mrs B £1,000 to acknowledge the significant distress caused to the family by the faults identified; and
  - pay Mrs B £150 in recognition of the time and trouble caused to her in pursuing this complaint.
60. Within three months the Council should also:
- review its procedures to ensure that when it receives a notification under Section 24 of the Act that a child in its area may have special educational needs, it consults parents and other professionals so as to reach a decision within 6 weeks;
  - review and streamline its processes to meet the 20-week timescale required to finalise EHC plans; and
  - review the arrangements for the new early years inclusion fund to ensure it will not allow for the faults identified by this investigation to be replicated.
61. There may also be injustice caused to other families where children were placed on the waiting list for funding; where the Council failed to give a decision on whether to begin an EHC plan assessment; or where the EHC plan process took more than 20 weeks. Using our powers under S26(D) Local Government Act 1974 we therefore recommend that within three months the Council should also write to the parents of all children who were placed on the waiting list for funding to explain the faults identified by this investigation and provide a remedy for those families on the same basis as that provided in this case.
62. If other parents, because of this report, complain to the Council about delays in their child’s EHC Plan process, the Council should be willing to consider these complaints in the light of the findings on this case. In the event parents make a complaint to us, we will consider whether we should exercise discretion in respect of the time limits for making complaints to our office.
63. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

## **Decision**

64. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mrs B and to C. The Council should take the action identified above to remedy that injustice.

# **Cabinet**

**15 JULY 2019**

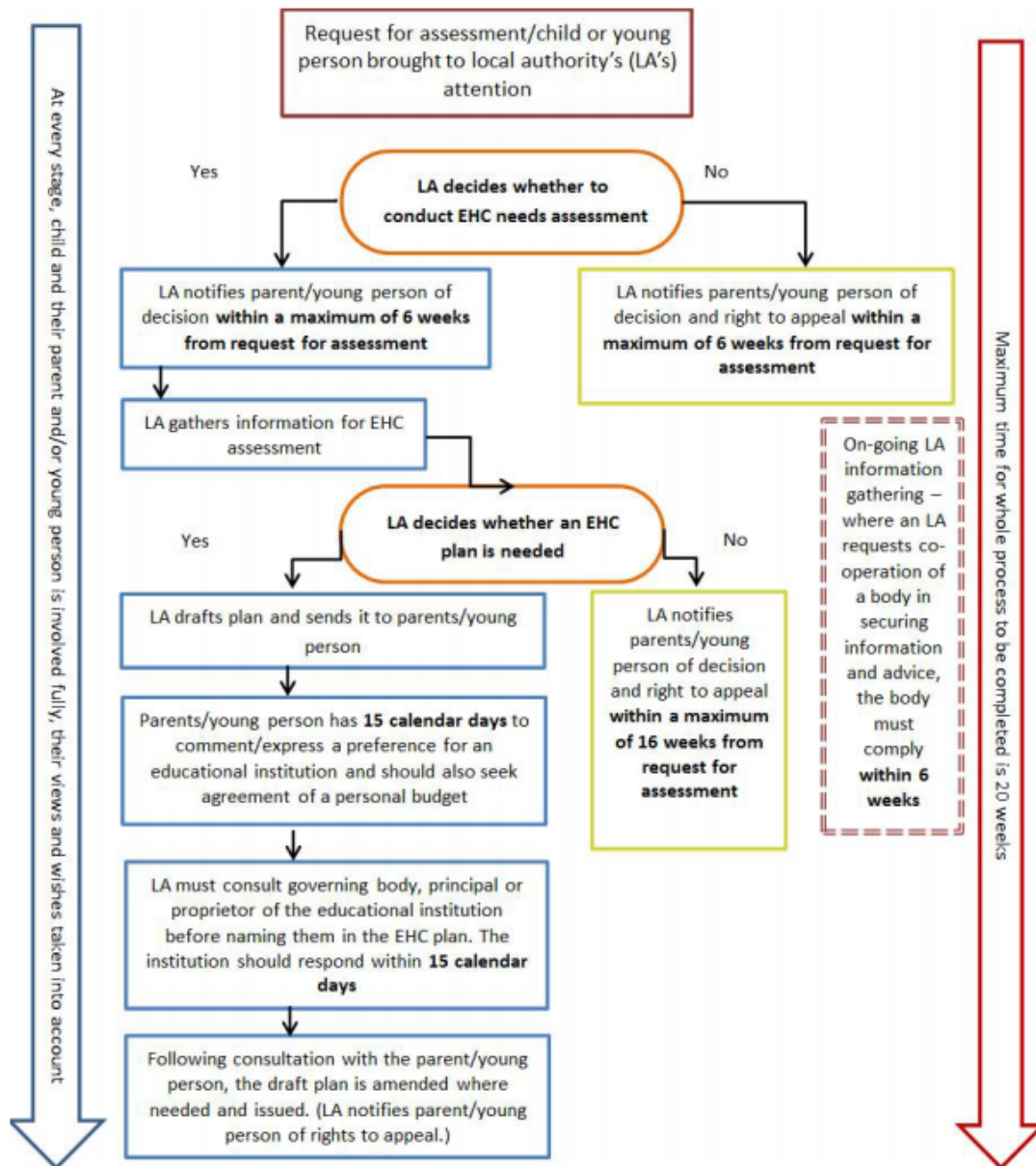
**REPORT OF THE  
LOCAL GOVERNMENT & SOCIAL  
CARE OMBUDSMAN (LGSCO) –  
EHC PLANS  
(Reference 17 009 505 – Mrs B)**

## **Appendix 2**

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**Appendix 2 - Statutory timescales for EHC needs assessment and EHC plan development (SEND Code of Practice 2014)**



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<p><b>Capital Update Report</b></p> <p><b>KEY DECISION NO. FCR P92</b></p>	
<p><b>CABINET MEETING DATE</b></p> <p>15 July 2019</p>	<p><b>CLASSIFICATION:</b></p> <p>Open</p> <p>If exempt, the reason will be listed in the main body of this report.</p>
<p><b>WARD(S) AFFECTED</b></p> <p>All Wards</p>	
<p><b>CABINET MEMBER</b></p> <p>Philip Glanville, Mayor of Hackney</p>	
<p><b>KEY DECISION</b></p> <p>Yes</p> <p><b>REASON</b></p> <p>Spending or Savings</p>	
<p><b>GROUP DIRECTOR</b></p> <p>Ian Williams Finance and Corporate Resources</p>	

## **1. CABINET MEMBER'S INTRODUCTION**

- 1.1 This report on the capital programme for 2019/20 updates members on the capital programme agreed in the 2019/20 budget. It includes capital project approvals for Children, Adults and Community Health, Finance and Corporate Resources, Neighbourhoods and Housing (Non) and Housing, particularly showing the Council's commitment to young people across the borough through school and extracurricular facility investment.
- 1.2 We promised to maintain Hackney's education success by investing in our schools, so they are fit for the 21st century. The report provides further significant funding for the improvement of schools in the form of ongoing lifecycle works, as well as specific projects that will further enhance school facilities, like the £1.2m refurbishment of Stoke Newington School's theatre.
- 1.3 There is also a significant investment in facilities at the Old Baths Eastway, "match funding" resources provided by the Mayor of London's Good Growth Fund to create a multi-use games-room and classroom. These new community facilities will be managed by Young Hackney to provide community based learning and accredited programmes. This project will enable children and young people to gain new skills and opportunities, as well as support their emotional well-being, resilience and self-esteem. It is further evidence that despite central government imposing a £140m cut to our grant since 2010, Hackney Council continues to deliver services over and above the statutory requirements and prioritise the younger generation.
- 1.4 Finally, the investment in the West Reservoir Improvement Project included in this report takes forward a manifesto commitment to invest in our parks and green spaces and more specifically to provide wider public access to West Reservoir in Woodberry Down and expand the activities on offer to our residents. This approval builds upon a previous Cabinet resolution from January 2018 and will further improve the leisure offer at West Reservoir by improving the entrances to the Reservoir, and its links to the wider public realm, open up the banks of the Reservoir to the public for the first time in many years, and interpret the heritage of the site for a wider audience.

## **2. GROUP DIRECTOR'S INTRODUCTION**

- 2.1 This report updates Members on the current position of the Capital Programme and seeks spending and resource approval as required to enable officers to proceed with the delivery of those schemes as set out in section 9 of this report.

## **3. RECOMMENDATION(S)**

- 3.1 **That the schemes for Children, Adults and Community Health as set out in section 9.2 be given approval as follows:**

**BSF Lifecycle Works Programme 2019/20:** Virement and spend approval of **£990k** in **2019/20** is requested to fund the BSF lifecycle works of 9 schools and across all the

BSF school buildings that are not the liability of the LEP within the managed service contract.

**Stoke Newington School Theatre Refurbishment:** Virement and spend approval of **£1,200k (£1,186k in 2019/20 and £14k in 2020/21)** is requested to fund the refurbishment of the Drama Theatre and associated ancillary spaces at Stoke Newington School.

3.2 **That the schemes for Neighbourhoods and Housing (Non) as set out in section 9.4 be given approval as follows:**

**New Classroom Facility at The Old Baths 80-80a Eastway:** Resource and spend approval of **£350k (£300k in 2019/20 and £50k in 20/21)** is requested to fund the delivery of a classroom at the Old Baths.

3.3 **That the S106 schemes as set out in section 9.4 and summarised below be given resource and spending approval as follows:**

S106	2019/20
	£'000
Capital	1,979
<b>Total S106 Resource and Spend Approvals</b>	<b>1,979</b>

3.4 **That the schemes outlined in section 9.5 be noted.**

3.5 **That the expenditure plans and associated resources to be carried from 2018/19 to 2019/20 as set out in 9.6 and summarised below be approved:**

Directorate	2018/19 Slippage
	£'000
Children, Adults & Community Health	(1,163)
Finance and Corporate Resources	2,776
Neighbourhoods	3,642
<b>Total Non-Housing</b>	<b>5,254</b>
Housing	2,494
<b>Total Capital Expenditure</b>	<b>7,749</b>

#### **4. REASONS FOR DECISION**

- 4.1 The decisions required are necessary in order that the schemes within the Council's approved Capital programme can be delivered as set out in this report.
- 4.2 In most cases, resources have already been allocated to the schemes as part of the budget setting exercise but spending approval is required in order for the scheme to proceed. Where however resources have not previously been allocated, resource approval is requested in this report.

#### **5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

None.

#### **6. BACKGROUND**

##### **6.1 Policy Context**

The report to recommend the Council Budget and Council Tax for 2019/20 considered by Council on 25 February 2019 sets out the original Capital Plan for 2019/20. Subsequent update reports considered by Cabinet amend the Capital Plan for additional approved schemes and other variations as required.

##### **6.2 Equality Impact Assessment**

Equality impact assessments are carried out on individual projects and included in the relevant reports to Cabinet or Procurement Committee, as required. Such details are not repeated in this report.

##### **6.3 Sustainability**

As above.

##### **6.4 Consultations**

Relevant consultations have been carried out in respect of the projects included within this report, as required. Once again details of such consultations would be included in the relevant detailed reports to Cabinet or Procurement Committee.

##### **6.5 Risk Assessment**

The risks associated with the schemes detailed in this report are considered in detail at individual scheme level. Primarily these will relate to the risk of the projects not being delivered on time or to budget. Such risks are however constantly monitored via the regular capital budget monitoring exercise and reported to cabinet within the Overall Financial Position reports. Specific risks outside of these will be recorded on departmental or project based risk registers as appropriate.

## 7. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

- 7.1 The gross approved Capital Spending Programme for 2019/20 currently totals **£346.641m (£177.856m non-housing and £168.785m housing)**. This is funded by discretionary resources (borrowing, government grant support, capital receipts, capital reserves (mainly Major Repairs Reserve and revenue contributions) and earmarked funding from external sources.
- 7.2 The financial implications arising from the individual recommendations in this report are contained within the main report.
- 7.3 If the recommendations in this report are approved, the revised gross capital spending programme for 2019/20 will total **£356.858m (£185.579m non-housing and £171.279m housing)**.

Directorate	Revised Budget Position	July 2019 Cabinet Update	Slippage from 18/19	Updated Budget Position
	£'000	£'000	£'000	£'000
Children, Adults and Community Health	29,430	0	(1,163)	28,267
Finance and Corporate Resources	115,705	0	2,776	118,481
Neighbourhoods & Housing	32,721	2,468	3,642	38,831
<b>Total Non-Housing</b>	<b>117,856</b>	<b>2,468</b>	<b>5,255</b>	<b>185,579</b>
Housing	168,785	0	2,494	171,279
<b>Total</b>	<b>346,641</b>	<b>2,468</b>	<b>7,749</b>	<b>356,858</b>

## 8. COMMENTS OF THE DIRECTOR OF LEGAL

- 8.1 The Group Director, Finance and Corporate Resources is the officer designated by the Council as having the statutory responsibility set out in section 151 of the Local Government Act 1972. The section 151 officer is responsible for the proper administration of the Council's financial affairs.
- 8.2 In order to fulfil these statutory duties and legislative requirements the Section 151 Officer will:
- (i) Set appropriate financial management standards for the Council which comply with the Council's policies and proper accounting practices, and monitor compliance with them.
  - (ii) Determine the accounting records to be kept by the Council.
  - (iii) Ensure there is an appropriate framework of budgetary management and control.
  - (iv) Monitor performance against the Council's budget and advise upon the corporate financial position.
- 8.3 Under the Councils Constitution although full Council set the overall Budget it is the Cabinet that is responsible for putting the Council's policies into effect and responsible

for most of the Councils' decisions. The Cabinet has to take decisions in line with the Council's overall policies and budget.

- 8.4 The recommendations include requests for spending approvals. The Council's Financial Procedure Rules (FPR) paragraphs 2.7 and 2.8 cover the capital programme with 2.8 dealing with monitoring and budgetary control arrangements.
- 8.5 Paragraph 2.8.1 provides that Cabinet shall exercise control over capital spending and resources and may authorise variations to the Council's Capital Programme provided such variations: (a) are within the available resources (b) are consistent with Council policy.
- 8.6 With regard to recommendation 3.3 and paragraph 9.4 where Cabinet is being invited to approve the allocation of monies from agreements under section 106 of the Town and Country Planning Act 1990, s.106 permits anyone with an interest in land to enter into a planning obligation enforceable by the local planning authority. Planning obligations are private agreements intended to make acceptable developments which would otherwise be unacceptable in planning terms. They may prescribe the nature of the development (for example by requiring that a percentage of the development is for affordable housing), secure a contribution to compensate for the loss or damage created by the development or they may mitigate the development's impact. Local authorities must have regard to Regulation 122 of the Community Infrastructure Levy Regulations 2010. Regulation 122 enshrines in legislation for the first time the legal test that planning obligations must meet. Hackney Council approved the Planning Contributions Supplementary Planning Document on 25 November 2015 under which contributions are secured under S106 agreements. Once completed S.106 agreements are legally binding contracts. This means that any monies which are the subject of the Agreement can only be expended in accordance with the terms of the Agreement.

## **9 CAPITAL PROGRAMME 2019/20 AND FUTURE YEARS**

- 9.1 This report seeks spending approval for schemes where resources have previously been allocated as part of the budget setting process, as well as additional resource and spending approvals for new schemes where required.

### **9.2 Children, Adults and Community Health Services:**

- 9.2.1 **BSF Lifecycle Works Programme 2019/20:** Virement and spend approval of **£990k in 2019/20** is requested to fund the BSF lifecycle works at 9 schools set out in the table below, including contingency allowance for emergency works across all the BSF school buildings that are not the liability of the LEP within the managed service contract.

<b>No.</b>	<b>Name of School</b>
1	Cardinal Pole
2	Stoke Newington



3	Clapton Girls Academy
4	Stormont House
5	Ickburgh
6	Haggerston
7	Urswick
8	Our Ladys
9	The Garden

As part of the Facilities Management contract for BSF schools, there is a requirement to provide an annual lifecycle programme which is made up of a number of elements determined by three main processes: (a) condition surveys undertaken by the Local Education Partnership (LEP) to ascertain items that are going to need replacement / attention to enable them to continue functioning; (b) observations made on site and inspecting the school with the Business manager to determine the individuals schools requirements; and (c) reactive items that are either identified by early failure of plant and fabric or items that are failing due to the parts of refurbished schools that were not addressed by the BSF programme. The works will include cyclical redecoration, replacement of flooring, fire doors, furniture, new blinds, maglocks, installation of mains water supply to school site and repairs to staircases. The lifecycle programme enables the ongoing sustainability of the various schools to be maintained and improved. The ongoing delivery of works ensures that the teaching environment provided is conducive to improving the student, staff and visitor experience. The proposed works will also significantly contribute to keeping students, staff and visitors safe and secure and providing an environment that enables all occupants of the various premises to gain maximum benefit from highly maintained facilities. This capital project links in with the Council's 2018-2028 Sustainable Community Strategy Priority 2 'A borough where residents and local businesses fulfil their potential and everyone enjoys the benefits of increased local prosperity and contributes to community life'. This approval will have no net impact as the resources already form part of the capital programme.

**9.2.2 Stoke Newington School Theatre Refurbishment:** Virement and spend approval of **£1,200k (£1,186k in 2019/20 and £14k in 2020/21)** is requested to fund the refurbishment of the Drama Theatre and associated ancillary spaces at Stoke Newington School. During the BSF programme, Stoke Newington was one of the three schools that was partially refurbished rather than rebuilt and as a result there were certain areas that still need upgrading to BSF standards. This drama theatre is one such area. It is crucial for the delivery of the drama curriculum, as well as for use as an assembly hall and for general teaching. This capital project links in with the Council's 2018-2028 Sustainable Community Strategy Priority 2 'A borough where residents and local businesses fulfil their potential and everyone enjoys the benefits of increased local prosperity and contributes to community life' and Priority 4 'An open, cohesive, safer and supportive community'. This approval will have no net impact as the resources already form part of the capital programme.

### **9.3 Neighbourhood and Housing (Non):**

9.3.1 **New Classroom Facility at The Old Baths 80-80a Eastway:** Resource and spend approval of **£350k (£300k in 2019/20 and £50k in 2020/21)** is requested to fund the delivery of class room facility alongside the refurbishments to the Multi-Use Games Area (MUGA) at the Old Baths. In 2018 the Area Regeneration team successfully secured £450k of funding from the GLA's Good Growth Fund to carry out works at The Old Baths & the Depot (at 80 and 80A Eastway). Once the classroom is built the intention is for Young Hackney (the Council's single service for all young people aged 6-19) to manage this facility. The classroom facility will be used for community based learning/accredited programmes for young people and not for profit. The classroom will be used to teach students over 14 years of age courses that are not a statutory obligation of the Council. Training will include sports coaching, health related activities, sports administration, apprenticeship and integrated projects which are inclusive of children and young people with special educational needs or disabilities. It will offer industry specific information and advice and guidance with our partners on the pathways into the sports industry and higher education. It will support children and young people's emotional well-being, develop their resilience and self-esteem. The youth programmes on the MUGA and surrounding areas will include football, hockey, netball, fitness sessions, cycling, stand up paddle board and paralympic sports. This project will enable children and young people to gain new skills, improve their physical health, address community cohesion and reduce the fear of crime. This capital project links in with the Council's 2018-2028 Sustainable Community Strategy Priority 2 'A borough where residents and local businesses fulfil their potential and everyone enjoys the benefits of increased local prosperity and contributes to community life' and Priority 4 'An open, cohesive, safer and supportive community'. This approval will have no net impact on the capital programme as the resources are funded by earmarked reserves held by the authority.

#### 9.4 S106 Capital Approvals:

9.4.1 Capital Resource and Spend approval is requested for **£1,979k in 2019/20** in respect of the projects detailed below, to be financed by S106 contributions. The works to be carried out are in accordance with the terms of the appropriate S106 agreements.

Planning Site No.	Project Description	Agreement Development Site	2019/20 £'000
2013/2042& 2015/2577	Ridley Road Environmental Improvements	51 -57 Kingsland High Street London E8 2JS	390
2013/3223	West Reservoir Improvement Project	Woodberry Down Future Phases	1,589
<b>Total Capital S106 Approvals</b>			<b>1,979</b>

#### 9.5 For Noting:

9.5.1 The s106/CIL Corporate Board Meeting dated 3 April 2019 and 17 June 2019 considered and approved the following bids for resource and spend approval. As a

result **£189k in 2019/20** was approved to spend in accordance with the terms of the appropriate s106 agreements.

<b>Planning Site No.</b>	<b>Project Description</b>	<b>Agreement Development Site</b>	<b>2019/20 £'000</b>
2012/1945	Highway Works at 55 Pitfield Street (0027-17)	55 Pitfield Street London N1 6BU	27
2015/2258	Highway Works at 6 Orsman Road (0001-19)	6 Orsman Road London N1 5QJ	23
2016/2713	Highway Works at St Leonards Court (0022-18)	St. Leonards Court New North Rd.London N1 6JA	53
2013/3223	Fairchild's Garden Improvements (0025-17)	97-137 Hackney Road, London, E2 8ET	87
<b>Total Capital S106 Approvals</b>			<b>189</b>

## 9.6 Carry Forward of Schemes from 2018/19 to 2019/20

9.6.1 Further to the outturn position reported in the March OFP to June 2019 Cabinet, the table below summaries the proposed carry forward to 2019/20 of £7,749k in respect of overall slippage against the 2019/20 capital programme with a detailed scheme analysis provided in Appendix 1.

<b>Directorate</b>	<b>2018/19 Slippage</b>
	<b>£'000</b>
Children, Adults & Community Health	<b>(1,163)</b>
Finance and Corporate Resources	<b>2,776</b>
Neighbourhoods	<b>3,642</b>
<b>Total Non-Housing</b>	<b>5,254</b>
Housing	<b>2,494</b>
<b>Total Capital Expenditure</b>	<b>7,749</b>

## APPENDICES

One.

## BACKGROUND PAPERS

In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required.

None.

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**Cabinet**

**15 JULY 2019**

**Capital Update Report - Key  
Decision No. FCR P92**

**Appendix 1**

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Programme Description	19/20 Budget	Slippage 18/19	Revised Budget 19/20
<b>Children, Adults &amp; Community Health</b>			
<b>Adult Services Capital</b>			
Oswald Street Day Centre	241,798.28	(45,453.99)	196,344.29
Median Road Refurbishment	1,000,000.00	46,115.60	1,046,115.60
<b>AMP Primary Programmes</b>			
Harrington Hill AMP	327,410.20	(13,161.60)	314,248.60
Parkwood AMP	129,894.24	102,000.43	231,894.67
William Patten AMP	165,315.00	(110,136.98)	55,178.02
Princess May AMP	0.00	2,906.80	2,906.80
Sebright AMP	57,900.00	(12,674.15)	45,225.85
Education Asbestos Removal	20,888.82	(20,888.82)	0.00
Primary Capital Prog 13/14	1,719,061.44	100,717.00	1,819,778.44
C C AMP needs/maintenance	173,635.50	(104,170.07)	69,465.43
Primary School AMP Needs	154,312.10	(7,088.40)	147,223.70
<b>Building Schools for the Future</b>			
Mossbourne Victoria Park Acad	82,478.95	(49,741.19)	32,737.76
Stormont College SEN Pre BSF	210,245.25	(2,121.25)	208,124.00
Ickburgh BSF	411,048.95	(34,648.26)	376,400.69
<b>Misc Education &amp; Children's Services</b>			
DFC Holding Code	1,217,010.43	(801,493.52)	415,516.91
HLT - IT Service Desk CRM	0.00	13,000.00	13,000.00
Queensbridge ARP	216,500.00	8,000.00	224,500.00
Asbestos works	660,065.00	(25,371.84)	634,693.16
<b>Primary School Programmes</b>			
Woodberry Down	167,972.20	63,180.70	231,152.90
Early Ed. for 2 Year Olds	0.00	38,000.00	38,000.00
Woodberry Down CC Relocation/r	619,183.67	50,549.21	669,732.88
Shaklewell School	956,047.18	(565,148.63)	390,898.55
Berger School Works	260,553.86	(13,077.50)	247,476.36
Façade Developmnt & Profes Cost	344,054.00	(248,456.59)	95,597.41
Gainsborough Façade Repair	810,191.22	729,428.26	1,539,619.48
London Fields Façade	506,098.00	(132,536.08)	373,561.92
Princess May Façade	388,331.00	35,000.00	423,331.00
Contingency Facade Repairs	154,880.00	74,530.24	229,410.24
Shoreditch Park School Façade	548,725.00	(529,565.33)	19,159.67
Colvestone Façade	230,956.20	23,867.80	254,824.00
De Beauvoir Façade	315,360.90	28,918.14	344,279.04
Gayhurst Façade	705,682.00	13,688.53	719,370.53
Grasmere Façade	311,649.30	33,174.90	344,824.20
Harrington Hill Façade	0.00	4,000.00	4,000.00
Hoxton Gardens Façade	800,000.00	43,804.98	843,804.98
Mandeville Façade	150,090.00	(581.90)	149,508.10
Millfields Façade	337,430.00	20,000.00	357,430.00
Morningside Façade	54,252.00	20,000.00	74,252.00
Orchard Façade	2,000.00	(2,000.00)	0.00

Queensbridge Façade	99,279.90	8,139.52	107,419.42
Randal Cremer Façade	424,266.77	91,279.23	515,546.00
Rushmore Façade	215,586.00	20,555.79	236,141.79
Sebright Façade	1,000,000.00	81,546.45	1,081,546.45
Southwold Façade	25,000.00	1,925.22	26,925.22
Springfield Façade	27,500.00	24,773.16	52,273.16
Tyssen Façade	131,252.00	15,000.00	146,252.00
William Patten Façade	209,138.00	2,067.21	211,205.21
<b>Secondary School Programmes</b>			
BSF LC Early Failure Conting	64,457.81	(64,457.81)	0.00
Temp Sec School Audrey St site	0.00	79,549.23	79,549.23
The Urswick School Expansion	3,901,211.60	13,949.43	3,915,161.03
AMP Works 2017/18	646,223.47	(279,658.89)	366,564.58
Haggerston Science Lab	326,000.00	109,632.74	435,632.74
<b>Finance &amp; Corporate Resources</b>			
<b>Strategic Property Capital</b>			
PV Solar Panel	50,431.30	(850.00)	49,581.30
Corporate Property Annual Surv	87,803.67	(6,517.39)	81,286.28
Asbestos Surveys	569,922.50	87,778.28	657,700.78
SFA - Stoke Newington Assembly	378,148.74	(40,631.99)	337,516.75
148-154 SN Church Street	400,000.00	(8,443.06)	391,556.94
Chats Palace R&M	0.00	85,891.36	85,891.36
Keltan House Windows & Refurb	100,000.00	18,470.44	118,470.44
14 Andrews Rd Roof Renewal	287,500.00	(20,726.25)	266,773.75
39-43 Andrews Road Works	160,224.94	(6,663.49)	153,561.45
Essential Works Corporate Estate	0.00	250,000.00	250,000.00
FM Upgrade HSC generator	153,000.00	(1,447.24)	151,552.76
HSC Flooring Replacement Works	1,113,873.20	5,967.64	1,119,840.84
HSC Lighting Upgrade	217,780.64	(11,937.14)	205,843.50
Annex (Staff Moves)	100,000.00	(7,340.50)	92,659.50
Christopher Addison Phase 2	4,231,000.00	61,249.54	4,292,249.54
Decant to MBH & Moves to CAH	932,731.00	(49,911.09)	882,819.91
HLT Maintenance Works	0.00	11,611.29	11,611.29
HLT Restack	0.00	56,777.75	56,777.75
Acquisition Gd Flr Retail DWC	100,000.00	262.61	100,262.61
CLAPTON COMMON FRM TOILET REFU	200,000.00	53,919.52	253,919.52
Landlord wks 37-39 Leswin Road	169,252.35	(6,486.61)	162,765.74
Landlord Wks Trowbridge Ctre	0.00	9,753.71	9,753.71
LandlordWks12-14 Englefield Rd	293,880.07	80,340.73	374,220.80
VCS 186 Homerton High St	0.00	23,679.76	23,679.76
161 Northwold Rd New Boiler	0.00	28,000.00	28,000.00
80 Eastway New Boiler & Plant	0.00	53,865.20	53,865.20
80a Eastway	0.00	176,175.10	176,175.10
80 Eastway	0.00	105,259.02	105,259.02
AcquisitionOfBuilding for FLIP	0.00	5,684.10	5,684.10
234-238 Mare Street	100,000.00	17,395.00	117,395.00



Acquis Flat 16 Cranwood Crt	0.00	30,808.39	30,808.39
Dalston Lane Regen Outfit	0.00	7,070.21	7,070.21
Dalston Lane Terrace	500,000.00	(302,808.58)	197,191.42
Voluntary Sector	42,201.17	40,000.27	82,201.44
Property Overall	1,142,273.83	93,031.52	1,235,305.35
<b>ICT Capital</b>			
Digital Discharge to Social Care	200,000.00	(52,244.17)	147,755.83
Corporate Booking System	22,000.00	(22,000.00)	0.00
Social Care Microfiche	0.00	16,936.25	16,936.25
End-user Mtg Rm Device Refresh	1,500,000.00	719,582.72	2,219,582.72
Business Intelligence	318,704.00	(109,555.08)	209,148.92
New Payroll & Recruitment Sys	100,000.00	11,608.25	111,608.25
Network refresh	800,000.00	118,680.96	918,680.96
Legal Case Management System	0.00	107,250.00	107,250.00
<b>Financial Management CAP</b>			
Financial Management System	759,829.19	169,417.38	929,246.57
<b>Other Scheme</b>			
E-Tendering System	0.00	56,010.64	56,010.64
<b>Mixed Use Development</b>			
Tiger Way Development	8,811,066.75	(1,558,308.41)	7,252,758.34
PRU Nile Street	32,292,188.24	36,315.39	32,328,503.63
Britannia Site	54,314,961.10	2,442,964.34	56,757,925.44
<b>Neighbourhood &amp; Housing (Non)</b>			
<b>Museums &amp; Libraries</b>			
Library Management System	0.00	3,395.58	3,395.58
Library Capital Works	589,169.00	173,274.41	762,443.41
Library Self-Issue Machines	5,465.00	14,511.00	19,976.00
<b>Parks and Open Spaces</b>			
Abney Park	590,000.00	150,640.56	740,640.56
Springfield Park Restoration	3,359,475.50	(20,774.37)	3,338,701.13
Hackney Marshes	198,883.00	(32,514.44)	166,368.56
Parks Strategy - Infrastructure	375,000.00	168,437.12	543,437.12
De Beauvoir Square Play Area	0.00	3,413.70	3,413.70
Fairchild's Gardens	98,522.37	14,890.30	113,412.67
Parks Equipment and Machinery	0.00	14,984.00	14,984.00
Stonebridge Gardens Refurb	0.00	890.50	890.50
Daubney Fields Play Area	90,312.98	40,789.30	131,102.28
Shepherdess Walk Play Area	36,925.00	0.35	36,925.35
Park Tractor	38,650.00	(38,650.00)	0.00
Comm Vehicles Parks Central	271,534.00	(45.80)	271,488.20
<b>Infrastructure Programmes</b>			
Wick Road	1,177,029.00	(75,191.10)	1,101,837.90
Park Trees H&S Works	0.00	23,587.80	23,587.80
Bridge Height Sign Programme	0.00	10,734.16	10,734.16
Highways Planned Maintenance	4,010,000.00	(325,302.56)	3,684,697.44
Street Lighting	100,000.00	(879.00)	99,121.00

## Appendix 1

Zero Emissions Network	0.00	4,600.00	4,600.00
Develop Borough Infrastructure	0.00	5,618.67	5,618.67
1-14 Spurstowe Works	0.00	25,839.59	25,839.59
H/ways Oakwharf (0040-08) S106	0.00	81,000.00	81,000.00
Central London Grid (Phase 1)	200,000.00	290,074.56	490,074.56
Cycle Super Highway	345,084.00	263,385.98	608,469.98
SS Road Safety	169,968.54	(40.00)	169,928.54
Regents Canal Denne Terr Wall	0.00	31,000.00	31,000.00
Legible London Wayfinding	0.00	4,254.87	4,254.87
Tysen Street	0.00	13,000.00	13,000.00
East Rd Car Club Bays	0.00	18,000.00	18,000.00
Pembury Circus Land	0.00	1,143.44	1,143.44
100 Shepherdess Walk	0.00	11,490.00	11,490.00
68-82 Digby Rd	0.00	6,724.23	6,724.23
25a Willberforce Road	0.00	4,370.00	4,370.00
184-186 Well Street	0.00	15,797.14	15,797.14
Hackney Car Club	0.00	22,590.08	22,590.08
Shoreditch Village	0.00	15,459.32	15,459.32
Clifton Street	0.00	17,966.21	17,966.21
52 well Street & 1 Shore Plac	0.00	31,350.00	31,350.00
218 Green Lanes	0.00	22,186.69	22,186.69
Gascoyne Road	0.00	19,204.73	19,204.73
42 Lower Clapton Road	0.00	15,187.36	15,187.36
Wenlock Rd/Sturt St/Shepherde	0.00	14,987.80	14,987.80
Clapton Common Pedestrian Imp	0.00	5,717.24	5,717.24
Highways works Denman House	0.00	26,611.00	26,611.00
Highways works Parr St 17-20	0.00	7,936.56	7,936.56
Highways 94-96 Lordship Lane	0.00	9,502.00	9,502.00
Highways works 3-11 Stean St	0.00	6,076.68	6,076.68
42-48 Whitmore Rd & 56 Orsman	7,969.00	(1,200.00)	6,769.00
Highway Works 1-13 Long St	0.00	102,050.75	102,050.75
Hgway Works 48-76 Dalston Lane	0.00	30,584.26	30,584.26
Hgway Works Kings Crescent Est	50,209.00	32,284.06	82,493.06
Highway Works at 10 Andre St	3,345.00	(392.50)	2,952.50
Highway Wk 112-118 Kingsland	6,477.59	(825.00)	5,652.59
Highway Wk 22-44 London Lane	0.00	14,245.00	14,245.00
Highway Wk at 9 Shepherds Lane	0.00	10,000.00	10,000.00
Hackney Car club	0.00	9,000.13	9,000.13
Highways Wk Haggerston West	0.00	18,690.08	18,690.08
Highway wks 17-19 Shacklewell	0.00	6,450.00	6,450.00
Highway work 18 Ellingfort Rd	0.00	1,560.45	1,560.45
Highway wks adj 47 Lea Bridge	0.00	15,178.63	15,178.63
Highway wks Bayton Crt	0.00	16,494.12	16,494.12
Highway works Spurstowe Works	0.00	35,355.48	35,355.48
Highway wks at Woodmill Road	0.00	8,000.00	8,000.00
The Shoreditch Public Realm	736,329.63	58,288.26	794,617.89

## Appendix 1

Highway work Principal Place	300,000.00	160,548.77	460,548.77
Highway works Phipp St	0.00	18,309.47	18,309.47
Highway works Gransden Ave	0.00	654.06	654.06
Highway works 258 Kingsland Rd	27,149.00	(2,699.85)	24,449.15
Highway works 1 Mentmore Ter	0.00	486.44	486.44
Highway Wks 61-67 Great Easter	0.00	84,481.20	84,481.20
Highway Wks 99 East Road	0.00	32,197.12	32,197.12
Highway works 125C Dunlace Rd	0.00	4,027.63	4,027.63
Highway works 11-15 Tudor Road	0.00	17,737.29	17,737.29
Highway Works 25 Penhurst Rd	0.00	11,936.10	11,936.10
Highway Works at 62 Paul St	0.00	41,042.39	41,042.39
Highway Wk 10,14 &16 Crossway	14,954.00	29,588.47	44,542.47
Highway Wks Aikin Crt	0.00	1,737.85	1,737.85
HighwayWks 32-34 EagleWharf Rd	0.00	62,500.00	62,500.00
<b>Public Realms TfL Funded Schemes</b>			
Maintenance (TFL)	0.00	1,877.46	1,877.46
Local Transport Fund (TFL)	0.00	167,931.63	167,931.63
Corridors (TFL)	1,765,000.00	1,097,790.79	2,862,790.79
Mayors Air Quality Fund	0.00	99,220.29	99,220.29
Zero Emissions Network	128,400.00	(128,400.00)	0.00
Low Emission Neighbourhood	0.00	200,897.78	200,897.78
Neighbourhoods of the Future	108,000.00	144,615.58	252,615.58
Liveable Neighbourhoods (TfL)	0.00	37,300.00	37,300.00
<b>Parking and Market Schemes</b>			
Hackney Street Markets Strat	204,574.94	67,253.06	271,828.00
<b>Safer Communities Capital</b>			
HTH Square CCTV Cameras	0.00	13.56	13.56
Ashwin St & St Johns CCTV	6,000.00	5,484.40	11,484.40
Shoreditch CCTV Cameras	1,324,000.00	(300.00)	1,323,700.00
<b>Regeneration</b>			
Hackney Wick Regeneration	131,993.29	(218,097.00)	(86,103.71)
80-80a Eastwy(GLA)	215,000.00	170,325.00	385,325.00
Trowbridge (GLA)	0.00	60,000.00	60,000.00

Housing			
AMP Capital Schemes HRA			
HiPs North West	14,400,000.00	2,164,720.98	16,564,720.98
HiPs Central	9,531,316.09	801,579.31	10,332,895.40
HiPs South West	11,457,136.58	(174,039.22)	11,283,097.36
Estate Lighting	720,000.00	220,496.57	940,496.57
Ventilation Systems	400,000.00	81,811.91	481,811.91
CCTV upgrade	1,150,000.00	(145,898.65)	1,004,101.35
Door Entry Syst (Replacements)	950,000.00	(26,801.71)	923,198.29
Drainage	500,000.00	(2,515.66)	497,484.34
Lifts Major Components	350,000.00	310,211.97	660,211.97
Dom Boiler Replace/Cen Heating	2,000,000.00	(396,983.70)	1,603,016.30
Road & Footpath Renewals	500,000.00	(328,555.12)	171,444.88
Void Re-Servicing	2,000,000.00	(82,982.77)	1,917,017.23
Water Mains/Boosters	300,000.00	95,538.12	395,538.12
Disabled Adaptations	1,000,000.00	(189,533.30)	810,466.70
H & S and Major Replacement	177,000.00	268,425.01	445,425.01
Community Halls Maj. Reps/DDA	400,000.00	187,521.33	587,521.33
Lift Renewals	1,700,000.00	46,798.32	1,746,798.32
Intergrated Housing Manag Sys	2,000,000.00	(269,404.17)	1,730,595.83
Boiler Hse Major Works	550,000.00	(5,312.85)	544,687.15
Fire Risk Works	13,000,001.32	1,297,015.51	14,297,016.83
Planned & Reactive Water Mains	100,000.00	23,617.52	123,617.52
High Value Repairs/Imp & Wk	2,000,000.00	225,447.66	2,225,447.66
Estate Boundary Security Imp	100,000.00	(42,116.64)	57,883.36
Garage Review	200,000.00	(172,505.35)	27,494.65
Capitalised Salaries	5,000,000.00	(346,188.95)	4,653,811.05
Lateral Mains	1,000,000.00	(31,141.95)	968,858.05
Re-wire	1,073,000.00	27,000.00	1,100,000.00
Green initiatives	2,600,000.00	317,619.50	2,917,619.50
Cycle Facilities	323,000.00	5,755.00	328,755.00
Contingency Planned Maintenance	3,000,000.00	1,822,549.98	4,822,549.98
District Heating System	0.00	268,529.00	268,529.00
Better Estates Cherbury Court	0.00	1,215,582.08	1,215,582.08
L&B Acquisition Sherry Wharf	0.00	18,103.45	18,103.45
Commercial Properties	200,000.00	101,577.61	301,577.61
Comm Vehicles Estate Cleaning	283,377.50	0.00	283,377.50
Gascoyne Comm Hall refurb	0.00	165,054.26	165,054.26
Recycling Scheme	760,000.00	(99,976.34)	660,023.66

## Appendix 1

<b>Council Capital Schemes GF</b>			
Hostels - Major Repairs	612,000.00	(426,982.66)	185,017.34
<b>Private Sector Housing schemes</b>			
Disabled Facilities Grant	1,713,600.00	364,537.09	2,078,137.09
General repairs grant (GRG)	332,802.71	50,000.00	382,802.71
Warmth & security grant (WSG)	122,400.00	78,200.59	200,600.59
<b>Estate Renewal Programme</b>			
Bridge House Phase 2	7,792,713.00	(1,667,280.64)	6,125,432.36
Kings Crescent Phase 3+4	2,591,708.00	(670,456.61)	1,921,251.39
St Leonard's Court	6,277,413.00	(1,102,295.31)	5,175,117.69
Nightingale	3,752,729.96	(388,579.95)	3,364,150.01
<b>Housing Supply Programme</b>			
Housing Supply Programme	0.00	85,042.70	85,042.70
Gooch House	1,119,862.00	26,554.09	1,146,416.09
Whiston Road	0.00	115,595.03	115,595.03
Buckland Street	1,660,801.00	42,692.84	1,703,493.84
Downham Road 1	243,810.00	66,135.15	309,945.15
Pedro Street	2,906,084.00	100,847.52	3,006,931.52
Mandeville Street	2,376,098.60	336,641.18	2,712,739.78
<b>Other Regeneration Schemes</b>			
Phase2 & Other Heads	4,913,357.04	(1,867,278.78)	3,046,078.26

**Total budget slipped from 2018/19 to  
2019/20**

**7,748,573.96**

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**2018/19 OVERALL FINANCIAL POSITION, PROPERTY DISPOSALS AND ACQUISITIONS REPORT (MAY 2019)  
KEY DECISION NO. FCR P93**

<p><b>CABINET MEETING DATE 2018/19</b>  15<sup>TH</sup> JULY 2019</p>	<p><b>CLASSIFICATION:</b>  OPEN</p>
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<p><b>WARD(S) AFFECTED: ALL WARDS</b></p>
<p><b>CABINET MEMBER</b>  Councillor Rebecca Rennison  Cabinet Member for Finance and Housing Needs</p>
<p><b>KEY DECISION</b>  Yes  <b>REASON</b>  Spending or Savings</p>
<p><b>GROUP DIRECTOR</b>  Ian Williams: Finance and Corporate Resources</p>

## **1. CABINET MEMBER'S INTRODUCTION**

- 1.1 This is the first Overall Financial Position (OFP) report for 2019/20 and is based on detailed May 2019 provisional outturn monitoring data from directorates. We are forecasting an overspend of £4,028k at year end.
- 1.2 This overspend will be substantially funded by the application of the unspent 2018/19 Council Tax and NNDR Collection Fund surpluses carried forward into 2019/20. It must be noted that there is no guarantee that these surpluses will continue in future years and so they must be regarded as one-off funding streams only.
- 1.3 An explanation of each directorate's forecast outturn position is detailed in the directorate commentaries below.
- 1.4 As with 2018/19, our projected overspend primarily reflects severe spending cuts by central government since 2010 and increasing cost pressures in services which remain underfunded by the Government. These include social care, homelessness and special educational needs (SEN). The government's failure to provide any additional funding to date to address the inherent increasing demands and cost pressures within these services, and to support wage increases for local government staff makes our financial position next year and in the following years, extremely challenging.
- 1.5 I commend this report to Cabinet.

## **2. GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES INTRODUCTION**

- 2.1 The OFP shows that the Council is forecast to have a £4,028k overspend which is equivalent to 0.5% of the total gross budget. At year end, this overspend will be substantially funded by the application of the unspent 2018/19 Council Tax and NNDR Collection Fund surpluses carried forward into 2019/20. As there is no certainty that these surpluses will continue in future years they must be regarded as one-off funding streams that can be used in 2019/20 only.



- 2.2 There is also significant uncertainty about most other external funding sources post 2019/20. The LGA noted in various news channel interviews on 2nd July that “Councils are in the dark” over how much money that they will get from central government next year and called for urgent guarantees that they will get sufficient resources to provide key services like social care and child protection. It also called for guarantees that local government are given sufficient resources to ensure local services receive the funding they need to survive the uncertainty ahead. They also drew attention to the Better Care Fund and the need for ministers to confirm its continuance. As noted in previous reports, we regard the continuation of the Better Care Fund as a key requirement going forward as it is a very important source of our funding. We also hope that the one-off social care grants (such as winter pressures grant) are made permanent funding streams as these form an important revenue source and the service demands they are intended to meet are recurring.
- 2.3 Where there are service overspends of a recurrent nature, and/or funding shortfalls, we have dealt with this in the growth assumptions in our medium-term financial plan and will manage down the overspends by a phased application of additional resources to the relevant services. It is necessary to do this in a phased way to smooth out the impact on the rest of the budget and council tax.
- 2.4 **Proposed disposal by way of a 125-year lease of 3 – 10 Bradbury Street, Dalston.** Approval is sought to enter into a new 125 years lease of 3 – 10 Bradbury Street with the current tenant, Hackney Co-Operative Developments Community Interest Company (HCD). Cabinet approval is required because the term of 125 years exceeds the delegated authority of the Director of Strategic Property who has authority to approve leases and sub-leases for a term of up to 7 years only.

The Property is currently leased to HCD Limited, a not-for-profit organisation (an affordable workspace operator) on a long lease of 99 years commencing 9<sup>th</sup> May 1997 and expiring 8<sup>th</sup> May 2096 at a peppercorn rent. The unexpired term is 77 years and on a full repairing lease (the tenant being responsible for all repairs and outgoings). The tenant has planning consent and funding to carry out works to the property including refurbishment, extension and temporary relocation of the ground floor retail pods. The total project cost of works is expected to be £2,830,000 of which HCD has secured £1,800,000 from Unity Trust Bank (UTB), £824,000 from GLA (via the London Regeneration Fund) and the Council has agreed in principle to provide a loan of £200,000 to support the project.

As a condition of the loan from UTB, HCD is required to extend the existing lease which is considered to be too short to provide sufficient security for the loan of £1.8m. Based on a feasibility study by Gerald Eve for UTB, a minimum lease term of 125 years is required to achieve a minimum Gross Development Value of £5m i.e. the value of the completed scheme has to be at least £5m to provide sufficient security for the loan.

HCD's objectives align with Local Plan 2033 and the emerging Inclusive Economy Strategy. Their offer provides affordable workspace to start-up and early stage businesses in addition to a wide range of activities that supports and promotes social value. The Council's Area Regeneration Team supports this lease extension and the purpose of the exercise.

**2.5 Proposed Disposal of Land at Regan Way.** The Council is the owner of a small parcel of land extending to approximately 130 square metres adjacent to the rear of 149 – 157 Hoxton Street forming circulation area to the formerly Council owned garages at Regan Way. A planning permission for the development of the garages and part of the Council owned land has been applied for under planning reference 2018/4205 for the construction of six new flats. If permission is granted the scheme can only be implemented on the transfer of the Council owned land to the developer and construction of these flats will improve the immediate locality. The Council will use some or all of the receipt for the land for a project within the ward. It is proposed therefore that the land is transferred.

**2.6 Proposed Disposal of Land at Stamford Hill.** The Council is the owner of a small parcel of land extending to approximately 30 square metres near the junction of Amhurst Park and Stamford Hill, which forms the entrance stairs to a now redundant former public convenience. A planning permission for the development of the adjoining former public convenience and the Council owned land was granted under planning reference 2017/0574 on the 04/12/2017 for the construction of a new retail kiosk. This permission can only be implemented on the transfer of the Council owned land to the developer and construction of this kiosk will improve the immediate locality by bringing what is now an eyesore back into productive use. The Council will use some or all of the receipt for the land for a project within the ward. It is proposed therefore that the land is transferred.

- 2.7 **Proposed acquisition of up to 25-year Lease of Part First Floor, Block E Woodberry Down.** The Property forms part of the Ground and First Floors of Block E Woodberry Down. This asset was initially acquired by the Council with a view to letting the entire space to East London and City NHS. In August 2012, the proposed tenant withdrew its interest, so the Council considered a range of alternative use options. In February 2016 the Council granted a 15-year commercial lease to the Gym Group to convert the ground floor (except for the entrance to the first-floor space) and a small part of the first floor into a gym. The remainder of the first floor is being let to Hackney Cooperative Developments (HCD), one of LBH's approved list of workspace providers, to provide a business hub for a mixed portfolio of businesses at Woodberry Down, with a mixture of self-contained office units and open plan workspace. HCD will provide discounted occupational costs and business support services to tenants and will target local start-ups.

Consultation and engagement has been carried out with the Woodberry Down Community Organisation and the wider partnership who support this use of the property and welcome the proposals to provide business and training opportunities for the residents of Woodberry Down.

HCD are also required to lease back a small section of the first floor to the Council, so that the neighbourhood regeneration and housing teams and the partner organisation (Notting Hill Genesis Housing Association) can be accommodated there. This report proposes that the Council enter into a leaseback arrangement in respect of this part of the Property.

2.8 **Proposal for granting of two third party loans**

Requests for loans from two entities from within the borough have recently been requested. The granting of loans to third parties requires Cabinet approval.

- Rio Centre (Dalston) Ltd, which operates the Rio Cinema at 107 Kingsland High St, is seeking a £20k loan from the Council to convert the basement storage space into a workable bar and associated lounge area. These works have been completed using the tenant's own reserve funds. Rio Centre (Dalston) Ltd occupy the property under a sub-lease from 1986, expiring in 2037. The Council holds a similar headlease interest which is co-terminus with the tenant's sublease. It is proposed that the loan be repaid over the next 10 years and collected as an additional rent payment of £2,000 per year for 10 years. The value is sufficiently minimal to fall outside state aid requirements.

- **(To be read in conjunction with section 2.3 of this report)**  
Hackney Co-operative Developments (HCD) has requested a loan of £200k to meet part of the cost of refurbishing and extending 3-10 Bradbury Street to improve significantly the existing affordable workspace, and provide new affordable workspace, principally on a mezzanine floor. The total project cost of works is expected to be £2,830,000 of which HCD has secured £1,800,000 from Unity Trust Bank (UTB), and £824,500 from GLA (via the London Regeneration Fund). The refurbishment of 3 -10 Bradbury Street forms part of a wider Greater London Authority funded project to deliver more affordable workspace in the borough. The project will see investment in Hackney from the GLA totalling £1,024,000, split across two capital projects at Woodberry Down and Bradbury Street.

The loan would be for five years at a commercial rate of interest to be determined by Group Director of Finance and Corporate Resources. Payments will be interest-only in the first year and then principal and interest payments in the final four years of the loan, on a reducing balance basis. There will be an annual review of the loan arrangements and progress. The loan is non-securitised. There will be a clause in the contract that states that, in the event of HCD failing before the loan is repaid, the balance of the loan and interest will be transferred onto the rent of the property, for the new tenant to repay.

Whilst checks have been made on the strength of both companies around ability to repay the loans, in order to comply with the latest requirements of International Financial Reporting Standards (IFRS) 9, an “expected credit loss” calculation will be made for each loan to reflect risk, although any financial impact of recognising this (through the creation of a provision via a charge to revenue) on the principal values as outlined will be trivial.

- 2.9 The latest position in relation to **GENERAL FUND REVENUE EXPENDITURE** is summarised in table 1 below.

**TABLE 1: GENERAL FUND FORECAST OUTFURN AS AT MAY 2019**

Revised Budgets £k	Service Unit	Forecast: Change from Revised Budget after Reserves £k
		£k
86,623	Children's Services	313
91,094	ASC & Commissioning	3,132
32,764	Community Health	-
<b>210,481</b>	<b>Total CACH</b>	<b>3,445</b>
<b>36,338</b>	<b>Neighbourhood &amp; Housing</b>	<b>65</b>
<b>14,957</b>	<b>Finance &amp; Corporate Resources</b>	<b>380</b>
<b>8,938</b>	<b>Chief Executive</b>	<b>138</b>
<b>49,338</b>	<b>General Finance Account</b>	<b>0</b>
<b>320,052</b>	<b>GENERAL FUND TOTAL</b>	<b>4,028</b>
	Application of One-Off Funding	-4,028
	<b>Forecast End Year Position</b>	<b>0</b>

### **3.0 RECOMMENDATIONS**

- 3.1 To update the overall financial position for May 2019, covering the General Fund and the HRA, and the earmarking by the Group Director of Finance and Corporate Resources of any underspend to support funding of future cost pressures and the funding of the Capital Programme.**
- 3.2 Authorise the disposal of 3 – 10 Bradbury Street edged red on the attached plan (Appendix 1) by way of a surrender and re-grant of a long lease for a term of 125 years.**
- 3.3 Authorise the Director of Strategic Property Services to agree all other lease terms.**
- 3.4 Authorise the Director of Legal and Governance to affect the proposed disposal and to enter into any other ancillary legal documentation required to complete the disposal transaction.**
- 3.5 To authorise the freehold disposal of the land at Regan Way edged red on the attached plan (Appendix 2)**
- 3.6 To authorise the Group Director of Finance and Resources to agree the commercial terms for this disposal**
- 3.7 To authorise the Director of Legal and Governance to prepare, agree, settle and sign the sale agreement and transfer and any other legal documentation required to complete the transaction.**
- 3.8 To authorise the freehold disposal of the land at Stamford Hill edged red on the attached plan (Appendix 3).**

- 3.9 To authorise the Group Director of Finance and Resources to agree the commercial terms for this disposal.**
- 3.10 To authorise the Director of Legal and Governance to prepare, agree, settle and sign the sale agreement and transfer and any other legal documentation required to complete the transaction.**
- 3.11 Authorise the acquisition of the leasehold interest of Proposed acquisition of up to 25-year Lease of Part First Floor, Block E Woodberry Down for a term of up to 25 years.**
- 3.12 Authorise the Director of Legal and Governance to prepare, agree, settle and sign the necessary legal documentation to affect the proposed transaction and to enter into any other ancillary legal documentation required to complete the proposed transaction.**
- 3.13 Delegate authority to the Group Director of Finance and Corporate Resources to enter into a lease of 25 years, and to agree all other terms of the lease provided that the requirements of S120 Local Government Act 1972 are met.**
- 3.14 To grant a loan of £20k to Rio Centre (Dalston), with repayments to be made at a rate of £2k a year, collected as additional rent payments.**
- 3.15 To grant a loan of £200k to Hackney Co-operative Developments at a commercial rate of interest for a period of five years to be determined by the Group Director of Finance and Corporate Resources, with repayments to be interest-only in the first year and then principal and interest payments in the final four years of the loan.**

#### **4. REASONS FOR DECISION**

- 4.1 To facilitate financial management and control of the Council's finances.**

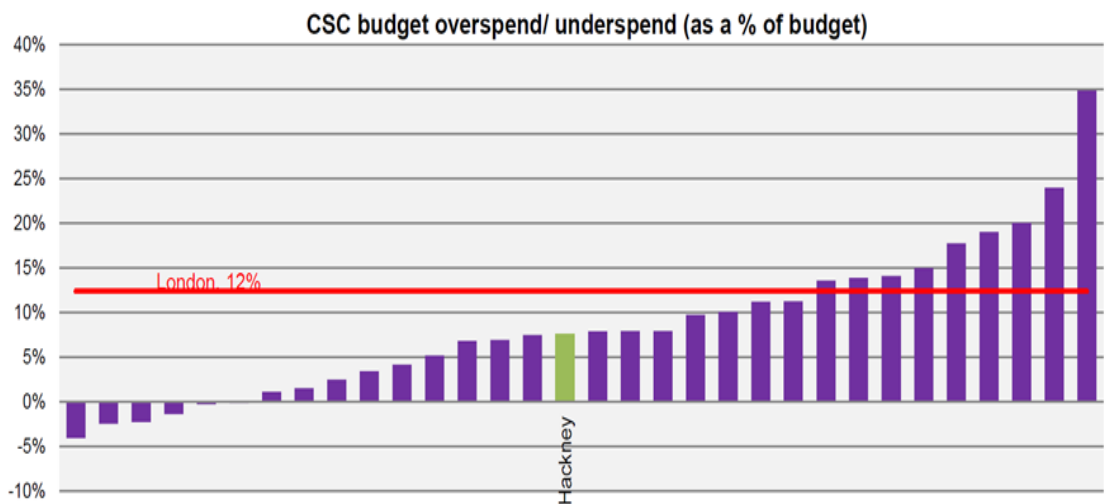
#### **4.2 CHILDREN, ADULT SOCIAL CARE AND COMMUNITY HEALTH (CACH)**

The CACH directorate is forecasting an overspend of £3,445k after the application of reserves and drawdown of grant.

## Children & Families Service

Children & Families Service (CFS) is forecasting a £313k overspend against budget after the application of reserves and grants. This variance is after a £1,800k draw down from the Commissioning Reserve, set up to meet the cost of placements where these exceed the current budget. Additionally, £100k is drawn down from the Housing Costs reserve for families the Council is supporting who have No Recourse to Public Funds (NRPF).

The sustained pressure on CFS budgets is a position that is not unique to Hackney, as shown by the results of a survey on Children's Social Care spend carried out jointly by the Society of London Treasurers (SLT) and the Association of Directors of Children's Services (ADCS). The graph below shows how Hackney's year end position for 2017/18 (before the use of reserves) compared to other London boroughs for Children's Social Care. The main budget pressures in CFS are in relation to Corporate Parenting (which incorporates budgets for looked after children placements), the Children in Need service and the No Recourse to Public Funds (NRPF) Team.



The main budget pressures in CFS are in relation to Corporate Parenting (which incorporates budgets for looked after children placements) and the Children in Need service.

Corporate Parenting is forecasting to overspend by £168k after the use of £1,800k of commissioning reserves. This position also includes the use of £1,200k of non-recurrent social care funding that was announced in October 2018 budget. Spend on Looked After Children and Leaving Care placements (as illustrated in the table below) is forecasted at £18,800k compared to last year's outturn of £18,300k – an increase of £500k.

**Table 1: Placements Summary**

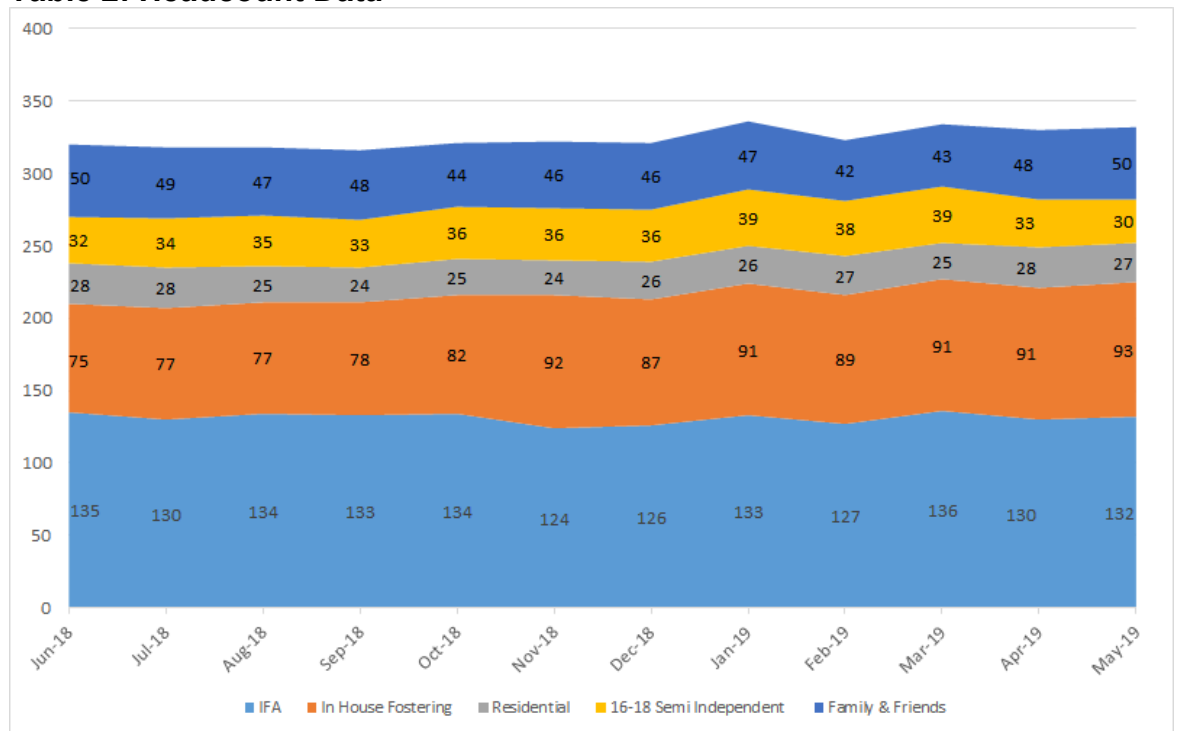
Service Type	Budget £000	Forecast £000	Forecast Variance £000	Budgeted Placements*	Current Placements	Management Actions
Residential	4,331	4,947	616	23	27	<p>There are a number of initiatives in place to seek to contain these cost pressures, for example the Family Learning Intervention Project (FLIP), the Edge of Care workers, the Residential project and re-negotiation of high cost placements. The first two of these have been in train for some time. Tracking of the financial impact is undertaken on a case by case basis and this indicates significant costs avoided suggesting the cost pressure would be greater if these were not in place.</p> <p>We will continue to monitor residential placement moves and the resulting effect on other placement types across future periods. The impact of Mockingbird, the extended family model for delivering foster care with an emphasis on respite care and peer support, and new arrangements for implementing Supported Lodgings will also be reviewed going forwards.</p>
Semi-Independent (Under 18)	1,570	1,671	101	29	30	
Other Local Authorities	-	198	198	-	4	
In-House Fostering	1,800	2,019	219	83	93	
Independent Foster Agency Carers	6,488	6,344	-144	136	132	
Residential Family Centre (M&Baby)	-	377	377	-	2	
Family & Friends	569	766	197	32	50	
Extended Fostering	-	12	12	-	2	
Staying Put	200	278	78	12	19	
Overstayers	290	457	167	11	24	
Semi-independent (18+)	1,370	1,739	369	50	103	
<b>Total</b>	<b>16,618</b>	<b>18,808</b>	<b>2,190</b>	<b>376</b>	<b>486</b>	

\*based on average cost of placements. Residential budget also includes one-off social care funding of £1,200k)

The table below shows the trend in LAC placements over the past 12 months.



**Table 2: Headcount Data**



As can be seen from the above since this time last year there has been a favourable movement in the ratio between Independent Foster Agency carers and in-house placements. This is driven primarily by the in-house foster carer recruitment which has seen some success and the matching officer post which has been in the structure since 2018. At around £50k per annum the cost of a child placed in independent foster care is double that of a placement with one of our own foster carers.

One of the main drivers for the cost pressure in Corporate Parenting continues to be the rise in the number of children in costly residential placements which has now sustained for the past year and the number of under 18s in high-cost semi-independent placements. Where children in their late teens are deemed to be vulnerable, and in many cases are transitioning from residential to semi-independent placements, they may still require a high-level of support and in extreme circumstances bespoke crisis packages.

Following growth in the base budget this year the No Recourse to Public Funds (NRPF) Team is forecast to break even after use of £86k of reserves. We are currently supporting 72 families who have no recourse to public funds. The main area of spend is Section 17 payments on accommodation and subsistence, with spend forecast at £1,600k in the current year which is in line with the budget. This position has improved significantly from the previous year, and the service continues to work to ensure that services are targeted at those in need.

Children in Need is forecast to overspend by £301k after use of reserves. The overspend is mainly due to staffing overspends relating to supernumerary social worker posts to meet service pressures, maternity cover, agency premiums associated with covering vacant posts and these items collectively total £301k. There is an overspend in LAC incidental costs in relation to support to children in care proceedings of £370k, which has been offset by the use of reserves.

Disabled Children Services is forecast to overspend by £65k. The overspend is attributed to £190k overspend in placements including homecare, direct payments and residential respite.

Overspends across the service are partly offset by underspends elsewhere in the Directorate Management Team and Safeguarding and Learning Services.

Directorate Management Team is forecast to underspend by £236k. This is due to maximisation of non-recurrent funding in the service.

Safeguarding and Learning Service is forecast to underspend by £66k. This is due to a vacant post that will not be filled this financial year.

### **Hackney Learning Trust**

The Hackney Learning Trust (HLT) forecast is consolidated into the Children and Families position. As part of the delegated arrangements for HLT, any overspend or underspend at year end will result in a drawdown-from or contribution-to the HLT reserve and expenditure is reported 'on budget'.

HLT are forecasting a significant drawdown on the HLT reserve (between £3.5m and £4.5m), mainly due to pressures in special educational needs. This is an early forecast that will be adjusted as data on any new demands on HLT services become known throughout the year.

Special educational needs (SEND) activities cost £9.5m in excess of agreed budgets 2018/19; and expenditure is currently expected to increase by a further £2.0m in 2019/20. Within the HLT forecast, the SEND overspend is mostly offset with savings made across other HLT departments. Costs associated with special educational needs have complex cost drivers and senior leadership across HLT and the wider Council continue to investigate ways where the Council might be able to bring expenditure under control. Recent reports submitted to HLT SLT estimate that HLT reserves will be fully utilised in 2019/20.

The SEND cost pressure is attributable to the increase in the number of Education and Health Care Plans (EHCPs) as the pupil population has grown significantly and there are growing demands on the system since the reforms introduced by the Children and Families Act 2014. The impact of these factors is that, in Hackney, the number of EHCP's have increased by more than 50% since 2011. Apart from SEN transport, SEN costs should be met from the High Needs block of the Dedicated Schools Grant. However, despite the significant rise in numbers and costs there has not been an adequate increase in this funding source.

### **Adult Social Care & Community Health**

The forecast for Adult Social a £3,132k overspend. The position for Adult Social Care last year was an overspend of £4,083k and this has improved through adjustments for corporate growth items and non-recurrent funding. The revenue forecast includes significant levels of non-recurrent funding including iBCF, Social Care grant funding of £1,200k and Winter Pressures funding of £1,400k.

It is unclear what funding will be available in Adult Social Care post 2019/20 to support a sustainable adult social care funding solution. The non-recurrent funding was only intended to be a 'stop-gap' pending a sustainable settlement for social care through the Green Paper, however this is subject to ongoing delay. The implications of any loss of funding will continue to be highlighted in order that these can be factored into the Council's financial plans. This will include ensuring that it is clear what funding is required to run safe services for adults. Alongside this the service continue to take forward actions to contain these cost pressures. Some of these management actions are outlined in the table below.

Care Support Commissioning (external commissioned packages of care) contains the main element of the overspend in Adult Social Care, with a £2,200k pressure. The forecast includes £700k Winter Pressures grant to fund additional costs resulting from hospital discharges in 2018/19. It is expected that the remaining grant of £700k will be released through the year to offset additional pressures from hospital discharges.

Service type	2018/19 Budget	May 2019 Forecast	Full Year Variance to budget	Full Year Variance to Apr 2019	Management Actions
	£k	£k	£k	£k	
Learning Disabilities	15,000	15,987	987	987	<ul style="list-style-type: none"> <li>- ILDS transitions/demand management and move on strategy</li> <li>- Multi-disciplinary review of care packages (delivered £395k)</li> <li>- Three conversations</li> <li>- Review of homecare processes</li> <li>- Review of Section 117 arrangements</li> <li>- Personalisation and direct payments - increasing uptake</li> </ul>
Physical and Sensory	12,843	13,318	476	476	
Memory, Cognition and Mental Health ASC (OP)	7,710	8,328	619	619	
Occupational Therapy Equipment	840	850	110	110	
Asylum Seekers Support	170	203	34	34	
<b>Total</b>	<b>36,462</b>	<b>38,688</b>	<b>2,226</b>	<b>2,226</b>	

The Learning Disabilities service is the most significant area of pressure with a £987k overspend. £290k of this pressure arises from the estimated costs of new transition clients in the year. This is significantly less than last year due to the application of both budget growth and one-off funds in this area.

Work is ongoing with CCG colleagues to embed the joint funding model for high cost Learning Disability packages as business as usual. There is an agreement between both parties for all packages to be reviewed for joint funding. A process of quarterly reconciliation and financial reimbursement will be managed through the Learning Disability Section 75 review group on behalf of the Planned Care Workstream. The CCG have committed to ringfence £1,900k -£2,700k within their financial planning for 2019/20 and £1,900k has been factored into the forecast above. The partners also acknowledged that by implementation of the joint funding policy the amount paid for health need will be based on the assessment of patient/residents and that health need for individuals could be potentially less or more than the initial identified range. In light of this uncertainty, it will be important for partners to manage proactively the quarterly reconciliation in order to provide adequate lead in time to address any significant gap in financial forecasting.

Physical & Sensory Support is forecasting an overspend of £476k, whilst Memory, Cognition and Mental Health ASC (OP) is forecasting an overspend of £619k. The cost pressures being faced in both service areas have been driven by the significant growth in client numbers as a result of hospital discharges in 2018/19, which has been partially mitigated by one-off funding from the Winter pressures grant of £700k. Discussions have been held with the service in order to develop a set of management actions to mitigate the ongoing cost pressure as a result of increased clients being discharged from hospital with more complex needs.

Care Management & Adults Divisional Support is forecasting an overspend of £24k which is a significant decrease on the overspend of £700k reported in 2018/19. The decrease reflects the drive by the service and Learning Disabilities, in particular, to recruit permanent staff and reduce the use of agency staff.

The Mental Health service is provided in partnership with the East London Foundation Trust (ELFT) and is forecast to overspend by £494k. The overall position is made up of two main elements - a £720k overspend on externally commissioned care services and £226k underspend across staffing-related expenditure.

Provided Services is forecasting a £123k overspend which is largely attributed to:

- Housing with Care overspend of £206k. The forecast includes additional resources to respond to issues raised in the recent CQC inspection. The service is currently under strategic review to seek efficiencies and reduce costs without impacting negatively on service provision.
- Day Care Services are projected to underspend by £97k, primarily due to the current staff vacancies across the service.

Preventative Services. The forecast position is a £587k underspend which is primarily accounted for within the Median Road position. The Hospital Social Work Team forecast includes non-recurrent funds towards supporting staffing levels needed to ensure hospital discharge targets are met.

ASC Commissioning is forecasting a £851k overspend mainly due to ongoing challenges around Housing Related Support (HRS) service redesign (£801k); £33k due to increase in activity levels for the Phower contract (VSC) and £17k is linked to additional interim QA officer cost in commissioning team

HRS procurement plans are however on track to meet future savings through close working with Providers to manage expectations around delivery timelines. The savings target was revised to incorporate savings attributed to telecare charging.

The decision not to go ahead with telecare charging was taken after benchmarking against other local authorities which highlighted the planned charging proposals would only yield a small amount of additional income which would not be sufficient to meet the agreed savings target. New proposals around assistive technology are now being looked at and is expected to inform the charging model for service users going forward.

### **Public Health**

Public Health is forecasting a breakeven position. There are pressures in the service due to the delay in implementation of the Public Health restructure and the review of physical activity for adults. However, this pressure is being managed within the overall budget and it is not anticipated to result in an overall overspend.

Sexual health service is delivering progress as expected to support the financial sustainability of the wider Public Health service. Current level of activity remains within budget and the competitive pricing achieved through the Pan London contract is beginning to show better value for money. There is also a progressive uptake of e-services alongside clinical service provision and both activities are subject to continuous review with commissioners to ensure sustainable future provision.

## **4.3 NEIGHBOURHOODS AND HOUSING**

The forecast position for Neighbourhoods and Housing Directorate is a £65k overspend. The forecast includes the use of £1,200k of reserves, the majority of which are for one off expenditure/projects.

Planning is forecast to overspend by £86k which is due to a shortfall of income in the Building Control Service. The Head of Service has undertaken a high-level review of the service with a view to modernising and improving the Building Control offer. A new Building Control manager has been appointed and will be in post from July to improve the service and to achieve full cost recovery going forward.

Parking and Markets, Leisure, Green Spaces, Libraries, Directorate Management and Community Safety, Enforcement and Building Regulations are forecasting break-even positions.

Housing General Fund is forecast to be on budget at this stage.

Regeneration is forecast to underspend by £13k, due to a vacancy within the Area Regeneration team which is being recruited to shortly.

The Private Sector Housing Licensing scheme is due to make a surplus again this financial year and any favourable variance to budget will be moved to a reserve for use in future years when income levels will reduce. This is in line with the expected operation of the scheme.

The directorate forecast includes the use of £1,200k of reserves which are used for one off expenditure.

#### **4.4 FINANCE & CORPORATE RESOURCES**

The forecast is an overspend of £380k.

The overspend in Facilities Management (£410k) is primarily due to increases in business rates costs on council owned buildings in the borough which are partially offset by reserves. The largest increases are in Hackney Town Hall, Hackney Service Centre and Florfield Road.

In Property services, the cost pressure primarily results from: - providing additional staffing resources within the service to address essential works; and the re-classification of a significant revenue item as a capital receipt. The service is currently reviewing their operations to address the former and the allocation of overall budget, both capital and revenue, needs to be reviewed to address the latter.

Financial Management and Control are forecasting an underspend of £264k due to vacancies across all services

Directorate Finance Teams are projecting an underspend of £157k which mainly relates to salaries and projected additional income from service fees

Revenues and Benefits and Business Support is reporting a forecast underspend due to a surplus on Net Cost of Benefits, while Registration and Audit and Anti-Fraud are forecast to come in at budget.

Housing Needs is forecast to come in at budget after the application of the Flexible Homeless Grant and Homelessness Reduction Act Grant. Whilst we will continue to receive the Flexible Homeless Grant, it is probable that this grant will reduce overtime and there may be other calls on the Grant. Further, since April 2018 when the Homelessness Reduction Act was introduced there has been a 33.4% increase in approaches for housing advice, which could result in significantly higher accommodation costs over time.

#### **4.5 CHIEF EXECUTIVE**

Overall the Directorate is forecasting to overspend by £138k after forecast reserves usage.

Within Communications, Culture & Engagement, there is a forecast overspend of £60k in relation to venues, primarily due to costs relating to Hackney House, which the council will no longer be responsible for after July 2019. The rest of Communications including Hackney Today, Design & Film are forecast to breakeven but there is a risk in relation to the publication of Hackney Today.

Legal & Governance are forecasting an overspend of £78k, which is primarily due unbudgeted Internal Printing Recharges estimated at £36k and £58k is for an unfunded Team Manager's post in Governance previously funded by HRA. Internal Legal is projecting an underspend of £16k in relation to minor under spends on salaries budget.

All other services are forecast to come in at budget.

#### **4.6 HRA**

The projected outturn on the HRA is at budget.

##### Income

Other charges for services and facilities is over budget which is mainly due to the extension of LBH collection of water rates on behalf of Thames Water. The income was negotiated to continue throughout 2019/20 after the budgets had been set.

##### Expenditure

The overspend on Repairs and Maintenance is mainly due to reactive repair costs and an increase in legal disrepair expenditure. There is an overspend on Supervision and Management costs while Special services is forecast to be overspent due to increased costs within estate cleaning, but this is expected to reduce in 2020/21 as the effects from restructuring of the service are realised.

#### **5.0 DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

This report is primarily an update on the Council's financial position and there are no alternative options here.



On **3 -10 Bradbury Street**, the Council is not obliged under the terms of existing lease to extend the term. If the Council refuses the lease extension though, HCD is not likely to be able to meet UTB's loan conditions and may not be able to proceed with the refurbishment. This would mean that existing affordable workspace could not be brought into good condition and the additional affordable workspace would not be delivered. Failure to deliver the scheme would also threaten the existing operation, because the property does not currently meet Energy Efficient Regulation 2015, which means that new sub-leases cannot be agreed. HCD is considered to be an appropriate occupier, both in terms of their record as a tenant and impact within Hackney, and without the new lease, their existing operation would be at significant risk.

With regard to the **Regan Way** disposal, there is no other option if the development is to take place.

On the **Stamford Hill** disposal, there is no other option if the development is to take place.

With regard to the **Woodbury Down lease**, the Council could have taken space within the first-floor business centre on a more flexible short-term lease or licence, in line with other users of the centre. However, this would have meant the Council had less security over its long-term operations from the site, and less certainty over costs. This option was therefore considered less desirable than the long-term sub lease option.

With regard to the **Loan proposals**, there are no other practical options

## **6.0 BACKGROUND**

### **6.1 Policy Context**

This report describes the Council's financial position as at the end of May 2019. Full Council agreed the 2019/20 budget on 21<sup>st</sup> February 2019.

### **6.2 Equality Impact Assessment**

Equality impact assessments are carried out at budget setting time and included in the relevant reports to Cabinet. Such details are not repeated in this report.

### **6.3 Sustainability**

As above

## **6.4 Consultations**

Relevant consultations have been carried out in respect of the forecasts contained within this report involving, the Mayor, the Member for Finance, HMT, Heads of Finance and Assistant Directors of Finance.

## **6.5 Risk Assessment**

The risks associated with the schemes Council's financial position are detailed in this report.

## **7. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES**

7.1 The Group Director, Finance and Corporate Resources' financial considerations are included throughout the report.

## **8. COMMENTS OF THE DIRECTOR OF LEGAL AND GOVERNANCE**

8.1 The Group Director, Finance and Corporate Resources is the officer designated by the Council as having the statutory responsibility set out in section 151 of the Local Government Act 1972. The section 151 officer is responsible for the proper administration of the Council's financial affairs.

8.2 In order to fulfil these statutory duties and legislative requirements the Section 151 Officer will:

(i) Set appropriate financial management standards for the Council which comply with the Council's policies and proper accounting practices and monitor compliance with them.

(ii) Determine the accounting records to be kept by the Council.

(iii) Ensure there is an appropriate framework of budgetary management and control.

(iv) Monitor performance against the Council's budget and advise upon the corporate financial position.

8.3 Under the Council's constitution although full Council set the overall budget it is the Cabinet that is responsible for putting the Council's policies into effect and responsible for most of the Council's decisions. The Cabinet must take decisions in line with the Council's overall policies and budget.

- 8.4 Paragraph 2.6.3 of FPR2 Financial Planning and Annual Estimates states that each Group Director in charge of a revenue budget shall monitor and control Directorate expenditure within their approved budget report progress against their budget through the Overall Financial Position (OFP) Report to Cabinet. This Report is submitted to Cabinet under such provision.
- 8.5 With regard to the **3 – 10 Bradbury Street** proposal, under the Hackney Mayoral Scheme of Delegation of January 2017, the disposal of leasehold land (other than by leases of less than seven years' term) is reserved to the Mayor and Cabinet and additionally Financial Procedure Rule 20.4 confirms that the acquisition or lease of land or disposal of land shall be agreed by Cabinet. Section 1 of the Localism Act 2011 ('the power of general competence) grants local authorities the ability to do anything that a private individual is empowered to do, subject to any restrictions which bound local authorities before the coming into force of that section or any later provisions expressed to apply to it. Section 123 of the Local Government Act 1972 enables the Council to dispose of land provided the best consideration reasonably obtainable is achieved but if best consideration is not achieved then only with the consent of the Secretary of State. The General Disposal Consent 2003 ('the 2003 Circular') was issued by the Secretary of State and permits an undervalue in respect of best consideration reasonably obtainable not to exceed £2 million where the proposed disposal has as its aim the promotion or improvement of the economic, social or environmental well-being of its area.
- 8.6 In the opinion of the Council's surveyors the premium that could have been charged for the extension of the term would have been less than £10,000. Accordingly, this disposal can occur by using the 2003 Circular by way of granting a longer lease term as necessary to enable the investment by private lenders and the GLA which has clear economic and social benefits to the area. In approving this disposal, consideration should also be given to the Council's over-arching fiduciary and best value duties concerning its responsible stewardship of assets and resources.
- 8.7 With regard to the **Regan Way disposal**, under the Hackney Mayoral Scheme of Delegation of January 2017, the disposal of an interest in land is reserved to the Mayor and Cabinet and additionally Financial Procedure Rule 20.4 confirms that the acquisition or disposal of freehold or leasehold land shall be referred to Cabinet. Section 1 of the Localism Act 2011 ('the general power of competence') grants local authorities the ability to do anything that a private individual is empowered to do, subject to any restrictions which bound local authorities before the coming into force of that Section or any later provisions expressed to apply to it.

As the land is held in the Housing Revenue Account, the consent of the Secretary of State is required by operation of section 32(2) of the Housing Act 1985, given either as a specific consent for that particular transaction or by the circumstances falling within those envisaged by the general consents that have been issued. Consent A3.1.1 of the General Housing Consents 2013 states that “A local authority may, subject to paragraph 3.1.2, dispose of land for a consideration equal to its market value.” The conditions in paragraph 3.1.2 relate to underlettings and local authority owned companies and so will not apply to this proposed disposal. If the condition requiring market value is not fulfilled, then a specific consent of the Secretary of State will be required.

As in all property transactions upon which Cabinet is asked for a decision, consideration should properly be given to the Council’s over-arching fiduciary and best value duties concerning its responsible stewardship of assets and resources.

- 8.8 On the **Stamford Land disposal**, Under the Hackney Mayoral Scheme of Delegation of January 2017, the disposal of an interest in land is reserved to the Mayor and Cabinet and additionally Financial Procedure Rule 20.4 confirms that the acquisition or disposal of freehold or leasehold land shall be referred to Cabinet. Section 1 of the Localism Act 2011 (‘the general power of competence’) grants local authorities the ability to do anything that a private individual is empowered to do, subject to any restrictions which bound local authorities before the coming into force of that Section or any later provisions expressed to apply to it.

Section 123(2) of the Local Government Act 1972 states that except with the consent of the Secretary of State, a council shall not dispose of land under that section, otherwise than by way of a short tenancy, for a consideration less than the best that can be reasonably obtained. Accordingly, the requirement to receive the best consideration reasonably obtainable will determine the sale price as referred to in the comments of Interim Director of Strategic Property Services above.

As in all property transactions upon which Cabinet is asked for a decision, consideration should properly be given to the Council’s over-arching fiduciary and best value duties concerning its responsible stewardship of assets and resources.

- 8.9 With regards to the **Woodberry Down** proposal, Under the Hackney Mayoral Scheme of Delegation of January 2017, the acquisition of an interest in land is reserved to the Mayor and Cabinet and additionally Financial Procedure Rule 20.4 confirms that the acquisition or disposal of freehold or leasehold land shall be referred to Cabinet. Section 1 of the Localism Act 2011 ('the general power of competence') grants local authorities the ability to do anything that a private individual is empowered to do, subject to any restrictions which bound local authorities before the coming into force of that section or any later provisions expressed to apply to it.

Section 120 of the Local Government Act 1972 ("the 1972 Act") enables the Council to acquire by agreement any land for any purpose for which they are authorised by that Act or any other enactment to acquire land. The purposes authorised by section 120 of the 1972 Act are (a) any of the Council's statutory functions or (b) the benefit improvement or development of the Council's area. The proposed transaction fulfils both limbs as the permitted users who may share occupancy with the Council under the leaseback expressly include groups engaged in carrying out Housing Services or community functions.

- 8.10 The loans in recommendations 3.15 and 3.15 of this Report are made under the power of general competence in section 1 of the Localism Act 2011 which allows the Council to do anything that individuals generally may do. The provision of the loans is subject to the Council's Financial Procedure Rules (FPR) made pursuant to the Local Government Act 1972. FPR 7.5 states that "Group Directors shall also ensure that loans are not made to third parties and that interests are not acquired in companies, joint ventures or other enterprises without the approval of the Cabinet or the Council, following consultation with the Group Director, Finance and Corporate Resources." Further FPR 16.4 states that "The approval of the Cabinet shall be sought before a Group Director provides assistance to industry by way of loan, grant or guarantee over £50,000 to any one body in any one financial year." Therefore, this Report is seeking the approval of Cabinet for the two loans
- 8.11 In addition to the above the Council will also need to consider the requirements of the law regarding State Aid. State Aid is aid granted through state resources which distorts or threatens to distort competition by favouring certain undertakings and is capable of affecting trade between Member States. If all four of these are present, then the aid is potentially illegal. If any of them are not present, then it will not be classified as State Aid and will not contravene the rules.

The loan to the Rio Centre (Dalston) Limited is of a value which is below the permitted de minimis aid level of E200,000 over a three-year rolling period and so the aid is deemed not to distort competition and can be provided under the de minimis regulation. In such circumstances the aid is permitted in advance, but written records should be kept to support this.

- 8.12 The loan to Hackney Co-operative Developments is provided at a market rate and therefore the aid is not State Aid as no advantage/favouring is given to the undertaking because the Council is acting as a normal operator in the market, i.e. the 'aid' is given on normal commercial terms. If there is no advantage to the undertaking there is no illegal State Aid as one of the four tests is not met and would therefore be permitted.
- 8.13 All other legal implications have been incorporated within the body of this report.

## **9.0 COMMENTS OF THE DIRECTOR FOR STRATEGIC PROPERTY SERVICES**

- 9.1 With regard to **3 -10 Bradbury Street**, entering into a new 125-year lease with HCD will enable them to refurbish 1,267 sq. m. of existing affordable workspace and to provide 473 sq. m. of new affordable workspace on a mezzanine floor to the existing building. All businesses currently trading from the premises will be protected since they will be temporarily re-located and will then move back into the re-furbished property at the same rent that they are currently paying. HCD has a well-established track record in delivery of affordable workspace specifically in Central Dalston and, as part of their larger Dalston Works programme this project will support them in providing workspace for an additional 101 jobs, as well as training and support for 250 people and 30 new businesses a year. This supports the Council's objective of retaining businesses within the Borough and I support the proposal to grant a new 125-year lease to HCD.
- 9.2 With regard to the **Regan Way disposal**, the sale price agreed must meet the best consideration requirements of s.123 of the Local Government Act 1972. This sale will be by private treaty, and Strategic Property Services will take all necessary steps to ensure compliance with this statutory obligation.
- 9.3 On the **Stamford Hill disposal**, the sale price agreed must meet the best consideration requirements of s.123 of the Local Government Act 1972. This sale will be by private treaty and Strategic Property Services will take all necessary steps to ensure compliance with this statutory obligation.

- 9.4 With regard to the **Woodbury Grove proposal**, the terms of the proposed leasehold interest provide the Council with the protection it needs in order to operate successfully from the Property in conjunction with relevant partner organisations. In effect the Council will pay zero rent for the space that it occupies, because the rent payable by the Council under the sub-lease will be exactly the same as the rent payable for this space by HCD to the Council under the superior lease. This will continue to be the case throughout the life of the lease, including following any rent reviews. The Council will of course receive rental income from HCD for the remainder of the first floor. As with all Corporate properties, the Council will be required to cover operational costs of occupying the Property, such as utilities, maintenance, service charges and business rates.

### **Appendices**

- 1. Site Plan – Bradbury Way**
- 2. Site Plan – Regan Way**
- 3. Site Plan – Stamford Hill**
- 4. Site Plan – Woodbury Grove**

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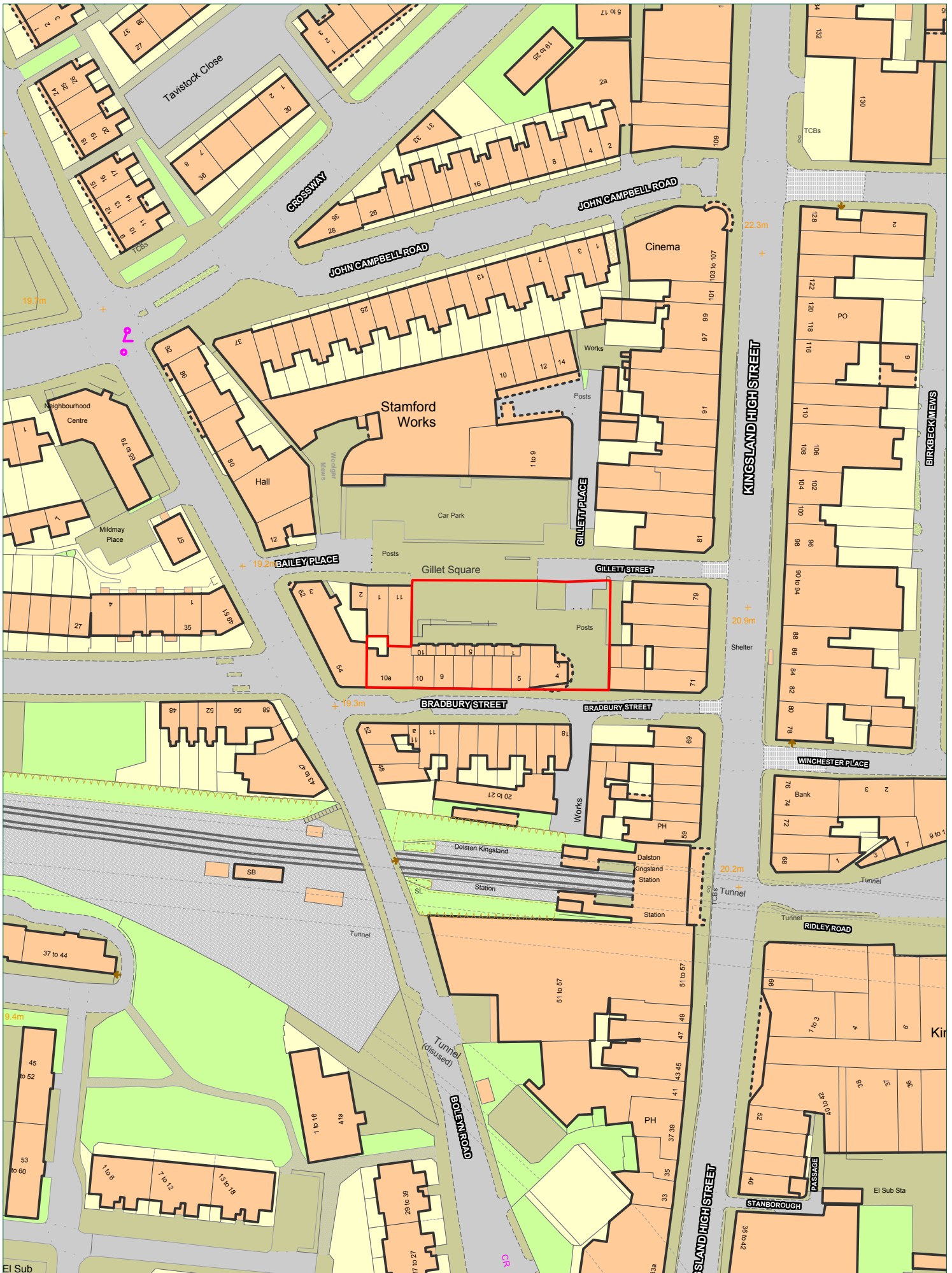
**15 JULY 2019**

**2018/19 OVERALL FINANCIAL  
POSITION, PROPERTY DISPOSALS  
AND ACQUISITIONS REPORT  
(MAY 2019)**

**KEY DECISION NO. FCR P93**

**Appendix 1**

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**2-10A Bradbury Street, London, N16 8JN**

Page 147



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email:gis@hackney.gov.uk web:www.hackney.gov.uk/gis



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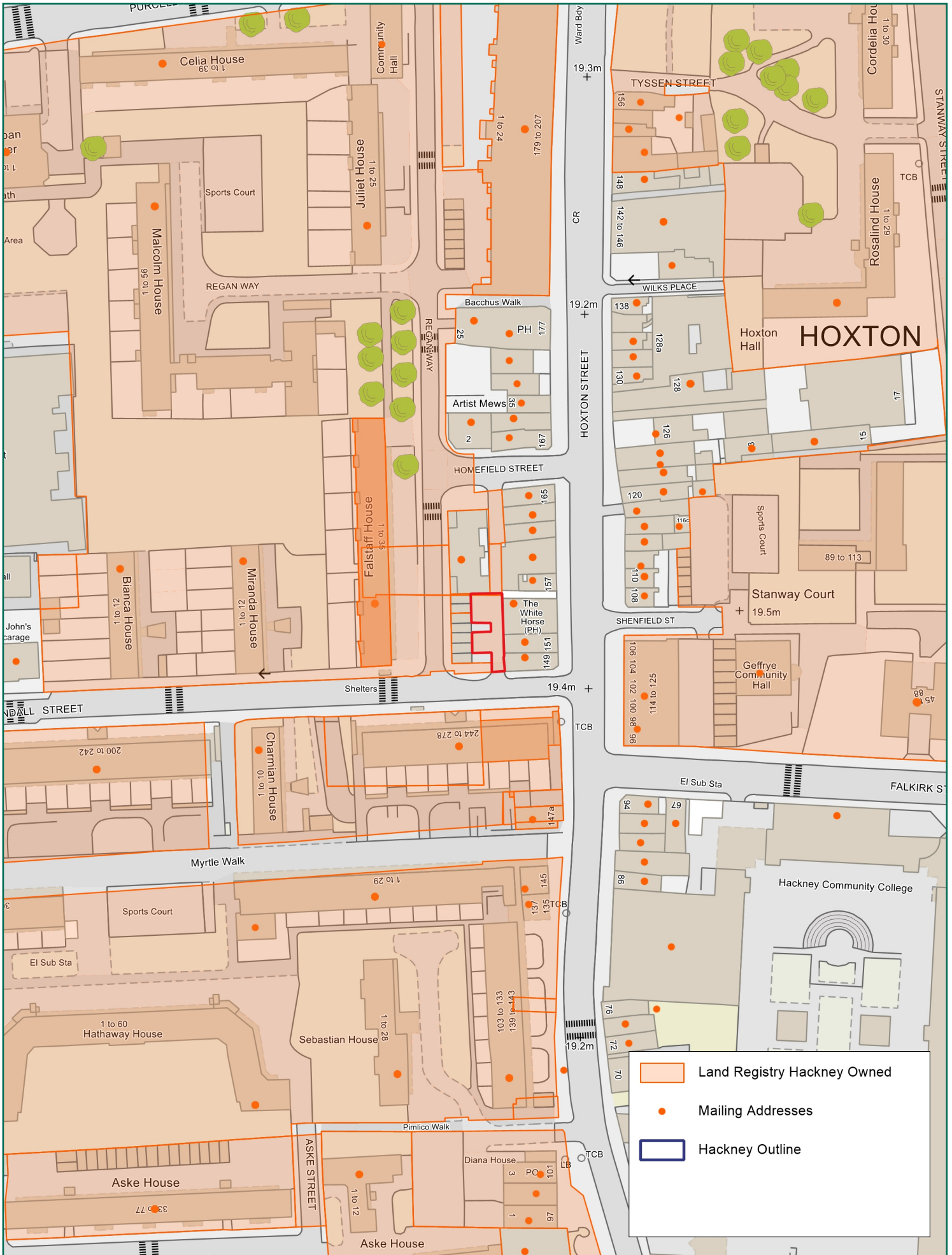
**15 JULY 2019**

**2018/19 OVERALL FINANCIAL  
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AND ACQUISITIONS REPORT  
(MAY 2019)**

**KEY DECISION NO. FCR P93**

**Appendix 2**

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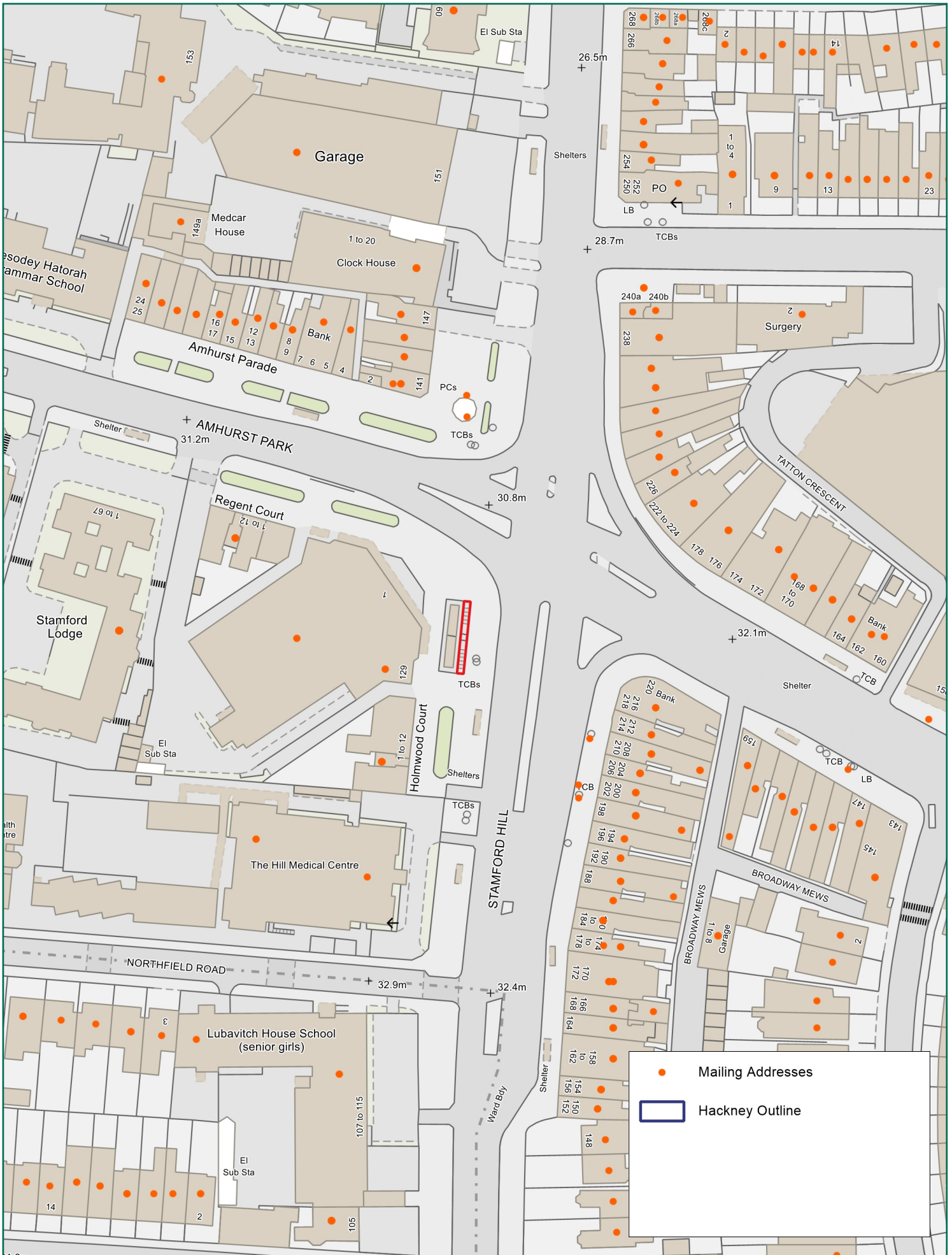
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**2018/19 OVERALL FINANCIAL  
POSITION, PROPERTY DISPOSALS  
AND ACQUISITIONS REPORT  
(MAY 2019)**

**KEY DECISION NO. FCR P93**

**Appendix 3**

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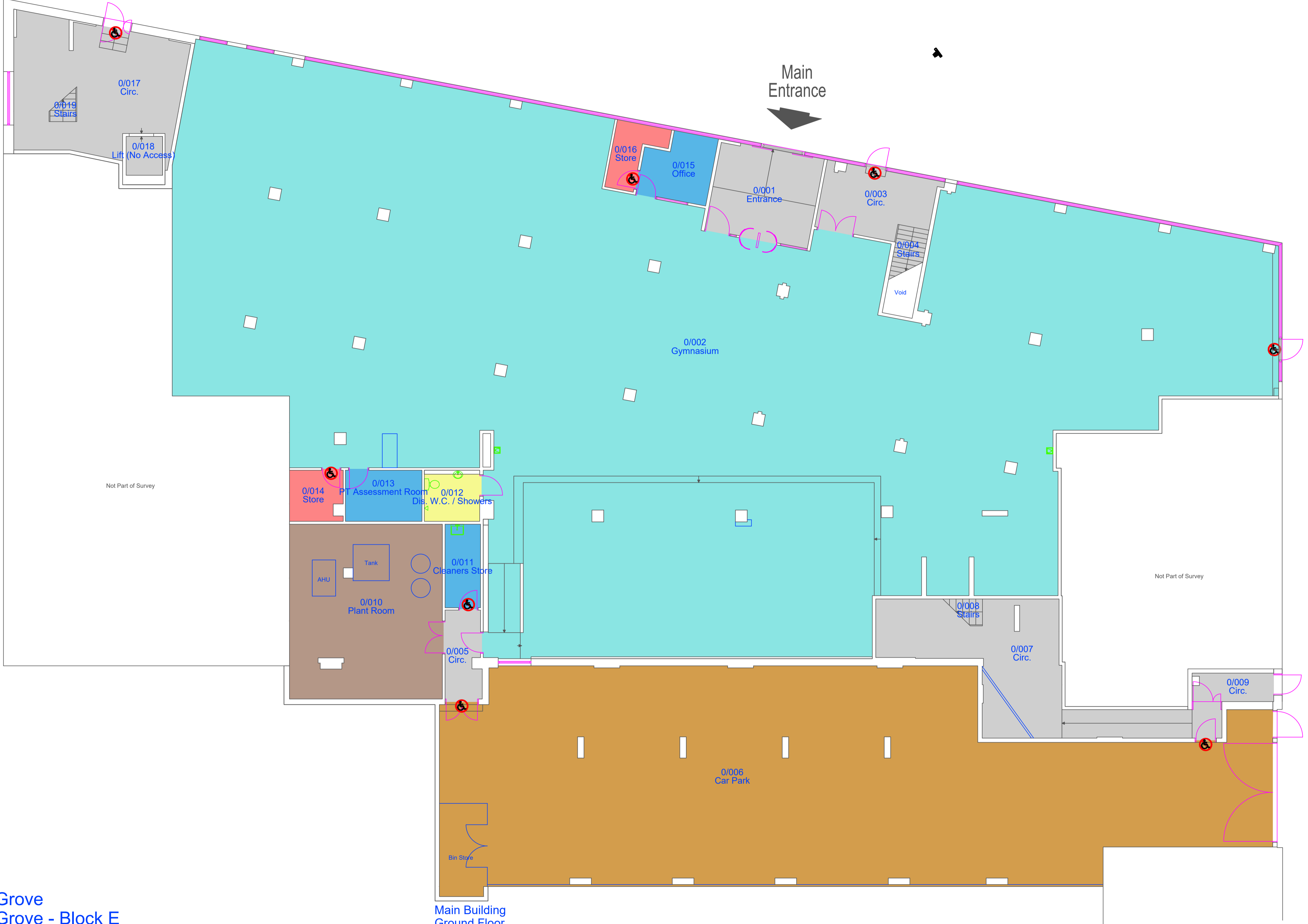
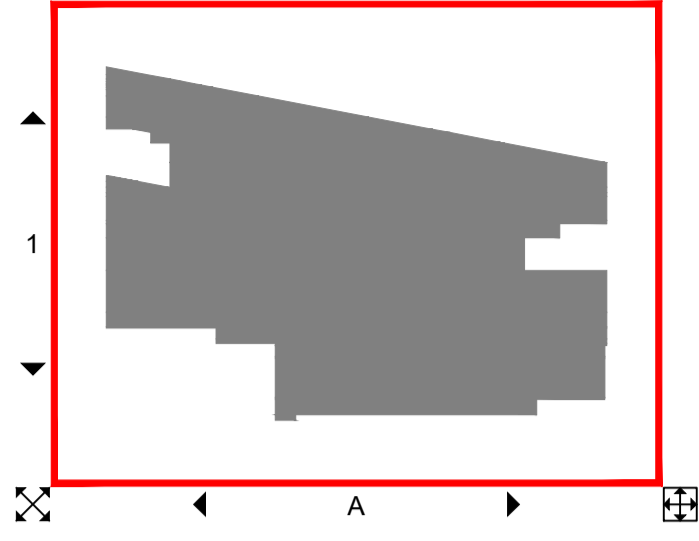
**15 JULY 2019**

**2018/19 OVERALL FINANCIAL  
POSITION, PROPERTY DISPOSALS  
AND ACQUISITIONS REPORT  
(MAY 2019)**

**KEY DECISION NO. FCR P93**

**Appendix 4**

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Block E  
Woodberry Grove  
Woodberry Grove - Block E

Site Area:  
Gross External Area: 3026.4  
Gross Internal Area: 2979.0  
Total Room Area: 2819.2  
Net Internal Area: 1469.7

North arrow and accessibility symbol: <850 & / OR STEP

Accommodation	Retail
Changing/Cloaks	Sport/Fitness
Child Care	Store
Circulation	Toilet
Dining	Training/Teaching
Kitchen	Unclassified
Medical	Utility
Office	Vehicle Storage
Plant	Workshop
Recreation	Worship
Resource	

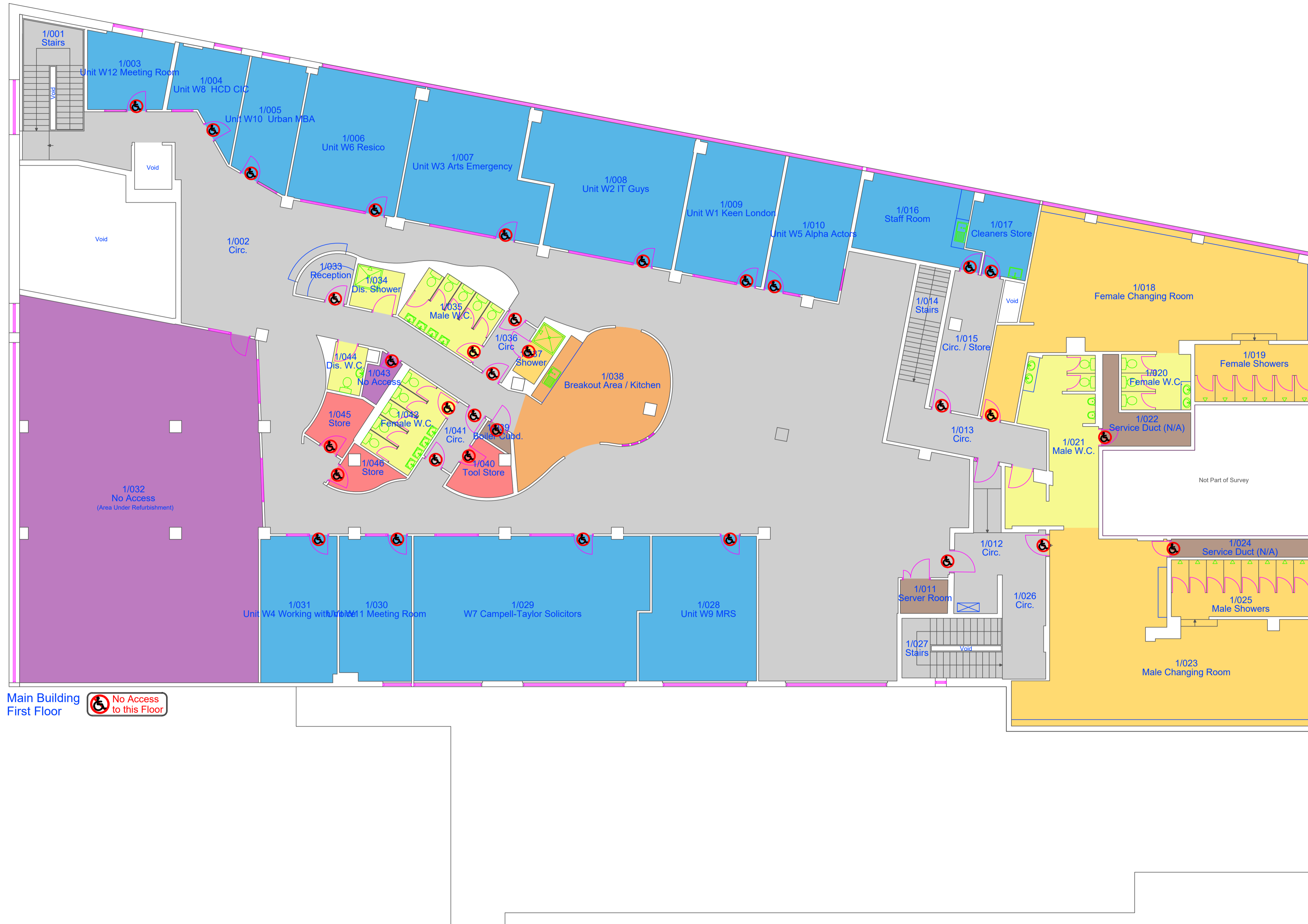
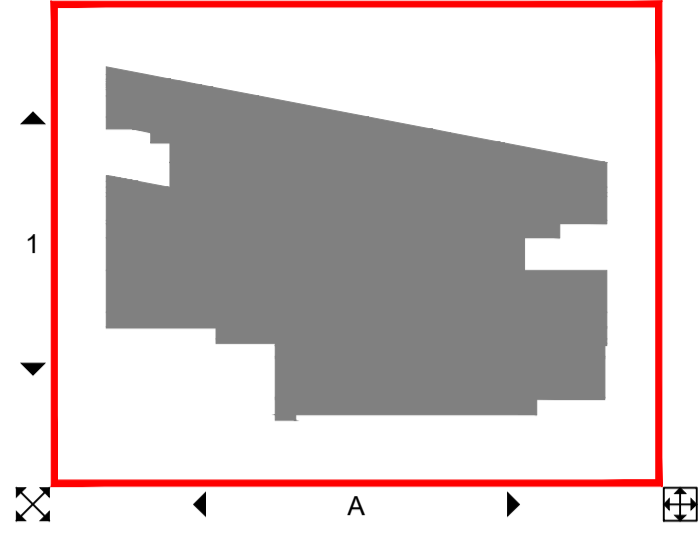
Rev	Description	Drn	Chk	Date
01	Drawing updated	OCC	ARB	25/06/2019
00	Initial Supply - FMS	CC	ARB	23/05/2018



OCCUPEYE LTD www.occupeye.com Tel: 020 300 200 14

Property: Block E  
Woodberry Grove  
Title: Ground Floor Plan

Area Information	Job: OPP-000098481
Total Site Area:	Scale: 1:100@A1 1:200@A3
Gross External Area: 3026.4	Date: 23/05/18
Gross Internal Area: 2979.0	Survey: 09/05/18
Total Room Area: 2819.2	Drawn: OCCUPEYE
Net Internal Area: 1469.7	Checked: ARB
Filename: Woodberry Grove - Block E.dwg	
Drawing No: Woodberry Grove - Block E	



Main Building First Floor No Access to this Floor



- |                 |                   |
|-----------------|-------------------|
| Accommodation   | Retail            |
| Changing/Cloaks | Sport/Fitness     |
| Child Care      | Store             |
| Circulation     | Toilet            |
| Dining          | Training/Teaching |
| Kitchen         | Unclassified      |
| Medical         | Utility           |
| Office          | Vehicle Storage   |
| Plant           | Workshop          |
| Recreation      | Worship           |
| Resource        |                   |

Rev	Description	Drn	Chk	Date
01	Drawing updated	OCC	ARB	25/06/2019
00	Initial Supply - FMS	CC	ARB	23/05/2018



OCCUPEYE LTD www.occupeye.com Tel: 020 300 200 14

Property: Block E  
Woodberry Grove  
Title: First Floor Plan

<b>Area Information</b>	Job: OPP-00098481
Total Site Area:	Scale: 1:100@A1 1:200@A3
Gross External Area: 3026.4	Date: 23/05/18
Gross Internal Area: 2979.0	Survey: 09/05/18
Total Room Area: 2819.2	Drawn: OCCUPEYE
Net Internal Area: 1469.7	Checked: ARB
Filename: Woodberry Grove - Block E.dwg	
Drawing No: Woodberry Grove - Block E	





**HOUSING COMPANY – ALLOCATION POLICY, TENANCY CONDITIONS AND BOARD OF DIRECTORS**

**Key Decision No. NHQ15**

<p><b>CABINET MEETING DATE (2019/20)</b></p> <p>15 July 2019</p>	<p><b>CLASSIFICATION:</b></p> <p><b>OPEN</b></p> <p>If exempt, the reason will be listed in the main body of this report.</p>
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**WARD(S) AFFECTED**

**ALL WARDS**

**CABINET MEMBER**

Philip Glanville, Mayor of Hackney

Councillor Sem Moema, Mayoral Advisor - Private Renting and Housing Affordability

**KEY DECISION**

Yes

**REASON**

Affects two or more wards

## **GROUP DIRECTOR**

**Kim Wright, Group Director Neighbourhoods and Housing**

### **1. CABINET MEMBER'S INTRODUCTION**

**1.1** Renters in Hackney deserve better. Around one third of Hackney residents now live in the private sector – double that of ten years ago. While a majority of private renters in Hackney are satisfied with their homes, there are too many properties suffering from poor conditions and management. Renters also face insecurity, often with six-month tenancies and high or unpredictable rent rises.

**1.2** Our #BetterRenting campaign is tackling these concerns – successfully lobbying the Government to ban tenancy fees, increase our powers to tackle rogue landlords and outlaw unfair 'Section 21' evictions, amongst many other actions.

**1.3** But I'm determined that we'll also intervene in the market to demonstrate what a good landlord looks like. Our new homes for Hackney Living Rent will help struggling renters – saving them around £11,000 a year on the market rate at our first development in Homerton. We will let and manage these homes ourselves – meaning that as well as a discounted rent, tenants can be sure they will have stable and secure homes, and that they won't face unwarranted fees and charges or excessive rent increases. And we'll prioritise people who live and work here when allocating our homes for living rent – meaning those at risk of being forced out of Hackney due to rising rents are able to stay in their borough, keeping our communities together.

**1.4** Government rules mean we have needed to set up a wholly owned housing company, to deliver on our commitments, set out in Hackney's Housing Strategy 2017-22, to provide new Hackney Living Rent homes - homes that are genuinely affordable to those on medium incomes, with rent levels set at one third of average local incomes.

**1.5** Hackney's Housing Company will also deliver a Private Rental Sector product that aligns with our #BetterRenting campaign; offering longer tenancies, no unfair evictions and deposits of no more than three weeks rent.

### **2. GROUP DIRECTOR'S INTRODUCTION**

**2.1** The lettings policy that is proposed for the Hackney Housing Company's Hackney Living Rent properties, subject to consultation, addresses the need to

prioritise working people on moderate incomes, who need stable, secure and genuinely affordable homes.

**2.2** Whilst owned by Hackney's Housing Company these Hackney Living Rent properties will be offered and will remain as a rental product. The properties will not be subject to Right to Buy or conversion to any other home ownership products.

**2.3** The policy has been developed through close engagement with various internal teams. Following the initial lettings, there will be a wider public consultation exercise to assess whether there are any other groups that may not be currently identified in the criteria for allocating new homes.

**2.4** The proposed tenancy agreements for new Hackney Living Rent and private rented homes ensure that the Council is following the principles set out in the #BetterRenting campaign, as well as ensuring that future changes can be accommodated, such as changes resulting from the Government's proposal to end Section 21 "no fault" evictions. We propose to set an example to the private rented sector by offering longer term tenancies of at least three years, which aligns with the Council's #BetterRenting principles and ensures that households have a secure and stable tenancy.

**2.5** The Housing Strategy adopted by the Council in January 2018 includes a key action to set up a housing company, to help provide new Hackney Living Rent homes – homes that are genuinely affordable to those on medium incomes with rent levels initially set at one third of median local incomes. In January 2018, the Cabinet approved the creation of a council-owned housing property company to deliver these Hackney Living Rent homes and agreed to a recommendation that the policy regarding the letting of homes owned by the company should be consulted on and brought back to Cabinet for approval before any lettings take place. This cabinet report is to agree this Lettings Policy, subject to consultation.

**2.6** The Lettings Policy represents a new lettings approach for new forms of housing for the Council: Hackney Living Rent and Private Rent. The impact of the policy will be monitored and evaluated throughout the first year of operation and the Company performance, including a review of the Lettings Policy, will be formally reported to Cabinet annually.

**2.7** This Lettings Policy caps the upper limit for household eligibility at a maximum of £60,000pa. Officers will keep this limit under a particular review and scrutiny throughout the first lets undertaken by the Hackney Housing Company. The cap is therefore subject to change should the experience of the initial lettings process indicate that the cap is set at a level requiring modification.

### **3. RECOMMENDATION(S)**

**Cabinet is recommended to:**

**3.1 Approve the Hackney Housing Company lettings policy which, subject to Resolution by the Company Board of Directors, will be adopted in order to prioritise applicants for Hackney Living Rent and Private Rent homes.**

**3.2 Note the draft Assured Shorthold Tenancy Agreements (appendices 2 and 3) to be used by the Hackney HLR Housing Company and Hackney PRS Housing Company respectively, subject to Resolution by the Company Board of Directors, and to note the alignment to Hackney's Better Renting principles.**

### **4. REASONS FOR DECISION**

**4.1** The Lettings Policy proposed for adoption by the Hackney Housing Company will ensure that there is a fair and balanced approach to allocating Hackney Living Rent (HLR) properties to prospective tenants. As set out in the Hackney Housing Strategy there is an identified housing pressure for people on middle incomes in Hackney, initially those with a household income of up to £60,000 per annum. This Lettings Policy, subject to consultation, will ensure that people living locally who fall into this category will be prioritised for Hackney Living Rent homes.

**4.2** In the Lettings Policy for Hackney Living Rent properties, priority is given to working applicants who have been living or working in the borough for at least thirty six months - this includes those in temporary accommodation and the private rental sector. The policy also adds a priority for those residents who are children of social housing tenants. This primary focus on local workers and residents means that people who would not typically qualify for social housing and for whom home ownership is out of reach are offered a stable tenancy and a high-quality, genuinely affordable home.

**4.3** The lettings policy will also ensure that those living and/or working in the borough will be the initial priority for the private rented sector products delivered by the company, ensuring that local residents can benefit from the #BetterRenting principles that have been incorporated by the Hackney Housing Company.

### **5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

**5.1** Cabinet adopted the Hackney Housing Strategy 2017-22 in January 2018. Action 8 of the Strategy committed to setting up a wholly owned company to help provide new Hackney Living Rent homes.

**5.2** It is unfeasible that the lettings of the Housing Company could be managed transparently, within the strategic aspirations of the Council, without a lettings policy.

## **6. BACKGROUND**

### **6.1 Policy Context**

**6.1.1** In July 2011, Cabinet approved the Estate Regeneration Programme and in February 2016 the Housing Supply Programme. In April 2019, Cabinet endorsed the progress of these programmes and the future aspiration for Council-led housing delivery in the borough.

**6.1.2** The Council is directly delivering over 3,000 new homes in the borough and is retaining the ownership of the social rented and shared ownership properties it is building. It is also supporting the development of a number of outright sale properties, in order to generate the funding and cross-subsidy needed to build the new genuinely affordable homes. The creation of a Housing Company to purchase and retain ownership of some of these properties gives the option for the Council to generate revenue from long-term income streams that provides alternative housing tenures and further supports the objectives of the Council's Regeneration Programme.

**6.1.3** Creating open, cohesive, safer and supportive communities is one of the five themes of Hackney's Sustainable Community Strategy 2018-28. Whilst the Council's Regeneration Programmes already make a significant contribution to meeting this priority, the creation of a Housing Company extends the range of tenures that can be offered by the Council.

**6.1.4** The Housing Strategy adopted by the Council in January 2018 reinforces the priority of building high quality, well-designed, and genuinely affordable new homes and includes an action to set up a housing company, to help provide new Hackney Living Rent homes – homes that are genuinely affordable to those on medium incomes with rent levels targeted to be at one third of average local incomes.

**6.1.5** The Housing Strategy also includes an objective of addressing standards and affordability in the private rented sector. The Hackney Housing Company will enable the Council to offer private rented properties and demonstrate that quality, security and affordability can be delivered successfully in the PRS. These private rented properties will be let alongside the Hackney Living Rent homes and will help to cross-subsidise the cost of supplying Hackney Living Rent homes at a lower rental level .

**6.1.6** In January 2018, the Cabinet approved the creation of a Council-owned housing property company and two subsidiaries; Hackney HLR Housing Company and Hackney PRS Housing Company and the associated business plans. Cabinet also agreed to a recommendation that the policy regarding the tenancy conditions and the allocation of homes owned by the company should be consulted on and brought back to Cabinet for approval before any lettings take place.

**6.1.7** The Board of Directors were appointed at the first meeting of the Housing Company in June 2019 and, in line with the approvals granted by Cabinet, comprise the Director of Regeneration, Head of Regeneration Finance and the Head of Legal and Governance. The Company Secretary is also in place as the Head of the Regeneration Divisional Programme Office.

## **6.2 Equality Impact Assessment**

**6.2.1** The Housing Company will facilitate an increase in the range of tenures and housing opportunities that the Council can provide and consequently the range of people who could benefit. In particular, the delivery of living rent properties will provide high quality housing to those on middle incomes who are not able to afford the private rented market and do not qualify for social housing.

## **6.3 Sustainability**

**6.3.1** None of the recommendations in this report would have a direct impact on the physical or social environment.

## **6.4 Consultations**

**6.4.1** There will be a wider consultation exercise carried out after the initial lettings in regard to the Lettings Policy. The first lettings will operate as a 'pilot scheme' for the first tranche of up to eight Hackney Living Rent homes at Bridge House. Lessons learned during the pilot will help inform a review of the initiative, alongside the wider consultation exercise.

## **6.5 Risk Assessment**

**6.5.1** The creation of a Hackney Living Rent product meets a gap in market provision for renters on low and middle incomes to whom the market is unaffordable and that may also live in substandard and unstable accommodation. However, the Housing crisis we face means there is an unprecedented housing need.

**6.5.2** A significant risk, therefore, associated with this product and Lettings Policy is a reputational risk to the Council if the Lettings Policy is not deemed to be fair or adequate in housing those in the greatest housing need. To mitigate this risk a consultation and engagement strategy will be put in place communicating the range of ways the Council is seeking to address failures in the housing market and take feedback from residents and stakeholders as to how this offer can be tailored.

**6.5.3** There is also a high risk that demand for the Hackney Living Rent and Private Rent products will far exceed the supply of available homes, especially in the first tranche of available homes. This is to be mitigated by the Lettings Policy, creating clearly defined eligibility criteria for applicants and a transparent selection process

## **7. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES**

**7.1** There are no direct financial implications of the Lettings Policy to the Council. The rent levels and tenancy conditions will be considered in the Housing Company's Business Plans and influence the number of properties that can be acquired for either Hackney Living Rent or Private Rent.

## **8. COMMENTS OF THE DIRECTOR, LEGAL & GOVERNANCE SERVICES**

**8.1** The "general power of competence" under Section 1 of the Localism Act 2011, which gives the local authority the power "...to do anything that individuals generally may do" would enable the creation and operation of companies such as Hackney Housing Company. The power is not limited either by the need to evidence a benefit accruing to the local authority's area, or in geographical scope. However, existing and future restrictions contained in the legislation continue to apply.

**8.2** There are no additional legal implications arising from the recommendations within the Report, as any change to Living Rent Lettings policy will need to be presented to Members for further consideration and approved by the Board of Directors of the Hackney Housing Company.

## **APPENDICES**

### **Appendix 1**

Hackney Housing Company Lettings Policy

### **Appendix 2**

Hackney Housing Company - Hackney Living Rent Tenancy Agreement

### **Appendix 3**

Hackney Housing Company - Market Rent Tenancy Agreement

## **BACKGROUND PAPERS**

None

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**Comments for and on  
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**Cabinet**

**15 JULY 2019**

**HOUSING COMPANY –  
ALLOCATION POLICY, TENANCY  
CONDITIONS AND BOARD OF  
DIRECTORS –  
KEY DECISION NO. NHQ15  
Appendix 1**

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# Hackney Housing Company Lettings Policy

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## **1. Introduction**

Hackney Housing Company has been set up to deliver two rental products: Hackney Living Rent (HLR) and Hackney Private Rent (HPR). The proposed Lettings Policy to be adopted by the Housing Company in relation to these products is set out below.

### **What is Hackney Living Rent and Hackney Private Rent?**

**1.1** The Hackney Living Rent product is designed to respond to the Mayor of Hackney's commitment to provide a range of genuinely affordable housing options to residents. It is a sub-market rental product aimed at low to middle-income households who currently live or work in Hackney and are currently unable to purchase a home, whether through shared ownership or outright sale. As is good practice, this will not exclude welfare benefit recipients.

**1.2** The Hackney Private Rent product is a market rent product that generates an income which helps fund the delivery of Hackney Living Rent properties. The PRS properties will align to Hackney's Better Renting principles; whilst it operates at market rates, it will offer greater security and transparency than is often seen in the private rental sector. The Housing Company Lettings Policy will seek to extend the 'first dibs' approach to ensure that people that live or work in the borough are prioritised for council-owned homes.

**1.3** The Hackney Housing Company Lettings Policy establishes the priorities and procedures to let the homes that it acquires either for Hackney Living Rent or Hackney Private Rent.

**1.4** Hackney Housing Company is wholly owned by the Council. The Lettings Policy will be adopted formally by the Housing Company with the approval of its Shareholders, namely the Mayor of Hackney and Cabinet. Changes to the Lettings Policy will be subject to approval via the Company's Scheme of Delegation.

**1.5** This Policy will come into force from the date of Cabinet approval, 15 July 2019. It will apply to prospective tenants of Hackney Living Rent homes. In the case of any future schemes that may be approved, the Policy will be subject to review and may be varied.

## **2. Principles of the Hackney Living Rent Lettings Policy**

The following headline principles are proposed and are set out in more detail below

- Potential tenants will be required to submit a formal application following a viewing
- Potential tenants will be required to meet basic eligibility criteria
- Lettings will be offered to eligible applicants. Where demand exceeds supply, this will be undertaken via a randomised ballot.

### **2.1. Eligibility for Hackney Living Rent homes**

In order to be eligible for Hackney Living Rent homes, applicants must meet the following eligibility criteria:

- Applicants can have a combined gross household income of no more than £60,000 per annum.
- Applicants must be unable (i.e. for reasons of affordability) to purchase a suitable home (including through Shared Ownership) in their local area.
- Applicants must not already own a home or have a financial interest in one.

## **2.2. Affordability Criteria for Hackney Living Rent homes**

In order to ensure that applicants are able to afford the payments on their living rent properties, an affordability assessment will be carried out to ensure that payments are affordable to applicants and will take into account both income and expenditure of the household. When assessing individual applications, as far as is possible, applicants should not be spending more than one third of their gross household income on rent.

## **2.3 Letting of Hackney Living Rent homes**

The following criteria will be applied in the letting of new homes to ensure fairness, transparency and consistency. Priority is given to:

- Working tenants who have been moved to alternative homes by the Council on a temporary basis; working tenants currently in the Private Rented Sector; and children of social housing tenants.
- Applicants who have been living and/or working in Hackney for at least 36 months.
- Where there are multiple households looking to occupy a home who meet the above criteria, priority will then be given by current housing needs (i.e. applicants with a two-bed need will be allocated a two-bedroom home ahead of those with a one-bed need - see section 2.4).
- Where there are multiple households who meet the above criteria, successful applicants will be decided by a randomised ballot. Applicants will have to register their interest. After a set period applications will close and eligible applicants will be entered into the ballot.

## **2.4 Bedroom Standard for Hackney Living Rent homes**

Newly built homes in the Council's regeneration programmes will meet the exemplary space standards set out in the London Housing Design Guide. In allocating properties, the following standard will be used in assessing how many bedrooms a household needs:

- A. Single bedroom accommodation such as a studio or bedsit is considered to be suitable for a single person. Couples who wish to apply will be considered for suitability.
- B. A couple with no children is considered to need one double bedroom.
- C. Children and young people of the same sex are expected to share a bedroom until the oldest is 16, or where there is an age gap of 15 years or more.
- D. Children of different sexes are expected to share a bedroom until the oldest is 8.

**2.5** The criteria in 2.1 - 2.4 will be applied to re-lets.

### **3. Rent Setting for Hackney Living Rent homes**

**3.1** Hackney Housing Company will set the rent levels for the Hackney Living Rent properties, it will do so with reference to the GLA guidance and in order to ensure genuinely affordable housing delivered as part of the wider regeneration programme.

**3.2** Rents for two-bedroom properties will be set at one third of local ward incomes, inclusive of service charges, using the Greater London Authority (GLA) income estimates. The GLA publishes maximum monthly rents by number of bedrooms for new living rent homes (inclusive of service charges) in every ward in London, and updates these figures each September.

**3.3** The rent levels are derived from average local incomes and ward-level house prices using a multi-stage process. The rent for a 2-bedroom property is based on one-third of the local median household income in that ward.

**3.4** Using the GLA two-bedroom rental value for each ward as a benchmark, the rent for a 1-bedroom home is 10% lower than a 2-bedroom home and for a Studio/Bedsit, 20% lower than a 2-bedroom home.. Similarly for a 3-bedroom home the rent would 10% higher than a two-bedroom and for a 4-bedroom home 20% higher. As a final affordability safeguard, the rent for any individual unit must be at least 20% below its assessed market rent.

### **4. Tenancy Terms for Hackney Living Rent homes**

**4.1** Tenancies will be offered for a minimum term of 3 years. A new tenancy may be offered at the end of the term if the tenant/s still meet the eligibility criteria set out in 2.1.

**4.2** Applicants will be reassessed for eligibility four months before the end of their tenancy if they wish to renew. Criteria for renewal may include conditions such as a financial income assessment, no history of anti-social behaviour or missed payments.

## **5. Priority for Private Rented Sector homes**

The following headline principles are proposed;

- Potential tenants will be required to submit an Expression of Interest
- Potential tenants who live or work in the borough will be prioritised
- Lettings will be offered to applicants who have successfully passed tenant referencing.

**5.1** Homes may only be rented by individuals and households, not companies. Where there are multiple prospective tenants looking to rent a home on an otherwise comparable basis and subject to offers being made in line with current market expectations, we will give priority to current Hackney residents and workers.

## **6. Monitoring and variation**

**6.1** Hackney Housing Company will monitor the impact of the Lettings Policy, recording the key characteristics of each letting. Key characteristics will include both personal and socio-economic data.

## **7. Amendments to the Lettings Policy**

**7.1** Hackney Housing Company may suspend, vary or withdraw the Lettings Policy at any time, in line with the Company's Scheme of Delegation.

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**Cabinet**

**15 JULY 2019**

**HOUSING COMPANY –  
ALLOCATION POLICY, TENANCY  
CONDITIONS AND BOARD OF  
DIRECTORS –  
KEY DECISION NO. NHQ15  
Appendix 2**

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# Hackney Housing Company - Hackney Living Rent Tenancy Agreement

## ASSURED SHORTHOLD TENANCY AGREEMENT

This is an agreement for letting a dwelling on a fixed term assured shorthold tenancy under Part 1 of the Housing Act 1988 (as amended).

This document is important. It sets out the rights and responsibilities of tenants and landlords under the agreement. **You are strongly advised to read it carefully before agreeing to it.** It should be kept for the lifetime of the tenancy as you may need to refer to it in the future.

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Section B	Main Terms of the agreement	2 - 7
Section C	Tenant's obligations	7 - 10
Section D	Landlord's obligations	10 - 11
Section E	Landlord's grounds (reasons) for possession during the fixed term	11
Section F	Tenant relinquishing Tenancy during the fixed term	12
Section G	Additional terms agreed between the landlord and tenant	12
Section H	Contact details and service of written notices	12 - 13
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## Section A: Definitions and Interpretation

### Definitions and interpretation

The following definitions and rules of interpretation apply in this agreement:

**Common Parts:** Common Parts means any part of a building containing the Property and any land or premises which the Tenant is entitled under the terms of this Tenancy to use in common with the owners or occupiers of other dwellings (*see clause B3.2*).

**Landlord:** A reference in this agreement to the Landlord includes a reference to the person who is entitled to the immediate reversion to the Tenancy and anyone who becomes entitled, by law, to receive the rent payable under this Tenancy.

**Property:** A reference to the Property is to the property (or any part of the property) described in clause B3.1.

**Tenancy:** A reference in this agreement to the Tenancy is to the tenancy created by this agreement.

**Tenant:** A reference to the Tenant is to the Tenant named within this agreement.

**CPI:** A reference to CPI means the consumer price index. When calculating rent reviews, the CPI figure is to be taken from the preceding September.

- 1.1 A reference to one gender shall include a reference to the other gender.
- 1.2 A reference to a statute (e.g. an Act of Parliament such as the Landlord & Tenant Act 1985) or statutory provision (e.g. a section of an Act – for example section 11 of the 1985 Act) is a reference to it as it is in force at the date of this agreement, taking account of any amendment, extension or re-enactment of the law concerned.
- 1.3 References to clauses are to clauses of this agreement.

## Section B: Main terms of the agreement

### 1 THE PARTIES

- 1.1 This is an agreement for a fixed term assured shorthold tenancy:

Between *(insert names of landlord(s))*: (“the Landlord”)

and *(insert names of tenant(s))*: (“the Tenant”)

Tenant 1 *(insert name)*

Tenant 2 *(insert name)*

Tenant 3 *(insert name)*

*(insert additional names if there are more tenants)*

1.2 The obligations and liabilities of the parties under this agreement are joint and several. This means that each Tenant is fully responsible for all the conditions of this agreement in connection with the other Tenants. For example, each Tenant is responsible for the full amount of the rent or the full cost of any damages, not just their share.

## 2 OTHER OCCUPIERS

2.1 The Landlord agrees that, in addition to the Tenant, the following person(s) (who for the avoidance of doubt are not tenant(s)) may live at the Property:

(a) the Tenant's children or other dependants who are under 18 years of age at the start of the Tenancy (if any):

Child or dependent name and date of birth *(insert name and date of birth)*

Child or dependent name and date of birth *(insert name and date of birth)*

and

(b) the following adults (if any):

Adult 1 *(insert name and date of birth)*

Adult 2 *(insert name and date of birth)*

Referred to in this agreement as "Members of the Tenant's Household".

2.2 The Tenant must not allow any other adults to live at the property without the written consent of the Landlord which will not be unreasonably withheld or delayed.

2.3 The Tenant must ensure that not more than *(insert number)* persons live at the Property.

2.4 Any obligation on the Tenant under this agreement to do or not to do anything shall also require the Tenant not to permit or allow any Member of the Tenant's Household or visitor to do or not to do the same thing.

## 3 THE PROPERTY AND COMMON PARTS

3.1 Address and description (e.g. 1 bedroom ground floor flat) of the Property: [ ]

The Property is: *(place a cross [x] in the boxes which apply)*

Furnished [ ]

Unfurnished [ ]

The Property includes:

Private garden [ ]

*(insert description if necessary)*

Private balcony [ ]

*(insert description if necessary)*

Garage [ ]

*(insert details if necessary)*

Other: *(insert details if applicable)*

3.2 In addition to the Property, the Tenant shall also have use of the following Common Parts  
*(place a cross [x] in the boxes which apply):*

Shared access to the Property

*(insert description if necessary)*

Shared garden which is shared with *(insert details)*

Other shared facilities: *(describe any other shared facilities)*

3.3 The Landlord must provide the Tenant with such information about the Property, the Property's installations and any services provided to the Property as is reasonably necessary to enable the Tenant to comply with the obligations contained in clauses C2 (payment of council tax, utilities and other charges) and C4 (care and maintenance of the Property) of this agreement.

3.4 The Property *is / is not (delete as appropriate)* currently subject to a mortgage.

#### **4 THE TERM AND EXPIRY OF THE FIXED TERM**

4.1 The Tenancy created by this agreement:

begins on: *(insert date)*

and

ends on: *(insert date)*

unless terminated early in accordance with the clauses in section E (landlord's grounds (reasons) for possession during the fixed term) or unless terminated early by mutual agreement between the parties.

4.2 If the Tenant continues to live in the Property after the expiry of the fixed term and no further tenancy has been entered into by the parties, then from the expiry of the fixed term the Tenant shall occupy the Property under a statutory periodic tenancy in accordance with section 5(2) of the Housing Act 1988.

#### **5 TERMINATION BY THE LANDLORD AT THE END OF THE FIXED TERM**

5.1 If the Landlord wants the Tenant to leave the Property at the end of the Tenancy, the Landlord must:

(a) give the Tenant at least two months' notice in writing before the end of the fixed term in accordance with section 21 of the Housing Act 1988 (this is known as a "section 21 notice");

or

(b) seek possession on one or more of the grounds contained in Schedule 2 to the Housing Act 1988 (if any of those grounds apply).

#### **6 THE RENT**

## **Option for landlord to increase the rent annually up to an agreed percentage**

- 6.1 The rent is £ *(insert amount)* per month until the review date
- 6.2 Subject to compliance with the requirements specified in clause B6.3, the Landlord may increase the rent on each review date by a maximum of CPI + 1%.
- 6.3 The requirements are that the Landlord must serve a rent review notice on the Tenant not less than 28 days but not more than 90 days before the relevant review date specifying:
- (a) the percentage by which the rent will increase on the relevant review date; and
  - (b) the new rent payable from the relevant review date.
- 6.4 If the Landlord fails to comply with the requirements specified in clause B6.3, the rent will not change until the next review date.
- 6.5 In clause B6 "review date" means the first Monday in April each year unless the Tenancy starts between January and March

## **8 PAYMENT OF THE RENT BY THE TENANT**

### **Rent payment dates**

- 8.1 The first payment is to be made on *(insert date)* and further payments are to be made on the 1<sup>st</sup> day of each month beginning on *(insert date)*.

### **Interest payable on overdue rent**

- 8.2 Interest of 3% above the Bank of England's base rate will be payable on any rent which is more than 14 days overdue. The interest will be payable from the date on which the rent fell due until the date it is paid.

### **Method of payment**

- 8.3 The rent must be paid by standing order.

## **9 THE INVENTORY AND REPORT OF CONDITION**

- 9.1 If the Landlord, or someone acting on behalf of the Landlord, has prepared an inventory and/or report of condition, it must be attached to this agreement (*see Annex 1*).
- 9.2 Unless the Landlord receives written comments on or amendments to the inventory and/or report of condition within 14 days of the start of the Tenancy, the Tenant shall be taken as accepting the inventory and report of condition as a full and accurate record of the condition of the Property and its contents.
- 9.3 The Landlord must ensure that any comments or amendments received from the Tenant under clause B9.2 are attached to the inventory and/ or report of condition annexed to this agreement.

## **10 THE DEPOSIT**

10.1 The Tenant has paid a deposit of £ *(insert amount, which will be equivalent to 3 weeks rent)* which the landlord *has protected / will protect (delete as appropriate)* in the Government authorised tenancy deposit protection scheme, Deposit Protection Scheme (DPS).

10.2 The Tenant agrees that the Landlord may make reasonable deductions from the deposit at the end of the Tenancy for the following purposes:

- (a) except for fair wear and tear, to make good any damage to the Property, the Common Parts or any of the items listed in the inventory caused by the Tenant's failure to comply with the Tenant's obligations under this agreement;
- (b) to replace any items listed in the inventory which are missing from the Property at the end of the Tenancy;
- (c) to pay any rent which remains unpaid at the end of the Tenancy;
- (d) where the Tenant has failed to comply with clause C8.2 of this agreement, to cover the reasonable removal, storage and disposal costs incurred by the Landlord;
- (e) where the Tenant has failed to comply with clause C8.1 of this agreement, to pay the reasonable cleaning costs incurred by the Landlord to remedy that failure;
- (f) where the Tenant has failed to comply with the obligation in clause C2.4, to recover any reconnection charge paid by the Landlord;
- (g) where the Tenant has made any addition or alteration to the Property or has redecorated the Property without the Landlord's prior written consent (*see clause C4.2*), to cover the reasonable costs incurred by the Landlord in removing or reversing any such addition or alteration or in reinstating the former decorative scheme.

## **Section C: TENANT'S OBLIGATIONS**

### **1 PAYMENT OF RENT**

The Tenant must pay the rent in advance, on or before the dates agreed (*see clause B8.1*).

### **2 PAYMENT OF COUNCIL TAX, UTILITIES AND OTHER CHARGES**

2.1 The Tenant must pay to the relevant local authority all council tax due in respect of the Property during the Tenancy.

2.2 The Tenant must pay to the relevant suppliers all charges in respect of any electricity, gas or water (including sewerage) services used at or supplied to the Property during the Tenancy and pay all charges to the provider for the use of any telephone, satellite, cable or broadband services at the Property during the Tenancy.

2.3 The Tenant must pay any television licence fee payable in respect of the Property during the Tenancy.

2.4 Where any service mentioned in clause C2.2 has been disconnected as a result of the Tenant's failure to comply with the Tenant's obligation to pay for the service, any reconnection charge will be payable by the Tenant.

### **3 USE OF THE PROPERTY, PETS AND PROHIBITED CONDUCT**

3.1 The Tenant must occupy the Property as the Tenant's only or principal home.

3.2 The Tenant must not use the Property for the purposes of a business, trade or profession except with the prior written consent of the landlord which will not be unreasonably withheld or



delayed. In particular, it will not be unreasonable for the Landlord to withhold consent if there is a reasonable likelihood that the use proposed would:

- (a) give rise to a tenancy to which Part II of the Landlord and Tenant Act 1954 (business tenancies) applies; or
- (b) cause a nuisance to the occupiers of neighbouring properties or significantly increase wear and tear to the Property.

3.3 The Tenant must not use the Property for any illegal, immoral, disorderly or anti-social purposes.

3.4 The Tenant must not do anything to or on the Property or any Common Parts which may reasonably be considered a nuisance or annoyance to the occupiers of neighbouring properties.

3.5 The Tenant must not keep any pets or other animals at the Property without the prior written consent of the Landlord which will not be unreasonably withheld or delayed. If permission is given, it may be given on the condition that the Tenant pays an additional reasonable amount towards the deposit.

#### **4 CARE, MAINTENANCE AND REDECORATION OF THE PROPERTY**

4.1 The Tenant must take reasonable care of the Property, any items listed in the inventory and the Common Parts (if any). This includes (but is not limited to):

- (a) taking reasonable steps to keep the Property adequately ventilated and heated so as to prevent damage from condensation;
- (b) taking reasonable steps to prevent frost damage occurring to any pipes or other installations in the Property, provided the pipes and other installations were adequately insulated at the start of the Tenancy; and
- (c) disposing of all rubbish in an appropriate manner and at the appropriate time.

4.2 The Tenant must not make any addition or alteration to the Property or redecorate the Property (or any part of it) without the Landlord's prior written consent which will not be unreasonably withheld or delayed.

4.3 The Tenant must notify the Landlord as soon as reasonably possible about any repairs that are needed to the Property or to any items listed on the inventory for which the Landlord is responsible (*see clause D3*).

4.4 The Tenant will be liable for the reasonable cost of repairs where the need for them is attributable to the Tenant's failure to comply with the obligations set out above in clauses C4.1 and C4.2 or where the need for repair is attributable to the fault or negligence of the Tenant, any Member of the Tenant's Household or any of the Tenant's visitors.

4.5 The Tenant shall promptly replace and pay for any broken glass in windows at the Property where the Tenant, any Member of the Tenant's Household or any of the Tenant's visitors cause the breakage.

#### **5 SECURITY OF THE PROPERTY AND PERIODS OF ABSENCE OF MORE THAN 28 DAYS**

5.1 The Tenant must not leave the Property unoccupied for more than 28 consecutive days without giving notice in writing to the Landlord.

5.2 The Tenant must take reasonable steps to ensure that the Property is secure, and all such steps as may reasonably be necessary to mitigate the risk of damage to the Property during that period whenever the Property is unoccupied.

## **6 ACCESS TO THE PROPERTY BY LANDLORD OR AGENT**

### **Routine access**

6.1 Provided the Landlord has given the Tenant at least 24 hours' prior notice in writing, the Tenant must give the Landlord (or any person acting on behalf of the Landlord) access to the Property at reasonable times of day for the following purposes:

- (a) to inspect its condition and state of repair;
- (b) to carry out the Landlord's repairing obligations and other obligations under this agreement; and
- (c) to carry out any inspections required by law including (but not limited to) gas safety inspections, fire safety inspections and inspections of any smoke or carbon monoxide alarms installed in the Property and to carry out any works, repairs, maintenance or installations (including the installation of any smoke or carbon monoxide alarm) required by law.

### **Access for the purposes of selling or re-letting the property**

6.2 Provided the Landlord has given the Tenant at least 24 hours' prior notice in writing, the Tenant must give the Landlord (or any person acting on behalf of the Landlord) access to the Property at reasonable times of day in the following circumstances for the purposes specified:

- (a) where it has been mutually agreed that the fixed term under clause 4.1 will end earlier, to show prospective tenants or purchasers, letting agents or estate agents around the Property, but only during the last 3 months of the Tenancy;
- (b) where the Landlord has served a notice on the Tenant under clause F3 stating his intention to sell the property, to show estate agents or prospective purchasers around the Property; and
- (c) during the last month of the Tenancy, for any of the purposes mentioned in paragraph (a) above.

### **Access during periods of absence of more than 28 days**

6.3 The Tenant agrees that if the Property is to be unoccupied for a period of more than 28 consecutive days, the Landlord may have access during that period for the purposes of keeping the Property insured and taking such steps as may reasonably be necessary to mitigate the risk of damage to the Property during that period.

### **Emergency access**

6.4 The Tenant must give the Landlord (or persons acting on the Landlord's behalf) immediate access to the Property in the event of an emergency on the Property.

## **7 ASSIGNMENT AND SUBLETTING**

## **Assignment**

7.1 The Tenant must not assign (i.e. transfer to another person) the tenancy, either in whole or in part.

## **Subletting of whole Property**

7.2 The Tenant must not sublet the whole of the Property for any duration of the Tenancy.

## **Subletting of part of the Property**

7.3 The Tenant must not sublet part of the Property for any duration of the Tenancy.

## **8 MOVING OUT AT THE END OF THE TENANCY**

8.1 Except for fair wear and tear, the Tenant must return the Property and any items listed on the inventory to the Landlord in the same condition and state of cleanliness as they were at the start of the Tenancy.

8.2 The Tenant must remove all possessions (including any furniture) belonging to the Tenant or any Member of the Tenant's Household or visitor and all rubbish from the Property at the end of the Tenancy. If any such possessions are left at the Property after the Tenancy has ended, the Tenant will be responsible for meeting all reasonable removal and storage charges. The Landlord will remove and store the possessions for one month (other than any perishable items which will be disposed of immediately) and will take reasonable steps to notify the Tenant. If the items are not collected within one month, the Landlord may dispose of the items and the Tenant will be liable for the reasonable costs of disposal. If the items are sold, the costs of removal, storage and disposal may be deducted from any sale proceeds.

8.3 The Tenant must give vacant possession and return all keys to the Landlord at the end of the Tenancy.

8.4 The Tenant must provide the Landlord with a forwarding address at the end of the Tenancy.

## **Section D: Landlord's obligations**

### **1 TO GIVE THE TENANT POSSESSION AT THE START OF THE TENANCY**

The Landlord must give the Tenant possession of the Property at the start of the Tenancy.

### **2 NOT TO INTERFERE WITH THE TENANT'S RIGHT TO QUIET ENJOYMENT OF THE PROPERTY**

The Landlord must not interrupt or interfere with the Tenant's right to quiet enjoyment of the Property.

### **3 REPAIR AND MAINTENANCE OF THE PROPERTY AND ITEMS LISTED ON THE INVENTORY**

3.1 In accordance with section 11 of the Landlord and Tenant Act 1985 (repairing obligations in short leases) the Landlord shall:

- (a) keep in repair the structure and exterior of the Property (including drains, external pipes, gutters and external windows);

- (b) keep in repair and proper working order the installations in the Property for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity); and
- (c) keep in repair and proper working order the installations in the Property for space heating and heating water.

3.2 In accordance with section 11 of the Landlord and Tenant Act 1985, the Landlord is not required:

- (a) to repair anything which the Tenant is liable to repair by virtue of the Tenant's duty to take reasonable care of the Property (*see clause C4.1*);
- (b) to rebuild or reinstate the Property in the case of destruction or damage by fire, storm or flood; or
- (c) to keep in repair or maintain anything which the Tenant is entitled to remove from the Property.

3.3 The Landlord must keep in repair and proper working order any furniture, fixtures, fittings and appliances which are listed in the inventory, except where the damage or need for repair is a result of the Tenant's failure to comply with the obligations in clause C4.1.

#### **4 INSURANCE AND RENT SUSPENSION**

4.1 The Landlord must insure the Property against fire, flooding and other risks usually covered by a comprehensive insurance policy and must use all reasonable efforts to arrange for any damage caused by an insured risk to be remedied as soon as possible. The Tenant is responsible for arranging insurance of the Tenant's own belongings.

4.2 The Landlord must provide the Tenant with a copy of the insurance policy at the request of the Tenant.

4.3 Where the Property is uninhabitable because of damage caused to the Property by an insured risk then, unless the damage was caused by the Tenant's negligence or failure to comply with the Tenant's obligations under this agreement, the Tenant shall not be required to pay rent until the Property is fit for occupation and use. The Landlord is not required to provide alternative accommodation if the property becomes uninhabitable due to fire, flooding or other damage.

#### **Section E: Landlord's grounds (reasons) for possession during the fixed term**

##### **1 LANDLORD'S STATUTORY GROUNDS (REASONS) FOR POSSESSION DURING THE FIXED TERM**

1.1 If any of the grounds (reasons) specified in clause E1.2 apply, the Landlord may seek to repossess the Property (sometimes referred to as forfeiture and re-entry) during the fixed term by giving the Tenant notice under section 8 of the Housing Act 1988 of his intention to apply to court for possession and, subsequently, applying to the court for a possession order.

1.2 The grounds referred to in clause E1.1 are the following grounds which are contained in Schedule 2 to the Housing Act 1988:

- Ground 2 (mortgagee (lender) entitled to possession);
- Ground 8 (at least 8 weeks' or two months' rent arrears);
- Ground 10 (some rent overdue);
- Ground 11 (tenant persistently late in paying rent);
- Ground 12 (breach of any term(s) of tenancy agreement);

Ground 13 (condition of property or common parts has deteriorated due to acts etc. of tenant or other occupant);

Ground 14 (the tenant or other person residing in or visiting the property is guilty of nuisance / annoyance in the locality or convicted of a criminal offence in relation to the property or committed in the locality);

Ground 15 (condition of furniture provided under the tenancy agreement has deteriorated due to ill-treatment by tenant or other occupant); and

Ground 17 (landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by the tenant or a person acting on the tenant's behalf).

## **Section F: Tenant relinquishing Tenancy during fixed term**

### **1 TENANT RELINQUISHING (GIVING UP) TENANCY DURING FIXED TERM**

1.1 The Tenant may wish to end the Tenancy earlier than the end of the fixed term. The Tenant may put this request in writing using the details outlined in H1. The landlord will consider this request and will not unreasonably refuse it.

1.2 If the Landlord agrees to the request, a new Tenancy end date will be mutually agreed and this date will be no less than one calendar month from the date of agreement.

## **Section G: Additional terms between the landlord and tenant**

*(insert details of agreed term)*

*(insert details of agreed term)*

*(Continue as necessary)*

## **Section H: Contact details and service of written notices**

### **1 THE LANDLORD'S OR AGENT'S CONTACT DETAILS AND SERVICE OF NOTICES ON THE LANDLORD**

#### **Service of written notices by post or delivery by hand**

1.1 The Landlord agrees that any notices given under or in connection with this agreement which are required to be given in writing may be served on the Landlord either by being left at the address given below or by being sent to that address by first class post. Notices shall be taken to be received the day after being left at the property or the day after posting.

The address for service of written notices and other documents on the Landlord is: **Hackney Town Hall, Mare St, London E8 1EA**

#### **Service of written notices by email**

1.2 The Landlord does agree that any notices given under or in connection with this agreement which are required to be given in writing may, alternatively, be sent by email. Notices sent by email shall be taken to be received the day after being sent. The Landlord's email address for these purposes is: **sales@hackney.gov.uk**.

#### **Landlord's or Agent's Emergency contact details**

1.3 The Landlord's / agent's (*delete as appropriate*) telephone number is: [ ]

## 2 THE TENANT'S CONTACT DETAILS AND SERVICE OF NOTICES ON THE TENANT

### Service of written notices by post or delivery by hand

2.1 The Tenant agrees that any notices given under or in connection with this agreement which are required to be given in writing may be served on the Tenant during the Tenancy either by being left at the Property or by being sent to the Tenant at the Property by first class post. Notices shall be taken to be received the day after being left at the Property or the day after posting.

### Service of written notices by email

2.2 The Tenant *does / does not (delete as appropriate)* agree that any notices given under or in connection with this agreement which are required to be given in writing may, alternatively, be sent by email (except as set out in clause H2.3 below). *Notices sent by email shall be taken to be received the day after being sent. The Tenant's email address for these purposes is: (insert Tenant's email address if agreeing to service by email).*

2.3 Any notice given under section 8 (notice of proceedings for possession) or section 21 (recovery of possession on expiry or termination of assured shorthold tenancy) of the Housing Act 1988 must always be given to the Tenant in hard copy in accordance with clause H2.1 above.

### Tenant's Emergency contact details

2.4 The Tenant's telephone number for use in emergencies is: (*insert contact details*)

## Section I: Signature

**Signed and executed as a deed by the following parties** (*delete this wording if the agreement is not being signed and executed as a deed – Tenancy Agreements need to be signed as a deed if they are for a term of 3 or more years*)

Tenant 1

Signature: .....

Full name (block capitals):

Address:

Date:

Witness (not a family member)

Signature: .....

Full name (block capitals):

Address:

Date:

Tenant 2  
Signature: .....  
Full name (block capitals):  
Address:  
Date:

Witness (not a family member)  
Signature: .....  
Full name (block capitals):  
Address:  
Date:

Tenant 3  
Signature: .....  
Full name (block capitals):  
Address:  
Date:

Witness (not a family member)  
Signature: .....  
Full name (block capitals):  
Address:  
Date:

*(insert additional signature blocks if there are more than 3 tenants)*

Landlord  
Signature: .....  
Full name (block capitals):  
Address:  
Date:

Witness (not a family member)  
Signature: .....  
Full name (block capitals):  
Address:  
Date:

*(insert additional signature blocks if there is more than 1 landlord)*

**ANNEXES**

**Annex 1: Inventory and report of condition (Clause B9)**

*(If there is an inventory and/ or report of condition they or it should be attached to the agreement here)*





**Cabinet**

**15 JULY 2019**

**HOUSING COMPANY –  
ALLOCATION POLICY, TENANCY  
CONDITIONS AND BOARD OF  
DIRECTORS –  
KEY DECISION NO. NHQ15  
Appendix 3**

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# Hackney Housing Company - Market Rent Tenancy Agreement

## ASSURED SHORTHOLD TENANCY AGREEMENT

**This is an agreement for letting a dwelling on a fixed term assured shorthold tenancy under Part 1 of the Housing Act 1988 (as amended).**

This document is important. It sets out the rights and responsibilities of tenants and landlords under the agreement. **You are strongly advised to read it carefully before agreeing to it.** It should be kept for the lifetime of the tenancy as you may need to refer to it in the future.

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Section C	Tenant's obligations	7 - 10
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## Section A: Definitions and Interpretation

### Definitions and interpretation

The following definitions and rules of interpretation apply in this agreement:

**Common Parts:** Common Parts means any part of a building containing the Property and any land or premises which the Tenant is entitled under the terms of this Tenancy to use in common with the owners or occupiers of other dwellings (*see clause B3.2*).

**Landlord:** A reference in this agreement to the Landlord includes a reference to the person who is entitled to the immediate reversion to the Tenancy and anyone who becomes entitled, by law, to receive the rent payable under this Tenancy.

**Property:** A reference to the Property is to the property (or any part of the property) described in clause B3.1.

**Tenancy:** A reference in this agreement to the Tenancy is to the tenancy created by this agreement.

**Tenant:** A reference to the Tenant is to the Tenant named within this agreement.

1.1 A reference to one gender shall include a reference to the other gender.

1.2 A reference to a statute (e.g. an Act of Parliament such as the Landlord & Tenant Act 1985) or statutory provision (e.g. a section of an Act – for example section 11 of the 1985 Act) is a reference to it as it is in force at the date of this agreement, taking account of any amendment, extension or re-enactment of the law concerned.

1.3 References to clauses are to clauses of this agreement.

## Section B: Main terms of the agreement

### 1 THE PARTIES

1.1 This is an agreement for a fixed term assured shorthold tenancy:

Between *(insert names of landlord(s))*: (“the Landlord”)

and *(insert names of tenant(s))*: (“the Tenant”)

Tenant 1 *(insert name)*

Tenant 2 *(insert name)*

Tenant 3 *(insert name)*

*(insert additional names if there are more tenants)*

1.2 The obligations and liabilities of the parties under this agreement are joint and several. This means that each Tenant is fully responsible for all the conditions of this agreement in connection with

the other Tenants. For example, each Tenant is responsible for the full amount of the rent or the full cost of any damages, not just their share.

## 2 OTHER OCCUPIERS

2.1 The Landlord agrees that, in addition to the Tenant, the following person(s) (who for the avoidance of doubt are not tenant(s)) may live at the Property:

(a) the Tenant's children or other dependants who are under 18 years of age at the start of the Tenancy (if any):

Child or dependent name and date of birth *(insert name and date of birth)*

Child or dependent name and date of birth *(insert name and date of birth)*

and

(b) the following adults (if any):

Adult 1 *(insert name and date of birth)*

Adult 2 *(insert name and date of birth)*

Referred to in this agreement as "Members of the Tenant's Household".

2.2 The Tenant must not allow any other adults to live at the property without the written consent of the Landlord which will not be unreasonably withheld or delayed.

2.3 The Tenant must ensure that not more than *(insert number)* persons live at the Property.

2.4 Any obligation on the Tenant under this agreement to do or not to do anything shall also require the Tenant not to permit or allow any Member of the Tenant's Household or visitor to do or not to do the same thing.

## 3 THE PROPERTY AND COMMON PARTS

3.1 Address and description (e.g. 1 bedroom ground floor flat) of the Property: [ ]

The Property is: *(place a cross [x] in the boxes which apply)*

Furnished [ ]

Unfurnished [ ]

The Property includes:

Private garden [ ]

*(insert description if necessary)*

Private balcony [ ]

*(insert description if necessary)*

Garage [ ]

*(insert details if necessary)*

Other: *(insert details if applicable)*

3.2 In addition to the Property, the Tenant shall also have use of the following Common Parts

*(place a cross [x] in the boxes which apply):*

Shared access to the Property

*(insert description if necessary)*

Shared garden which is shared with *(insert details)*

Other shared facilities: *(describe any other shared facilities)*

3.3 The Landlord must provide the Tenant with such information about the Property, the Property's installations and any services provided to the Property as is reasonably necessary to enable the Tenant to comply with the obligations contained in clauses C2 (payment of council tax, utilities and other charges) and C4 (care and maintenance of the Property) of this agreement.

3.4 The Property *is / is not (delete as appropriate)* currently subject to a mortgage.

#### **4 THE TERM AND EXPIRY OF THE FIXED TERM**

4.1 The Tenancy created by this agreement:

begins on: *(insert date)*

and

ends on: *(insert date)*

unless terminated early in accordance with the clauses in section E (landlord's grounds (reasons) for possession during the fixed term) or unless terminated early by mutual agreement between the parties.

4.2 If the Tenant continues to live in the Property after the expiry of the fixed term and no further tenancy has been entered into by the parties, then from the expiry of the fixed term the Tenant shall occupy the Property under a statutory periodic tenancy in accordance with section 5(2) of the Housing Act 1988.

#### **5 TERMINATION BY THE LANDLORD AT THE END OF THE FIXED TERM**

5.1 If the Landlord wants the Tenant to leave the Property at the end of the Tenancy, the Landlord must:

(a) give the Tenant at least two months' notice in writing before the end of the fixed term in accordance with section 21 of the Housing Act 1988 (this is known as a "section 21 notice");

or

(b) seek possession on one or more of the grounds contained in Schedule 2 to the Housing Act 1988 (if any of those grounds apply).

#### **6 THE RENT**

**Rent fixed for the whole of the fixed term**

6. The rent is £ *(insert amount)* per month for the fixed term.

## **8 PAYMENT OF THE RENT BY THE TENANT**

### **Rent payment dates**

8.1 The first payment is to be made on *(insert date)* and further payments are to be made on the 1<sup>st</sup> day of each month beginning on *(insert date)*.

### **Interest payable on overdue rent**

8.2 Interest of 3% above the Bank of England's base rate will be payable on any rent which is more than 14 days overdue. The interest will be payable from the date on which the rent fell due until the date it is paid.

### **Method of payment**

8.3 The rent must be paid by standing order.

## **9 THE INVENTORY AND REPORT OF CONDITION**

9.1 If the Landlord, or someone acting on behalf of the Landlord, has prepared an inventory and/or report of condition, it must be attached to this agreement (*see Annex 1*).

9.2 Unless the Landlord receives written comments on or amendments to the inventory and/or report of condition within 14 days of the start of the Tenancy, the Tenant shall be taken as accepting the inventory and report of condition as a full and accurate record of the condition of the Property and its contents.

9.3 The Landlord must ensure that any comments or amendments received from the Tenant under clause B9.2 are attached to the inventory and/ or report of condition annexed to this agreement.

## **10 THE DEPOSIT**

10.1 The Tenant has paid a deposit of £ *(insert amount, which will be equivalent to 3 weeks rent)* which the landlord *has protected / will protect (delete as appropriate)* in the Government authorised tenancy deposit protection scheme, Deposit Protection Scheme (DPS).

10.2 The Tenant agrees that the Landlord may make reasonable deductions from the deposit at the end of the Tenancy for the following purposes:

- (a) except for fair wear and tear, to make good any damage to the Property, the Common Parts or any of the items listed in the inventory caused by the Tenant's failure to comply with the Tenant's obligations under this agreement;
- (b) to replace any items listed in the inventory which are missing from the Property at the end of the Tenancy;
- (c) to pay any rent which remains unpaid at the end of the Tenancy;
- (d) where the Tenant has failed to comply with clause C8.2 of this agreement, to cover the reasonable removal, storage and disposal costs incurred by the Landlord;

- (e) where the Tenant has failed to comply with clause C8.1 of this agreement, to pay the reasonable cleaning costs incurred by the Landlord to remedy that failure;
- (f) where the Tenant has failed to comply with the obligation in clause C2.4, to recover any reconnection charge paid by the Landlord;
- (g) where the Tenant has made any addition or alteration to the Property or has redecorated the Property without the Landlord's prior written consent (*see clause C4.2*), to cover the reasonable costs incurred by the Landlord in removing or reversing any such addition or alteration or in reinstating the former decorative scheme.

## **Section C: TENANT'S OBLIGATIONS**

### **1 PAYMENT OF RENT**

The Tenant must pay the rent in advance, on or before the dates agreed (*see clause B8.1*).

### **2 PAYMENT OF COUNCIL TAX, UTILITIES AND OTHER CHARGES**

2.1 The Tenant must pay to the relevant local authority all council tax due in respect of the Property during the Tenancy.

2.2 The Tenant must pay to the relevant suppliers all charges in respect of any electricity, gas or water (including sewerage) services used at or supplied to the Property during the Tenancy and pay all charges to the provider for the use of any telephone, satellite, cable or broadband services at the Property during the Tenancy.

2.3 The Tenant must pay any television licence fee payable in respect of the Property during the Tenancy.

2.4 Where any service mentioned in clause C2.2 has been disconnected as a result of the Tenant's failure to comply with the Tenant's obligation to pay for the service, any reconnection charge will be payable by the Tenant.

### **3 USE OF THE PROPERTY, PETS AND PROHIBITED CONDUCT**

3.1 The Tenant must occupy the Property as the Tenant's only or principal home.

3.2 The Tenant must not use the Property for the purposes of a business, trade or profession except with the prior written consent of the landlord which will not be unreasonably withheld or delayed. In particular, it will not be unreasonable for the Landlord to withhold consent if there is a reasonable likelihood that the use proposed would:

- (a) give rise to a tenancy to which Part II of the Landlord and Tenant Act 1954 (business tenancies) applies; or
- (b) cause a nuisance to the occupiers of neighbouring properties or significantly increase wear and tear to the Property.

3.3 The Tenant must not use the Property for any illegal, immoral, disorderly or anti-social purposes.

3.4 The Tenant must not do anything to or on the Property or any Common Parts which may reasonably be considered a nuisance or annoyance to the occupiers of neighbouring properties.

3.5 The Tenant must not keep any pets or other animals at the Property without the prior written consent of the Landlord which will not be unreasonably withheld or delayed. If permission is given, it may be given on the condition that the Tenant pays an additional reasonable amount towards the deposit.



## **4 CARE, MAINTENANCE AND REDECORATION OF THE PROPERTY**

4.1 The Tenant must take reasonable care of the Property, any items listed in the inventory and the Common Parts (if any). This includes (but is not limited to):

- (a) taking reasonable steps to keep the Property adequately ventilated and heated so as to prevent damage from condensation;
- (b) taking reasonable steps to prevent frost damage occurring to any pipes or other installations in the Property, provided the pipes and other installations were adequately insulated at the start of the Tenancy; and
- (c) disposing of all rubbish in an appropriate manner and at the appropriate time.

4.2 The Tenant must not make any addition or alteration to the Property or redecorate the Property (or any part of it) without the Landlord's prior written consent which will not be unreasonably withheld or delayed.

4.3 The Tenant must notify the Landlord as soon as reasonably possible about any repairs that are needed to the Property or to any items listed on the inventory for which the Landlord is responsible (see *clause D3*).

4.4 The Tenant will be liable for the reasonable cost of repairs where the need for them is attributable to the Tenant's failure to comply with the obligations set out above in clauses C4.1 and C4.2 or where the need for repair is attributable to the fault or negligence of the Tenant, any Member of the Tenant's Household or any of the Tenant's visitors.

4.5 The Tenant shall promptly replace and pay for any broken glass in windows at the Property where the Tenant, any Member of the Tenant's Household or any of the Tenant's visitors cause the breakage.

## **5 SECURITY OF THE PROPERTY AND PERIODS OF ABSENCE OF MORE THAN 28 DAYS**

5.1 The Tenant must not leave the Property unoccupied for more than 28 consecutive days without giving notice in writing to the Landlord.

5.2 The Tenant must take reasonable steps to ensure that the Property is secure, and all such steps as may reasonably be necessary to mitigate the risk of damage to the Property during that period whenever the Property is unoccupied.

## **6 ACCESS TO THE PROPERTY BY LANDLORD OR AGENT**

### **Routine access**

6.1 Provided the Landlord has given the Tenant at least 24 hours' prior notice in writing, the Tenant must give the Landlord (or any person acting on behalf of the Landlord) access to the Property at reasonable times of day for the following purposes:

- (a) to inspect its condition and state of repair;
- (b) to carry out the Landlord's repairing obligations and other obligations under this agreement; and

- (c) to carry out any inspections required by law including (but not limited to) gas safety inspections, fire safety inspections and inspections of any smoke or carbon monoxide alarms installed in the Property and to carry out any works, repairs, maintenance or installations (including the installation of any smoke or carbon monoxide alarm) required by law.

### **Access for the purposes of selling or re-letting the property**

6.2 Provided the Landlord has given the Tenant at least 24 hours' prior notice in writing, the Tenant must give the Landlord (or any person acting on behalf of the Landlord) access to the Property at reasonable times of day in the following circumstances for the purposes specified:

- (a) where it has been mutually agreed that the fixed term under clause 4.1 will end earlier, to show prospective tenants or purchasers, letting agents or estate agents around the Property, but only during the last 3 months of the Tenancy;
- (b) where the Landlord has served a notice on the Tenant under clause F3 stating his intention to sell the property, to show estate agents or prospective purchasers around the Property; and
- (c) during the last month of the Tenancy, for any of the purposes mentioned in paragraph (a) above.

### **Access during periods of absence of more than 28 days**

6.3 The Tenant agrees that if the Property is to be unoccupied for a period of more than 28 consecutive days, the Landlord may have access during that period for the purposes of keeping the Property insured and taking such steps as may reasonably be necessary to mitigate the risk of damage to the Property during that period.

### **Emergency access**

6.4 The Tenant must give the Landlord (or persons acting on the Landlord's behalf) immediate access to the Property in the event of an emergency on the Property.

## **7 ASSIGNMENT AND SUBLETTING**

### **Assignment**

7.1 The Tenant must not assign (i.e. transfer to another person) the tenancy, either in whole or in part.

### **Subletting of whole Property**

7.2 The Tenant must not sublet the whole of the Property for any duration of the Tenancy.

### **Subletting of part of the Property**

7.3 The Tenant must not sublet part of the Property for any duration of the Tenancy.

## **8 MOVING OUT AT THE END OF THE TENANCY**

8.1 Except for fair wear and tear, the Tenant must return the Property and any items listed on the inventory to the Landlord in the same condition and state of cleanliness as they were at the start of the Tenancy.

8.2 The Tenant must remove all possessions (including any furniture) belonging to the Tenant or any Member of the Tenant's Household or visitor and all rubbish from the Property at the end of the Tenancy. If any such possessions are left at the Property after the Tenancy has ended, the Tenant will be responsible for meeting all reasonable removal and storage charges. The Landlord will remove and store the possessions for one month (other than any perishable items which will be disposed of immediately) and will take reasonable steps to notify the Tenant. If the items are not collected within one month, the Landlord may dispose of the items and the Tenant will be liable for the reasonable costs of disposal. If the items are sold, the costs of removal, storage and disposal may be deducted from any sale proceeds.

8.3 The Tenant must give vacant possession and return all keys to the Landlord at the end of the Tenancy.

8.4 The Tenant must provide the Landlord with a forwarding address at the end of the Tenancy.

#### **Section D: Landlord's obligations**

##### **1 TO GIVE THE TENANT POSSESSION AT THE START OF THE TENANCY**

The Landlord must give the Tenant possession of the Property at the start of the Tenancy.

##### **2 NOT TO INTERFERE WITH THE TENANT'S RIGHT TO QUIET ENJOYMENT OF THE PROPERTY**

The Landlord must not interrupt or interfere with the Tenant's right to quiet enjoyment of the Property.

##### **3 REPAIR AND MAINTENANCE OF THE PROPERTY AND ITEMS LISTED ON THE INVENTORY**

3.1 In accordance with section 11 of the Landlord and Tenant Act 1985 (repairing obligations in short leases) the Landlord shall:

- (a) keep in repair the structure and exterior of the Property (including drains, external pipes, gutters and external windows);
- (b) keep in repair and proper working order the installations in the Property for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity); and
- (c) keep in repair and proper working order the installations in the Property for space heating and heating water.

3.2 In accordance with section 11 of the Landlord and Tenant Act 1985, the Landlord is not required:

- (a) to repair anything which the Tenant is liable to repair by virtue of the Tenant's duty to take reasonable care of the Property (*see clause C4.1*);
- (b) to rebuild or reinstate the Property in the case of destruction or damage by fire, storm or flood; or
- (c) to keep in repair or maintain anything which the Tenant is entitled to remove from the Property.

3.3 The Landlord must keep in repair and proper working order any furniture, fixtures, fittings and appliances which are listed in the inventory, except where the damage or need for repair is a result of the Tenant's failure to comply with the obligations in clause C4.1.

#### **4 INSURANCE AND RENT SUSPENSION**

4.1 The Landlord must insure the Property against fire, flooding and other risks usually covered by a comprehensive insurance policy and must use all reasonable efforts to arrange for any damage caused by an insured risk to be remedied as soon as possible. The Tenant is responsible for arranging insurance of the Tenant's own belongings.

4.2 The Landlord must provide the Tenant with a copy of the insurance policy at the request of the Tenant.

4.3 Where the Property is uninhabitable because of damage caused to the Property by an insured risk then, unless the damage was caused by the Tenant's negligence or failure to comply with the Tenant's obligations under this agreement, the Tenant shall not be required to pay rent until the Property is fit for occupation and use. The Landlord is not required to provide alternative accommodation if the property becomes uninhabitable due to fire, flooding or other damage.

#### **Section E: Landlord's grounds (reasons) for possession during the fixed term**

##### **1 LANDLORD'S STATUTORY GROUNDS (REASONS) FOR POSSESSION DURING THE FIXED TERM**

1.1 If any of the grounds (reasons) specified in clause E1.2 apply, the Landlord may seek to repossess the Property (sometimes referred to as forfeiture and re-entry) during the fixed term by giving the Tenant notice under section 8 of the Housing Act 1988 of his intention to apply to court for possession and, subsequently, applying to the court for a possession order.

1.2 The grounds referred to in clause E1.1 are the following grounds which are contained in Schedule 2 to the Housing Act 1988:

- Ground 2 (mortgagee (lender) entitled to possession);
- Ground 8 (at least 8 weeks' or two months' rent arrears);
- Ground 10 (some rent overdue);
- Ground 11 (tenant persistently late in paying rent);
- Ground 12 (breach of any term(s) of tenancy agreement);
- Ground 13 (condition of property or common parts has deteriorated due to acts etc. of tenant or other occupant);
- Ground 14 (the tenant or other person residing in or visiting the property is guilty of nuisance / annoyance in the locality or convicted of a criminal offence in relation to the property or committed in the locality);
- Ground 15 (condition of furniture provided under the tenancy agreement has deteriorated due to ill-treatment by tenant or other occupant); and
- Ground 17 (landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by the tenant or a person acting on the tenant's behalf).

#### **Section F: Tenant relinquishing Tenancy during fixed term**

##### **1 TENANT RELINQUISHING (GIVING UP) TENANCY DURING FIXED TERM**

1.1 The Tenant may wish to end the Tenancy earlier than the end of the fixed term. The Tenant may put this request in writing using the details outlined in H1. The landlord will consider this request and will not unreasonably refuse it.

1.2 If the Landlord agrees to the request, a new Tenancy end date will be mutually agreed and this date will be no less than one calendar month from the date of agreement.

## **Section G: Additional terms between the landlord and tenant**

*(insert details of agreed term)*

*(insert details of agreed term)*

*(Continue as necessary)*

## **Section H: Contact details and service of written notices**

### **1 THE LANDLORD'S OR AGENT'S CONTACT DETAILS AND SERVICE OF NOTICES ON THE LANDLORD**

#### **Service of written notices by post or delivery by hand**

1.1 The Landlord agrees that any notices given under or in connection with this agreement which are required to be given in writing may be served on the Landlord either by being left at the address given below or by being sent to that address by first class post. Notices shall be taken to be received the day after being left at the property or the day after posting.

The address for service of written notices and other documents on the Landlord is: **Hackney Town Hall, Mare St, London E8 1EA**

#### **Service of written notices by email**

1.2 The Landlord does agree that any notices given under or in connection with this agreement which are required to be given in writing may, alternatively, be sent by email. Notices sent by email shall be taken to be received the day after being sent. The Landlord's email address for these purposes is: **sales@hackney.gov.uk**.

#### **Landlord's or Agent's Emergency contact details**

1.3 **The Landlord's / agent's (*delete as appropriate*) telephone number is: [ ]**

### **2 THE TENANT'S CONTACT DETAILS AND SERVICE OF NOTICES ON THE TENANT**

#### **Service of written notices by post or delivery by hand**

2.1 The Tenant agrees that any notices given under or in connection with this agreement which are required to be given in writing may be served on the Tenant during the Tenancy either by being left at the Property or by being sent to the Tenant at the Property by first class post. Notices shall be taken to be received the day after being left at the Property or the day after posting.

#### **Service of written notices by email**

2.2 The Tenant **does / does not (*delete as appropriate*)** agree that any notices given under or in connection with this agreement which are required to be given in writing may, alternatively, be sent by email (except as set out in clause H2.3 below). **Notices sent by email shall be taken to be received the**

day after being sent. The Tenant's email address for these purposes is: *(insert Tenant's email address if agreeing to service by email)*.

2.3 Any notice given under section 8 (notice of proceedings for possession) or section 21 (recovery of possession on expiry or termination of assured shorthold tenancy) of the Housing Act 1988 must always be given to the Tenant in hard copy in accordance with clause H2.1 above.

**Tenant's Emergency contact details**

2.4 The Tenant's telephone number for use in emergencies is: *(insert contact details)*

**Section I: Signature**

**Signed and executed as a deed by the following parties** *(delete this wording if the agreement is not being signed and executed as a deed – Tenancy Agreements need to be signed as a deed if they are for a term of 3 or more years)*

Tenant 1  
Signature: .....  
Full name (block capitals):  
Address:  
Date:

Witness (not a family member)  
Signature: .....  
Full name (block capitals):  
Address:  
Date:

Tenant 2  
Signature: .....  
Full name (block capitals):  
Address:  
Date:

Witness (not a family member)  
Signature: .....  
Full name (block capitals):  
Address:  
Date:

Tenant 3  
Signature: .....  
Full name (block capitals):  
Address:  
Date:

Witness (not a family member)  
Signature: .....  
Full name (block capitals):  
Address:  
Date:

*(insert additional signature blocks if there are more than 3 tenants)*

Landlord  
Signature: .....  
Full name (block capitals):  
Address:  
Date:

Witness (not a family member)  
Signature: .....  
Full name (block capitals):  
Address:  
Date:

*(insert additional signature blocks if there is more than 1 landlord)*

**ANNEXES**

**Annex 1: Inventory and report of condition (Clause B9)**

*(If there is an inventory and/ or report of condition they or it should be attached to the agreement here)*

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**TITLE OF REPORT Hackney Voluntary and Community Sector Small Grants  
2019/20 Second Round**

**Key Decision No. CE P85**

**CABINET MEETING DATE (2019/20)**

**15 July 2019**

**CLASSIFICATION:**

**Open**

**If exempt, the reason will be listed in the  
main body of this report.**

**WARD(S) AFFECTED**

**All Wards**

**CABINET MEMBER**

**Cllr Selman**

**Community Safety, Policy and the Voluntary Sector**

**KEY DECISION**

**Yes**

**REASON**

**Affects Two or More Wards**

**GROUP DIRECTOR**

**Tim Shields Chief Executive**

## **1. CABINET MEMBER'S INTRODUCTION**

- 1.1 This report outlines the recommendations for the second of two rounds of small grants awarded through the 2019/20 Voluntary and Community Sector (VCS) Grants Programme.
- 1.2 Hackney's VCS is part of the fabric of the borough and has helped define what the borough is like today. Activities like culture, sport, play and food growing animate spaces. As part of our community, the VCS can reach out and support those that need it most, empower and promote personal resilience of people of all ages and help build connections and bonds between people through community events and volunteering.
- 1.3 The Council recognises the contribution that the VCS makes to community life and to the role they play in achieving our priorities of a safer, fairer more sustainable Hackney. One of the ways we demonstrate this is through our VCS Grants Programme. Small Grants were introduced in 2013/14 as part of that grants programme with the aim of being more inclusive and accessible for newer, smaller or more community based groups. These grants provide funding of between £1,000 and £5,000 for projects contributing the programmes priorities of promoting social inclusion, encouraging independence, developing personal resilience and community cohesion and equalities objective of bridging the gap in outcomes within the community.
- 1.4 On the 21<sup>st</sup> of January 2019 Cabinet agreed recommendations to allocate £1,807,189 from the total VCS Grants Programme budget of £2,644,778 for Voluntary Sector Specialist and Main scheme grants to be delivered in 2019/20. Cabinet also agreed that £170,000 should be ring-fenced specifically for small grants, play schemes and community chest grants, and that this should be awarded via grant rounds during the year. On the 25<sup>th</sup> of February 2019 Cabinet agreed recommendations for the first round allocation of the small grants budget of £80,461. The recommendations in this report cover the second round allocation of this small grants budget of £66,522. Applications for the second round of community chest grants will open in September.
- 1.5 I would like to take this opportunity to thank officers from across Hackney Council along with colleagues from the Voluntary and Community Sector for their volunteered contribution to the assessment process. They are required to assess a number of high quality applications to reach these recommendations, and I am grateful for their hard work.

## **2. GROUP DIRECTOR'S INTRODUCTION**

- 2.1 In 2015 officers were asked to review the grants programme which was last reviewed in 2011. Given the scale of the financial challenge we face we need to ensure that the programme remains fit for purpose, maximises our investment and offers the best approach to supporting the sector and its beneficiaries.

- 2.2 As a result of the review both the design of the programme and its priorities were updated for 2016 onwards. Following consultation the programme was reshaped to deliver against the new Compact principles and to reflect the unique strengths of the sector and its contribution to Hackney.
- 2.3 Small grants enable the VCS to deliver a range of projects at a very local level, to target residents that may have particular needs which the voluntary sector can help to meet.
- 2.4 This report is seeking approval for the disbursement of £66,522 from the Voluntary and Community Sector grants budget of £2,644,718 for 2019/20. The first round of small grants disbursed £80,461 which included grants for holiday play schemes.
- 2.5 It should be noted that the Council received 38 applications for this round of the Small Grants, of which 15 have been recommended for funding. The total amount requested was £166,619. Due to the number of applications received, the quality of applications and the range of services and activities proposed, assessors continue to be faced with difficult deliberations when agreeing the final recommendations.
- 2.6 A full list of small grant applications and recommendations is attached in Appendix 1.

### **3. RECOMMENDATION(S)**

- 3.1 To approve the small grant awards recommended as listed in Appendix One.**

### **4. REASONS FOR DECISION**

#### **4.1 A Place for Everyone open grants programme**

- 4.2 Small grants are one of the grant streams within the 2019/20 Voluntary and Community Sector grants programme, and recommendations are being made for activities that will be delivered during 2019/20.

4.1 Each application has been scored by an assessor from the Council or a partner organisation from the VCS. The application scores were then reviewed to ensure parity and consistency of scoring across assessors and objectives.

4.2 The applications were then considered by the same assessors at a panel meeting and recommendations agreed. The panel considered how the applications scored overall, how they met the grant programme priorities and identified local community needs.

4.3 The panel was also asked to consider the following in relation to the recommendations:

1. The uniqueness of the proposed project activity (one or small number of services of this nature in the borough).
2. Services for residents who have protected characteristics as defined by the Equalities Act; or meet the needs of a particular community.

## **5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

- 5.1 The process for reaching the recommendations is outlined above, and a full list of recommended and non- recommended applications is appended to this report.

## **6. BACKGROUND**

### **6.1 Policy Context**

6.1.1 Applicants for grant funding had to meet the criteria set out within the grants guidance for small grants.

6.1.2 Out of the 15 recommended applications, four are from organisations which have not previously been funded through the Hackney VCS grants programme.

### **6.2 Equality Impact Assessment**

6.2.1 The Council's support for the voluntary and community sector is one of the ways that the Council continues to express its commitment to making social inclusion and community cohesion a reality. This is demonstrated by the diversity of organisations recommended for funding and the inclusion of ring-fenced small grant funding to support local project activity.

6.2.2 Each application has demonstrated its contribution to meeting at least three of the grant programme's equality aims and this is to ensure that the grant investment is focused on improving life chances, and increasing prosperity and equality for all.

6.2.3 The grants review for 2016/17 onwards considered how a new grants programme can continue to promote equality and mitigate against negative impacts. This included consideration of the role of the small grants programme

6.2.4 An Equalities Impact Assessment (EIA) has been carried out on the process and the recommendations and this is attached to this report. The main recommendations of the EIA are:

- Organisations are to provide information on how they are using the investment to contribute to the Council's equality objectives.

- HCVS is funded through their funding agreement to deliver funding advice and organisational support.
- There will be a further round of community chest grants.
- Outcomes for the Grants Programme will be analysed each year by equality groups to ensure spread of investment.

The grants review for 2016/17 onwards has considered how the new grants programme can continue to promote equality and mitigate against negative impacts. This included consideration of the role of a small grants programme.

### **6.3 Sustainability**

6.3.1 The Council will continue to administer the programme electronically through the use of the GIFTS grant software, which eliminates the need for paper applications, thus contributing to the Council's commitment to reducing carbon.

6.3.2 The VCS in Hackney plays an important role in the local economy, supporting both individuals and groups and makes a significant contribution to the community and civil life. Continuing to nurture and support the sector is fundamental to achieving sustainable communities in the borough.

### **6.4 Consultations**

6.4.1 Consultation was undertaken in 2015 to ensure that the views of the VCS and residents shaped the proposals that emerged as a result of the review. Consultation was also undertaken to inform the new Compact and this in turn influenced the design of the new programme. Engagement across the Council was also completed to ensure that services have been able to inform the shape of the programme

### **6.5 Risk Assessment**

6.5.1 The grants process is an open competition between local VCS organisations for a set amount of funding. Due to the competitive nature of the grants programme a large number of projects will not be funded and this risk will always exist for organisations applying to the programme. This is why the Council continues to encourage voluntary sector partners to apply for funding from a range of sources, which many of the organisations already do.

## **7. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES.**

7.1 A report was approved at Cabinet on 21st January 2019 for the allocation of £1.98m of the £2.64m 2019/20 budget for the VCS grants programme. Included in the allocation of £1.98m is £170k for small grants.

7.2 At February Cabinet, small grant awards totalling £80,461 were approved.

7.3 This report seeks to approve the award of a second round of small grants totalling £66,522 as listed in appendix one. This is within the £170k approved for small grants and there are no additional budgetary implications.

## **8. VAT Implications on Land & Property Transactions**

N/A

## **9. COMMENTS OF THE DIRECTOR, LEGAL & GOVERNANCE SERVICES**

9.1 The recommendations in this Report concern the Council's Voluntary and Community Sector Grants Programme for 2019/2020. Agreeing the award of grant aid from the voluntary sector grants programme is reserved to the Mayor and Cabinet under the Mayor's Scheme of Delegation (January 2017). It is proposed that Cabinet award the second round of Small Grants in this Report following award of the first round of Small Grants by Cabinet on 25<sup>th</sup> February 2019.

9.2 The award of a grant is a discretionary function. In determining the scope and award of the programme the Council has considered the Equalities Impact Assessments (EIA) undertaken which helps to ensure the Council has complied with the requirements of the Equality Act 2010.

## **APPENDICES**

**Appendix One – Recommended projects**

**Appendix Two – Not recommended projects**

**Appendix Three – Equalities Impact Assessment**

## **BACKGROUND PAPERS**

**In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required**

**Description of document (or None)**

None

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<b>Comments for and on behalf of Director of Legal &amp; Governance</b>	Patrick Rodger Senior Lawyer ☎020-8356 6187 ✉ Patrick.rodger@hackney.gov.uk





# **Cabinet**

**15 JULY 2019**

**A Place for Everyone –  
Hackney Voluntary and Community  
Sector Small Grants 2019/20  
Second Round –  
Key Decision No. CE P85**

**Appendix 1**

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## Small Grants Round Two 2019/20

### Recommended

Organisation Name	Small Grant / Holiday Playscheme	Project Title	Request Amount
Express Tuition Ltd	Small Grant	We will provide free beginner level English courses over 7 months for 66 unemployed and disadvantaged immigrant people in Hackney by using a specific teaching method which will encourage learners to be confident speakers.	£5000
Hands Inc.	Small Grant	This project provides menopausal women a supportive space to explore and share experiences of menopause, increasing their knowledge, so that they are better able to understand their choices for managing a healthy transition through menopause.	£3460
Outdoor People	Small Grant	Wild Walks Volunteer Training Programme - we aim to expand our successful Wild Walks programme and increase the number of direct beneficiaries through volunteer-led Wild Walks.	£1730
Hackney People First	Small Grant	This grant will fund monthly forum meetings for adults with learning disabilities to tackle social isolation and provide them with opportunities and support to be involved in local council consultations, planning, and co-production activities.	£4994
The Huddleston Centre in Hackney	Small Grant	A course of 12 weekly choir sessions for 10 of our members to come together and learn a mixture of contemporary pop songs and world music with a professional Choir leader.	£4790
Social Material CIC	Small Grant	An alternative qualification / certificate for individuals with significant mental illness, learning difficulties, and / or history of criminal offending; including weekly creative workshops, one-to-one support, exhibition visits and an awards ceremony.	£4940
Xenia	Small Grant	Outreach, planning and facilitation of 13 workshops bringing together diverse women (including long term residents, migrants and refugees) to participate in activities that promote community cohesion and increased awareness of their local area.	£4998
Wipers Youth C.I.C	Small Grant	The Ether Programme - a fun interactive Leadership and Personal Development workshop to support BAME young men in building their personal resilience, independence and social inclusion.	£2990

Schonfeld Square Foundation	Small Grant	This Program will enable elderly people, including those suffering from limited mobility, isolation or dementia, to participate in activities that will improve their social inclusion, independence and personal resilience.	£5000
Community Centre for Refugees from Vietnam, Laos & Cambodia	Small Grant	Garden of Hope Project: Older people Garden club promoting friendship building and self-initiated activities to improve social inclusion for vulnerable adults aiming to give resilience supporting a richer quality of life within the community.	£4960
Hackney Wick FC	Holiday Playscheme	Sport into social action will be holiday playscheme to stop unstructured activity for at-risk and deprived young people within the borough, through football and social action campaigns to help create diversion away from anti-social behaviour	£5000
MISGAV	Small Grant	Weekly netball and music sessions for 20 women with disabilities, to encourage their inclusion, independence and well-being by fostering relationships with each other and non-disabled community members, and by enhancing their physical/emotional health.	£4960
Sistah Space	Small Grant	Ain't I a Black Woman. This initiative gives voice to African heritage women affected by domestic or sexual abuse the opportunity to express themselves through art culture and performance while learning valuable, transferable skills.	£5000
Badu Community CIC	Small Grant	A Cultural Event during Black History Month organised by our young people as part of their training and development program. With a series of workshops for our service users around diversity and respecting others.	£3850
Hacquenye Football Club	Small Grant	We are planning to organise a healthy lifestyle program for the girls who are between 14-17 years old and live in Hackney, to help them to choose healthier foods and spend more time being active.	£4850
		<b>Total</b>	<b>£66,522</b>

# **Cabinet**

**15 JULY 2019**

**A Place for Everyone –  
Hackney Voluntary and Community  
Sector Small Grants 2019/20  
Second Round –  
Key Decision No. CE P85**

**Appendix 2**

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## Small Grants Round Two 2019/20

### Not Recommended

Organisation Name	Small Grant / Holiday Playscheme	Project Title	Request Amount
Stars 'n' Stripes (SNS)	Small Grant	Stop! Learn! Cycle! will provide regular cycle activities and create social cycle spots for families. Improving community cohesion by providing positive engagement activities that improve resident wellbeing, community safety and active travel.	£4,990
Protection Approaches	Small Grant	We will deliver our innovative, preventing prejudice, building resilience, workshop programme with secondary schools across Hackney helping 2,000+ students gain understanding and skills to stand against prejudice in their school and wider community	£5,000
Hackney Community Gospel Choir	Small Grant	Help to run 1 session of 12 week singing for HCGC which provides platform for the community to come together to learn and socialise thereby reducing isolation and assist community cohesion	£1,200
Hackney Young Peoples University (HYPU)	Holiday Playscheme	HYPY October half term 2019 programme activities to bring young people together in a safe educational environment.	£4,989
Hackney Chinese Community Services	Small Grant	HCCS aiming to deliver 'Digital Inclusion' project to support the elderly to get online with smart phone, tablets or iPad learning this basic, but essential skill to be independently reaching out to friends and relatives.	£5,000
Rising Stars Support CIC	Small Grant	The project will provide 6 months of integrated MMA (mixed martial arts), personal development and employment/career support workshops to young people in Hackney aged between 14-25.	£4,840
Youth on the Move (London)	Small Grant	We are seeking funding towards our project Pathways; Engaging the Disengaged. This is a midweek residential designed to engender a life-long interest in education and respectable employment amongst disadvantaged YP at risk of becoming NEET.	£5,000

Odd Eyes Theatre	Small Grant	#Haters is a community project using filmmaking, drama and debate as platforms for young people and local residents to voice their opinions and start meaningful conversations about knife crime, cultural stereotypes, social media and regeneration.	£3,500
Helping Girls Achieve	Holiday Playscheme	A holiday Play scheme for disadvantaged children.	£5,000
Uprising Community Club	Small Grant	Uprising Community Club inspiring sessions on Mondays, for senior citizens within the London Borough of Hackney. Uprising provides a nutritious hot meal, weekly exercise classes, assistance with benefits claims and fun activities for seniors.	£4,980
A New Song	Small Grant	The grant will fund an After school Club for girls from low income families. uniting girls in the community and bringing out their independence, whilst developing talents and learning new skills.	£5,000
ACE	Small Grant	ACE will open a Saturday afternoon club called ?Together Forever!? Taking place over seven months, from 3-5 pm, targeting 160 disadvantaged girls aged 9-13 years, from low-income families in the community of Hackney.	£5,000
Street Scenes	Small Grant	A series of social, creative street events where diverse people socialise, building more inclusive communities in areas with high levels of inequality, exclusion and loneliness. Events run by a volunteer network that supports new volunteers.	£5,000
Healthy Minds, Healthy Bods	Small Grant	Promoting Growth Mindset and Healthy Lifestyle in new proactive pioneering approach to mental health in over 55s. Creating terrific opportunity to inspire, encourage and motivate change in nutrition, routine and exercise. An exciting fresh project.	£4,982
The House of AMAU	Small Grant	Drama workshops leading to a public performance, facilitated by a local professional actress and aimed primarily at elder Hackney residents; particular those that may be struggling to cope with loneliness or isolation.	£4,370
Behind Every Kick	Small Grant	We believe in putting thought behind every kick, throw, metre, stride; by providing skill development, mentoring and career opportunities we empower young people to build positive relationships, further personal goals and contribute to their community.	£4,550



Active Within	Small Grant	Providing free group exercise classes to all the community. The barriers Active Within target are Financial, Social and Accessibility. Bringing the community together whilst improving health and wellbeing.	£5,000
Find Your Voice CIC	Small Grant	We propose to run a series of parent and child, multisensory singing and play sessions. The 5X1hr sessions are fun, inclusive and focus on numeracy, literacy, phonics as well as family wellbeing and resilience.	£4,550
African Community School	Small Grant	ACS Empowerment Project will deliver accredited functional English Entry Level 2 and 3, skills for CV Creation job search and employability skills to 22 disadvantaged unemployed adults living in poverty, without qualifications on our waiting list	£4,942
FUTURE CHALLENGES - UK	Small Grant	MULTICULTURAL FASHION FUSION highlights our fascination with other cultures and our willingness to embrace styles from other regions, without defining ourselves -or them- by those fashion choices.	£3,000
ONE STEP AHEAD PROJECT (OSAP)	Small Grant	First Serve programme will use the vehicle of tennis to empower youth resident by providing local sport facilities with a life skills program that promotes positive values, healthy habits & strengthens working relationships between residents of Clapton E5	£3,000
Read Easy Hackney	Small Grant	To purchase key reading manuals and accompanying reading books for our reading pairs to use in 4 of Hackney's libraries.	£1,204
S Pinter Youth Project	Holiday Playscheme	"Integrated" Summer holiday Playscheme for 550 CAYP and 70 youth volunteers, 5-16 yrs, from various schools/backgrounds, inc. thrilling, developmental and innovative experiences. CAYP with moderate to severe disabilities/special needs will be included.	£5,000
		<b>Total</b>	<b>£100,097</b>

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# **Cabinet**

**15 JULY 2019**

**A Place for Everyone –  
Hackney Voluntary and Community  
Sector Small Grants 2019/20  
Second Round –  
Key Decision No. CE P85**

**Appendix 3**

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## London Borough of Hackney Equality Impact Assessment Form

The Equality Impact Assessment Form is a public document which the Council uses to demonstrate that it has complied with Equality Duty when making and implementing decisions which affect the way the Council works.

The form collates and summarises information which has been used to inform the planning and decision making process.

**All the information needed in this form should have already been considered and should be included in the documentation supporting the decision or initiative, e.g. the delegate powers report, saving template, business case etc.**

Equality Impact Assessments are public documents: remember to use at least 12 point Arial font and plain English.

The form must be reviewed and agreed by the relevant Assistant Director, who is responsible for ensuring it is made publicly available and is in line with guidance. Guidance on completing this form is available on the intranet.

<http://staffroom.hackney.gov.uk/equalities-based-planning-and-decision-making>

### **Title of this Equality Impact Assessment:**

Hackney Voluntary and Community Sector Small Grants 2019/20 – second round small grants

### **Purpose of this Equality Impact Assessment:**

To ensure that recommendations for the 2019/20 Voluntary Sector Small Grants deliver services which are accessible to all, and that the investment actively contributes to achieving the Council's equality objectives.

### **Officer Responsible: (to be completed by the report author)**

<b>Name: Claire Witney</b>	<b>Ext: 3630</b>
<b>Directorate: Chief Executives</b>	<b>Department/Division: Policy and Partnerships</b>

**Director:** Stephen Haynes **Date:** 3<sup>rd</sup> June 2019

**Comment :**

### **PLEASE ANSWER THE FOLLOWING QUESTIONS:**

In completing this impact assessment, you should where possible, refer to the main documentation related to this decision rather than trying to draft this assessment in isolation. Please also refer to the attached guidance.

#### **STEP 1: DEFINING THE ISSUE**

##### **1. Summarise why you are having to make a new decision**

On the 21st of January 2019, Cabinet agreed recommendations to allocate £1,977,189 from the total budget of £2,644,718 for Voluntary Sector specialist, main and holiday play scheme grants to be delivered in 2019/20. Cabinet also agreed that £170,000 should be ring-fenced specifically for Small Grants, playschemes and Community Chest grants, and that this should be awarded via grant rounds during the year. The recommendations that this Equality Impact Assessment considers cover the second allocation of this Small Grants budget. Small Grants were introduced in 2013/14 following a grants review consultation and were designed to respond to specific feedback about the need to make the Voluntary Sector Grants Programme more inclusive and accessible for newer, smaller or more community based group.

Each application has been scored by an assessor from the Council or a partner organisation from the VCS. The application scores were then reviewed to ensure parity and consistency of scoring across assessors. The applications were then reviewed by the same assessors at a panel meeting, and recommendations agreed.

**2. Who are the main people that will be affected?** Consider staff, residents, and other external stakeholders

The primary group of people affected are residents who benefit from grant funded programmes. The other people affected are staff and trustees of voluntary and community sector organisations. The main focus for this assessment is on the residents who benefit from the grants programme. In order to describe the main people affected, the profile of beneficiaries from grant programmes is considered alongside the profile of the general population in Hackney which is published here:

<http://www.hackney.gov.uk/Assets/Documents/Hackney-Profile.pdf>

The profile of beneficiaries is from 2017/18 monitoring: we ask groups and organisations who receive funding to tell us about the profile of people who have benefited from using the services offered or the projects and activities run, as this helps provide a picture of who is benefiting from the Community grants awarded.<sup>1</sup> It is worth noting that the profile of beneficiaries from grant programmes is unlikely to match the general population because of programme priorities which lead to children and young people being over represented in the profile of beneficiaries.

Residents who benefit from grant funded programmes, staff and trustees of voluntary and community sector organisations. A profile of the people who

benefited from taking part in the projects and services in 2017/18 is provided below:

### **Across the main, small, specialist and holiday play scheme grants**

We ask groups and organisations who receive funding to tell us about the profile of people who have benefited from using the services offered or the projects and activities run, as this helps provide a picture of who is benefiting from the Community grants awarded. The equality information provided by community groups and organisations on the age, ethnic background and gender of beneficiaries is set out in the charts below.

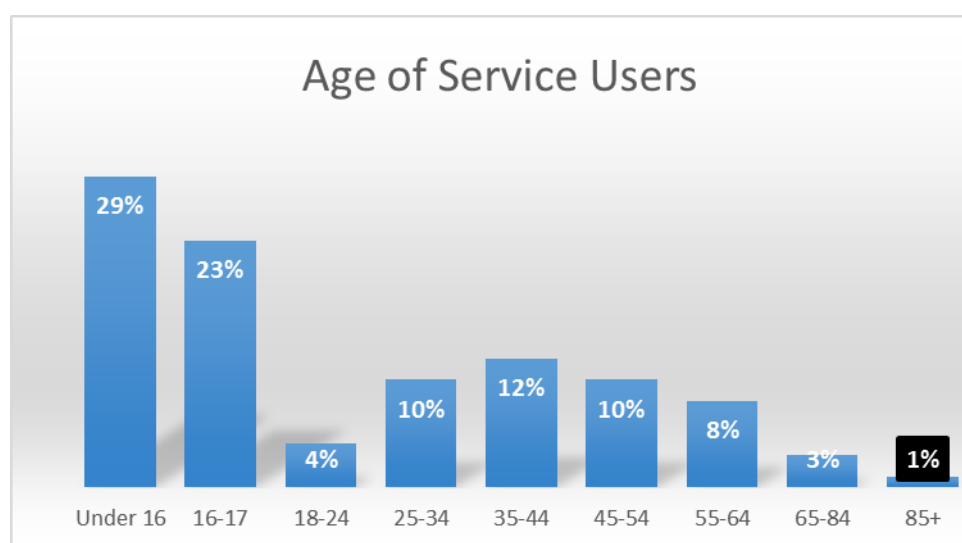
There were significant gaps in the service user data provided by grantees which make it difficult to draw conclusions about those who benefited from the grant funded activities. The level of data provided varies between protected characteristic, with particular gaps in the ethnicity data. These gaps are due to the nature of some of the projects delivered through the grants programme, such as community events, as well as the data recording systems used by the grantees.

Given the underreporting, the analysis of service user data in this report does not reflect the known targeting of grant funded projects which work with a high number of different community groups; it also does not reflect feedback from grantees about the people who accessed the projects.

We will continue to review our data collection form and guidance notes and work with organisations and community groups who are awarded grant funding to improve the collection of service user data.

### **A profile of project beneficiaries**

#### **Age Profile – Table 1**



Of the known data (27% known), grant funded projects were used by residents of all ages with the greatest percentage being those aged 16 and

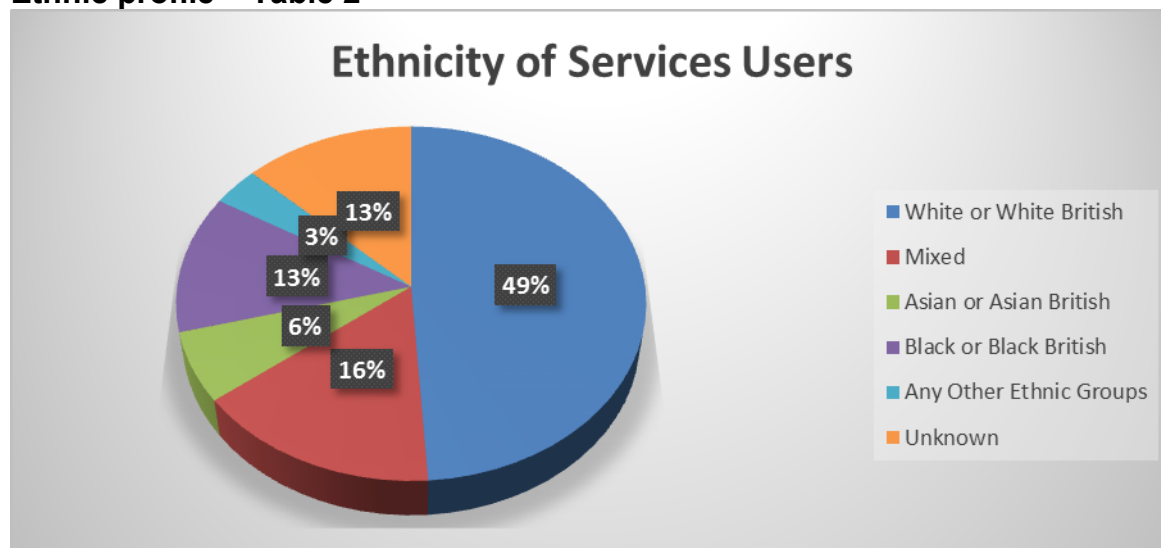
under. Some 12% of project beneficiaries were aged 55 plus. Those aged 18-55 made up 36% of beneficiaries (Table 1).

The known age profile of project beneficiaries is greater for Hackney's younger population where 25% of the population are under 18 years old. Whilst 61% of Hackney's population is aged between 18-55 years old, 36% of beneficiaries of project beneficiaries were within the age group. The beneficiaries of projects for people over 55 broadly reflects the borough profile of 14%. However it is difficult to draw accurate conclusions from this level of data.

### Gender Profile

The data for known participants suggests there were slightly more females than males participating in grant funded activities, 57% females, compared with 43% males. However it is difficult to draw accurate conclusions from the level of data provided.

### Ethnic profile – Table 2



#### *% of beneficiaries by ethnicity*

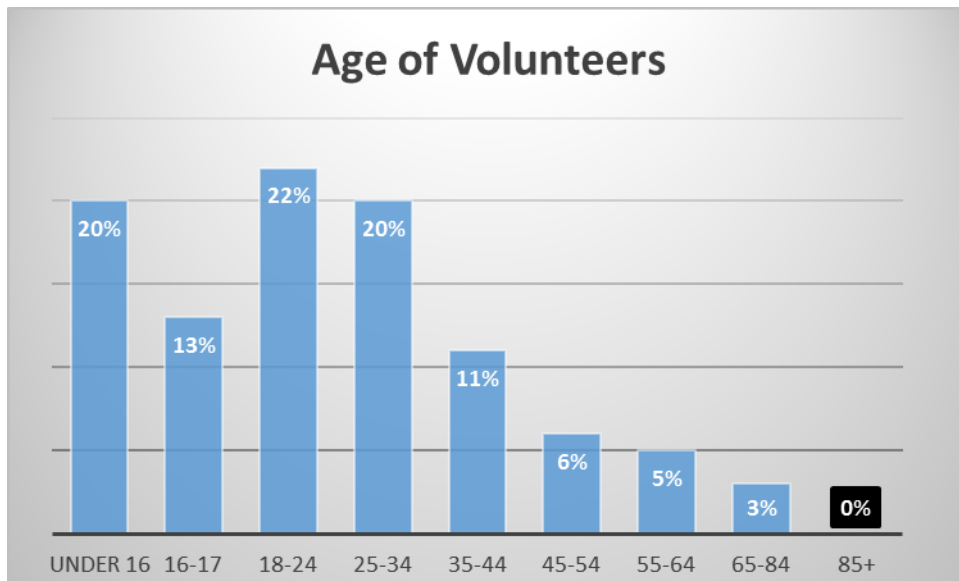
Ethnicity data was provided for 87% of project beneficiaries which makes it difficult to draw accurate conclusions about the ethnic background of the people who accessed grant funded projects and services.

The available data shows that 56% of beneficiaries whose ethnicity is known were White British with the second largest group identifying as Mixed. Some members of the Turkish and Kurdish communities in Hackney may use any other ethnic group's categories such as Arab, to describe their ethnic origin.

### A profile of the volunteers involved in running the projects and services

#### Age profile of volunteers – Table 3





#### *% of volunteers by age*

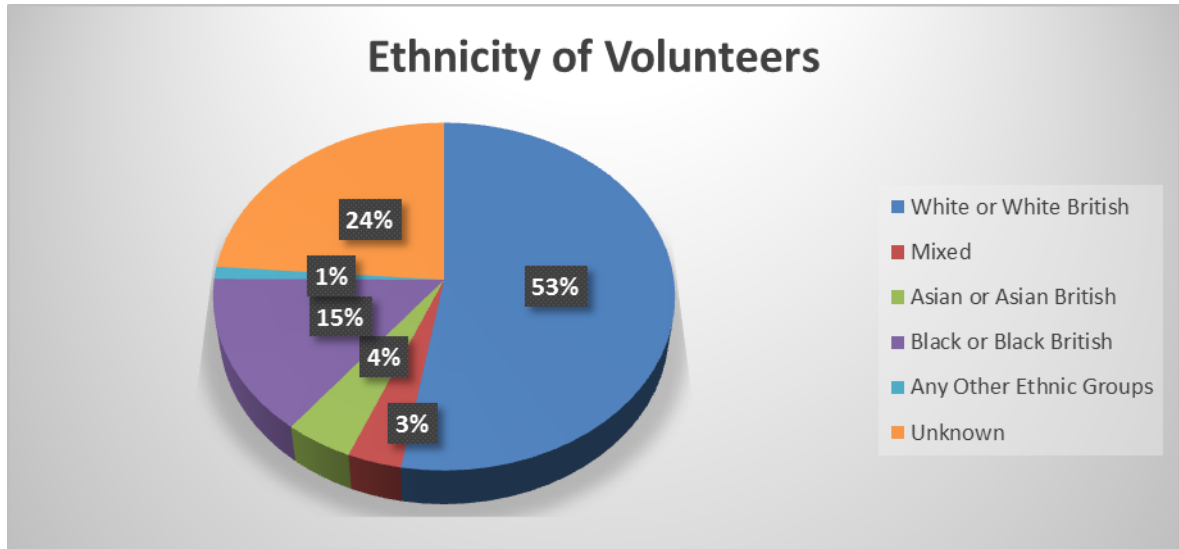
Just over 1,733 people volunteered to help run grant funded projects. Table 3 above provides a breakdown of volunteers by age.

The majority of volunteers involved whose age was known were between the ages of 18 and 44, which are the age bands with the largest proportion of Hackney's population. Of those who volunteered, 8% of people were over 55 years, which suggests grant funded projects provided some opportunities for older people to be involved in community life which helps reduce social isolation (Table 3). Although the age of 26% of volunteers was not reported the high numbers provide a fairly reliable picture.

#### **Gender profile of volunteers**

Of those whose gender was known, there were more female volunteers recorded than male volunteers, 68% compared with 31%. 1 volunteer had gender identity different to the sex assumed to be at birth.

#### **Ethnic background of volunteers - Table 4**



*% of volunteers by ethnicity*

Data on ethnic background was provided for 85% of the volunteers who worked on grant funded projects. However, the proportion of volunteers where ethnicity was known from White British and Any Other White backgrounds was higher than for the borough as a whole, 69%, compared with 55%, while the proportion of volunteers from Black communities was disproportionately lower, 19% compared with 23% of the population overall. The ethnicity of 24% is unknown.

### **Grants review 2015**

The programme was previously reviewed four years ago and a number of changes made following consultation with key stakeholders and partners. It was therefore timely to undertake another review to ensure that the programme remains fit for purpose in the future and reflected the new Compact.

Consultation undertaken with funded groups as part of the 2014/15 year grant evaluation included questions about the impact of their project activity, the difficulties they encountered along the way and the lessons they learnt from the project. The policy team also carry out annual monitoring visits to grant funded community projects and staff made similar observations about what works, what impact the projects have and what barriers and pitfalls projects have to deal with.

Using the insight gathered and building on the known strengths of the sector and its ability to deliver borough wide priorities, a new set of strategic priorities was used as a focus for open grants:

- Promote social inclusion, encourage independence and develop personal resilience

- Build positive relations between different groups and communities that will maintain the high levels of community cohesion in Hackney

In order to provide further clarity on the application of the new priorities the Council provided guidance on who it is important for the funding to reach and support by focussing on:

- improving the lives of people living in difficult circumstances;
- supporting and enabling people with complex needs;
- working with people who would benefit most from improved health;
- alleviating the impacts of poverty;
- Improving the lives of disabled people and or older people;
- Tackling inequality;
- Breaking harmful and chaotic cycles in people's lives;
- Enabling engagement and an active voice for those least likely to be heard.

Once initial proposals had been scoped consultation was undertaken through an on-line survey and a series of focus groups hosted by Hackney Council for Voluntary Services (HCVS) to ensure that they resonated with the sector and would achieve the required outcomes. An open on-line survey for residents was undertaken via the Council's website once consultation with the sector was concluded.

The new priorities were largely well received by the VCS which reflects the fact that the Council built on their earlier consultation feedback in the development process. Much of the feedback received during the engagement process reflected the sectors ideas and comments for how the new priorities and focus for the grants programme could be successfully implemented. A Funder Plus model of support in the first year and early consideration of how the new priorities were translated into the application process have helped to ensure that the transition was well managed.

The language of the priority relating to cohesion was changed as a result of feedback from the VCS. The redrafted priority is now clearer in describing the outcomes required relating to the building of community relations through VCS intervention and that whilst the borough does enjoy high levels of cohesion these need to be maintained.

Feedback on the guidance on who it is important future funding and support should reach identified two new areas that were included. One relates to the breaking of harmful cycles in people's lives, a key outcome related to the building of personal resilience and independence. The other relates to ensuring active engagement and a voice for those that are disadvantaged and vulnerable in our communities.

### **Engagement in relation to 2019/20 funding round**

Officers from the Council and partners from the voluntary and community sector have worked together and used their knowledge and expertise from the relevant service areas to reach these recommendations. Each panel

considers applications against the priorities and objectives and the panel is configured to include the relevant areas of expertise and knowledge from across the borough.

### **Involvement in assessment**

Officers from the across the Council were selected to reflect a breadth of areas including knowledge such as community cohesion and adult social care. Several voluntary sector representatives were also part of the assessment panel.

### **3. Equality Impacts**

This section requires you to set out the positive and negative impacts that this decision or initiative will have on equalities.

Detailed information on how to consider the impacts on equalities is included in 'Guidance on equalities based planning and decision making' which can be downloaded from the intranet here.

#### **4 (a) What positive impact could there be overall, on different equality groups, and on cohesion and good relations?**

The grant investment is intended to support residents from across Hackney's diverse communities including groups who share different equality groups. All of the grant applicants are required to describe the needs they seek to address and how they can evidence this. They are also asked to demonstrate how they contribute towards at least three of the grant programme's equality aims:

1. The lives of people living in difficult circumstances are improved
2. People with complex needs are supported and enabled
3. People with the worst health are supported to improve their wellbeing
4. The impacts of poverty are alleviated
5. The lives of disabled people and or older people are improved
6. Inequality is addressed
7. People are supported to identify harmful patterns and take steps to change
8. Those least likely to be heard are engaged and have an active voice

Grant applicants are also asked if they work specifically with any particular equality group and also with the following higher need groups: looked after children, ex-offenders, job seekers, those on a low income, homeless people, refugees and asylum seekers and substance mis-users.

The programme continues to invest in services for particular communities although the panel have carefully considered the budget available to ensure an appropriate balance between investment for generic services which can be accessed by all residents and those that are targeted at particular communities.

In order to meet new emerging needs, support innovation and reach new communities it is important to ensure that some organisations are funded who have not been funded in previous years. For this round eight out of seventeen of the recommended applications are from organisations that have not been funded by the Hackney a Place for Everyone Grants Programme. This year the programme is funding targeted projects which reach the following groups:

<b>Age</b>	<p><b>Four</b> projects will be working with children and young people under the age of 24. Two of these will be working with children and young people under the age of 18.</p> <p><b>Seven</b> projects will be working with adults only with one of these only working with people over 50. One of these projects will enable elderly people, including those suffering from limited mobility, isolation or dementia, to participate in activities that will improve their social inclusion, independence and personal resilience.</p>
<b>Disability people</b>	<p><b>Six</b> projects will be working with disabled people. These include a project delivering a course of 12 weekly choir sessions and another project providing netball and music sessions for 20 women with disabilities.</p>
<b>Ethnicity</b>	<p>The recommendations include <b>four</b> targeted projects including one that will deliver a cultural event during Black History Month organised by young people as part of a wider training and development program.</p>
<b>Gender</b>	<p>There are <b>five</b> projects working specifically with females and <b>one</b> specifically with males. One project working with women is for menopausal women to share experiences of menopause and increase their knowledge. Another project gives voice to African heritage women affected by domestic or sexual abuse and the opportunity to express themselves through art culture and performance while learning transferable skills.</p>
<b>Gender identity</b>	<p>There are no projects working with gender identity.</p>
<b>Pregnancy</b>	<p>There are no projects working specifically with women who are pregnant or have recently had a baby</p>
<b>Religion</b>	<p>There are <b>two</b> projects working with Orthodox Jewish communities. All other projects are universal. The grants programme does not fund projects or services which enable organisations to further their religious beliefs specifically with religious communities.</p>
<b>Sexual orientation</b>	<p>There are no projects working with sexual orientation</p>
<b>Other groups</b>	<p>There are several projects working with people who have higher needs including;</p> <ul style="list-style-type: none"> <li>Seven projects working with people with mental health issues</li> <li>Two working with ex-offenders</li> <li>Seven projects working with people on a low income</li> <li>Two projects working with unemployed people seeking work</li> <li>Three working with people with caring responsibilities</li> <li>One working with substance mis-users</li> <li>Two working with people affected by domestic violence</li> <li>Three working with refugees and/or asylum seekers</li> </ul>

**4 (b) What negative impact could there be overall, on different equality groups, and on cohesion and good relations?**

The table provided under 4(a) shows which equality groups will benefit from the small grants programme through targeted work and conversely which equality groups are not covered by any targeted work. The Council cannot fund every organisation that applies for funding due to the budget available and the competitive nature of any grants programme means that the recommendations are subject to variation each year. So if there are no high scoring projects that supported a particular community in need, this need would not be met through the grants programme. The ways that we have considered and mitigated these negative impacts is described under 5 and 6.

**STEP 3: REACHING YOUR DECISION**

**5. Describe the recommended decision**

The recommendation is that Cabinet approve the following list of grants:

<b>Organisation Name</b>	<b>Small Grant / Holiday Playscheme</b>	<b>Project Title</b>	<b>Request Amount</b>
Express Tuition Ltd	Small Grant	We will provide free beginner level English courses over 7 months for 66 unemployed and disadvantaged immigrant people in Hackney by using a specific teaching method which will encourage learners to be confident speakers.	£5000
Hands Inc.	Small Grant	This project provides menopausal women a supportive space to explore and share experiences of menopause, increasing their knowledge, so that they are better able to understand their choices for managing a healthy transition through menopause.	£3460
Outdoor People	Small Grant	Wild Walks Volunteer Training Programme - we aim to expand our successful Wild Walks programme and increase the number of direct beneficiaries through volunteer-led Wild Walks.	£1730
Hackney People First	Small Grant	This grant will fund monthly forum meetings for adults with learning disabilities to tackle social isolation and provide them with opportunities and support to be involved in local council consultations, planning, and co-production activities.	£4994

The Huddleston Centre in Hackney	Small Grant	A course of 12 weekly choir sessions for 10 of our members to come together and learn a mixture of contemporary pop songs and world music with a professional Choir leader.	£4790
Social Material CIC	Small Grant	An alternative qualification / certificate for individuals with significant mental illness, learning difficulties, and / or history of criminal offending; including weekly creative workshops, one-to-one support, exhibition visits and an awards ceremony.	£4940
Xenia	Small Grant	Outreach, planning and facilitation of 13 workshops bringing together diverse women (including long term residents, migrants and refugees) to participate in activities that promote community cohesion and increased awareness of their local area.	£4998
Wipers Youth C.I.C	Small Grant	The Ether Programme - a fun interactive Leadership and Personal Development workshop to support BAME young men in building their personal resilience, independence and social inclusion.	£2990
Schonfeld Square Foundation	Small Grant	This Program will enable elderly people, including those suffering from limited mobility, isolation or dementia, to participate in activities that will improve their social inclusion, independence and personal resilience.	£5000
Community Centre for Refugees from Vietnam, Laos & Cambodia	Small Grant	Garden of Hope Project: Older people Garden club promoting friendship building and self-initiated activities to improve social inclusion for vulnerable adults aiming to give resilience supporting a richer quality of life within the community.	£4960
Hackney Wick FC	Holiday Playscheme	Sport into social action will be holiday playscheme to stop unstructured activity for at-risk and deprived young people within the borough, through football and social action campaigns to help create diversion away from anti-social behaviour	£5000

MISGAV	Small Grant	Weekly netball and music sessions for 20 women with disabilities, to encourage their inclusion, independence and well-being by fostering relationships with each other and non-disabled community members, and by enhancing their physical/emotional health.	£4960
Sistah Space	Small Grant	Ain't I a Black Woman. This initiative gives voice to African heritage women affected by domestic or sexual abuse the opportunity to express themselves through art culture and performance while learning valuable, transferable skills.	£5000
Badu Community CIC	Small Grant	A Cultural Event during Black History Month organised by our young people as part of their training and development program. With a series of workshops for our service users around diversity and respecting others.	£3850
Hacquenye Football Club	Small Grant	We are planning to organise a healthy lifestyle program for the girls who are between 14-17 years old and live in Hackney, to help them to choose healthier foods and spend more time being active.	£4850
		Total	£66,522

We took the following actions to ensure that the grant investment is planned and delivered to positively benefit as wide a range of equality groups as possible and to mitigate negative impacts:

- The programme was advertised widely across the VCS in Hackney using the VCS networks, the Council's website and social media.
- Workshops and surgeries on the applications process were also run by Hackney CVS. Officers from the Policy Team also attended workshops to share information about where to find published evidence and advice about collecting additional evidence locally.
- The assessment process has taken into account (as far as possible) the needs of groups with protected characteristics and the impact on Hackney's communities. Based on the information provided by applicants and the expertise of the panel, decisions have been made to reflect this.
- There are also further opportunities for a range of organisations and groups to apply for funding at different intervals throughout the year.



For 2019/20 there is another round of Small Grants and two rounds of the Community Chest grants. This has a focus on the equality objective to 'Foster good relations by building a strong sense of community, neighbourliness and pride' also provides opportunities for very small groups to deliver activities which further cohesion within Hackney.

- To support a final moderation, we analyse the level of investment which is approved for projects that state they work with particular equality groups and identify if there are any concerns or gaps and whether any applications should be reconsidered. The following observations are made:
    - There is one project that works specifically with LGBT or transgender residents
    - There are no projects that work with pregnant women or those who have recently had a baby.
    - There are nine projects that work with low income groups
    - There are twelve projects that work with higher need groups
- Given this is a competitive small grants programme we did not recommend that any changes were made to the final allocations as the applications that were just below the threshold for approval did not address these gaps either. An action to consider how we promote the grants programme is included in the action plan to take account of these observations.

## STEP 4 DELIVERY – MAXIMISING BENEFITS AND MANAGING RISKS

### 6. Equality and Cohesion Action Planning

No	Objective	Actions	Outcomes highlighting how these will be monitored	Timescales / Milestones	Lead Officer
1	Organisations provide information on how they are using the investment to contribute to the Council's equality objectives.	Organisations are required to demonstrate this in the delivery of their service and evidence will be required as part of the monitoring process.	Evidence of how the grant investment has contributed to achieving the equality objectives.	Each application process	Grants manager

2	Where possible, organisations are encouraged to access alternative sources of funding.	HCVS is funded to deliver funding advice and organisational support.	Organisations use support to strengthen their applications for alternative sources of funding.	Ongoing	Community Investment and Partnerships Manager
3	There are further opportunities to diversify investment within the sector to reach smaller community based organisations through a further round of small grants budget and introduction of community chest grants.	There will be a further round of Small Grants and Community Chest grants for 19/20	Future rounds will be widely promoted and will be monitored by equality groups to assess if they are diversifying investment.	Each application process	Grants manager
4	Ensure that the investment is monitored and analysed by equality groups.	Analyse outcomes each year by equality groups to ensure spread of investment.	An outcomes report will be produced and reviewed in order to inform future priorities and programmes and to inform the ways that we promote the programme to address gaps and issues.	July 2019	Grants manager and Community Investment and Partnerships Manager



**ABNEY PARK RESTORATION PROJECT**

**Key Decision No. NH P55**

<p><b>CABINET MEETING DATE (2019/20)</b> 15 July 2019</p>	<p><b>CLASSIFICATION:</b> Open  If exempt, the reason will be listed in the main body of this report.</p>
<p><b>WARD(S) AFFECTED</b> Stoke Newington</p>	
<p><b>CABINET MEMBER</b> Cllr Feryal Clark Deputy Mayor and Cabinet Member for Health, Social Care, Leisure and Parks</p>	
<p><b>KEY DECISION</b> Yes  <b>REASON</b> Spending or Savings</p>	
<p><b>GROUP DIRECTOR</b> Kim Wright, Group Director, Neighbourhoods and Housing</p>	

## **1. CABINET MEMBER'S INTRODUCTION**

- 1.1 Hackney has one of the largest expanses of parks and green space in inner-London, with 58 sites across the borough totalling some 282 hectares - ranging from major parks and green spaces such as Hackney Marshes, Clissold Park and Abney Park to small gardens such as Hoxton Square and Church Street Gardens.
- 1.2 The Council has long recognised the impact that quality parks and green spaces can have on the achievement of its vision and objectives and has therefore placed a high priority on improving its parks and green spaces, with over £25m of investment in them since 2010.
- 1.3 The Council is committed to continuing to deliver improvement to its parks and green spaces and is therefore now seeking funds to restore Abney Park, one of the borough's most important and ecologically diverse historic parks.
- 1.4 The proposed restoration project in Abney Park will deliver significant improvements to both the landscape and historic buildings within the Park to facilitate a range of educational, employment and health benefits for the local community as well as the ability of the site to generate revenue for the Park's future maintenance.
- 1.5 To deliver this ambitious restoration project it is proposed to apply for a 'Parks for People' grant of £4.4m from the National Lottery Heritage Fund (NLHF) to help fund the improvement work. If successful, the works would be delivered over an approximate 18-month period, beginning in early 2020.

## **2. GROUP DIRECTOR'S INTRODUCTION**

- 2.1 This report seeks endorsement for the restoration proposals for Abney Park, which will be submitted to the NLHF in 2019.
- 2.2 Given the scale of investment required, a grant from the NLHFL offers the only realistic opportunity for restoring Abney Park as the Council does not have the resources to pay for the substantial capital works required itself.
- 2.3 The restoration proposals are supported by a thorough business plan to ensure that opportunities for the Park to generate revenue are robustly evidenced. Securing improved financial sustainability and resilience for the Park has been at the heart of the proposals.
- 2.4 The report also seeks approval for the Council's match funding commitment of £710,000 which is critical in securing the HLF's grant of £4.4 million.

## **3. RECOMMENDATION(S)**

- 3.1 It is recommended that Cabinet:

- (a) Agree to the proposals for the restoration of Abney Park and delegate responsibility for the agreement of any amendments to them, following further consultation with stakeholders and the National Lottery Heritage Fund, to the Group Director, Neighbourhoods and Housing;
- (b) Agree to the submission of a planning application to the Local Planning Authority for the restoration of Abney Park;
- (c) Agree to the submission of a Stage 2 Grant Application to the National Lottery Heritage Fund for a maximum sum of £4,411,400;
- (d) Agree to the allocation of match funding of £710,000 from the Council towards the overall costs of the restoration project; and
- (e) Agree that any additional income from the operation of the restored buildings in the Park (beyond operational costs) is ring-fenced for re-investment in Abney Park.

#### **4. REASONS FOR DECISION**

- 4.1 The buildings in Abney Park are in urgent need of repair. Major investment is required in order to stop them degrading further, to fulfil their potential as community spaces and to become income generating assets which will help secure a more financially sustainable future for the Park. Although in better condition than the buildings, the Park's infrastructure is also in need of some improvement and investment.
- 4.2 Given the scale of investment required, securing external funding is the only option to deliver the full scope of the restoration project. The Council needs to provide a reasonable level of partnership funding and a commitment to re-invest additional income generated from the NLHF investment back into the Park in order to be eligible for funding.

#### **5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

- 5.1 The option of doing nothing was considered. This was not pursued as the buildings within the Park would continue to decline and fall into further disrepair. In addition, any potential revenue generating opportunities to make the Park more sustainable would have been lost.
- 5.2 It was determined in 2017 that a NLHF grant offered the only realistic opportunity of addressing issues of long-term decline as the Council does not have the resources to pay for the substantial capital works required.

#### **6. BACKGROUND**

##### **6.1 Introduction**

##### **6.1.1 Abney Park**

Abney Park Cemetery is one of Hackney's finest green spaces and is listed as a Grade II Park on the Historic England Register of Parks and Gardens of Historic Interest. As one of the 'Magnificent 7' cemeteries in London, it is the resting place of around 200,000 people in 60,000 graves which range from elaborate monuments to path side common grave markers. No longer a working cemetery, Abney Park is run as a Park and is a Site of Metropolitan Importance for Biodiversity. It is one of London's most central woodlands and is an important site for deadwood invertebrates and fungi.

Although Abney Park is now closed to new burials, the Council makes every effort to honour burial deeds associated with existing plots that were made when the site was an active cemetery. In practice, this equates to around four burials a year.

Abney Park covers 12.5 hectares and is located between Stoke Newington Church Street and Stoke Newington High Street. Proudly embracing its urban setting, Abney Park is a very quiet and tranquil place.

The site of Abney Park was formed in 1840 from the estates of Fleetwood House and Abney House, the latter of which had been the home of renowned non-conformist and hymn writer Isaac Watts. This association quickly made Abney Park the foremost burial ground for Dissenters – those practicing their religion outside the established church. It was founded on these principles, with a non-denominational chapel at its core, and was open to all, regardless of religious conviction.

Abney Park was managed by the Abney Park Cemetery Company until the late 1970s, when they went into administration. Abney Park then fell into disrepair and the site was eventually abandoned, allowing a uniquely wild atmosphere to develop. Whilst this wild nature has allowed the site to become an important and well-loved urban woodland environment, it has left much of the infrastructure of Abney Park in desperate need of investment and development.

As well as the memorials, Abney Park has a non-denominational funerary chapel, two Egyptian style lodges and a boundary wall, all of which are in various states of disrepair. Currently, negative perceptions of the site mean that Abney Park does not receive as many visitors as it should as the site does not allow users to fully engage with all that the Park has to offer.

There are two entrances to Abney Park; the High Street entrance and the Church St. entrance, which is only accessible to those who can climb stairs. A new ramp will be introduced at this entrance to improve its accessibility. A key aspect of the Abney Park Restoration Project will be further restoring the Chapel and re-landscaping the areas around the two entrances as well as developing a programme of activities that encourages a new audience to the Park.

Fourteen of Abney Park's 60,000 graves and memorials are listed. Other listed structures in the Park are the wall, railings and gates at the southern

end of Abney Park; a chapel and a civilian war memorial. Underneath the war memorial are catacombs, however these were concreted shut at some point in the 1980s.

The dense nature of Abney Park (both in terms of memorials and trees) means that most Park activity is confined to paths, however there are small areas to the north and south of the main entrance to the Park which are more open. One such area is currently being used as a Forest School, a workshop for a group of wood carvers and is the site for a small temporary building that is used as a classroom. All of these buildings are in various states of disrepair and will be replaced by new buildings as part of the Abney Park Restoration Project.

Abney Park has a wide variety of uses. It is a popular site for dog walkers, people seeking peace and quiet and as a cut-through between Stoke Newington Church St and Stoke Newington High St. It is used for outdoor theatre productions, filming, photo shoots and supports two local community craft groups; stone carvers and woodworkers. Abney Park also has some people who are using the site inappropriately, specifically for drinking, drug taking and cruising. The Abney Park Restoration Project seeks to combat such antisocial by increasing footfall and the variety and number of appropriate activities taking place on site.

The Abney Park Trust ran the site from 1991 to 2015. In 2015, Hackney Council took over management of the Park. The Abney Park Trust still have a close involvement in the site in an educational and community capacity.

The Abney Park Development Board was set up following the Council's resumption of the management of Abney Park. The overall aim of the Board is to identify how Abney Park can continue to be managed and developed in order to deliver a site that reflects the needs of the local community, whilst celebrating its built and cultural heritage as a historic landscape and its significant biodiversity value as a woodland.

At a meeting in January 2016, the Board recommended that Hackney Council commission the writing of a Conservation Plan (CP) for the site. This was followed by a bid to the Heritage Lottery Fund as was for development funding under the Parks for People programme in August 2017.

### **6.1.2 Vision and Objectives**

The Abney Park Development Board has recommended the following vision and set of objectives for Abney Park.

#### **VISION**

*"A unique and self - sustaining green space that conserves and celebrates its built and natural heritage and is at the heart of the local community"*

Abney Park has always celebrated diversity. It is a unique and fantastic place with a mix of built and natural beauty, and is free and open to all those who wish to enjoy it.

It is the resting place for dissenters and non-conformists and those committed to helping others – the 200,000 people buried here include William Booth and James Braidwood, founders of the Salvation Army and London Fire Brigade respectively.

As a local nature reserve and a site of metropolitan importance for biodiversity, Abney Park proudly embraces its urban setting and is a uniquely peaceful and meditative woodland with a rich flora and fauna. As a historic landscape, Abney Park has changed much since its design but the values of inclusiveness and respect for others and its role as a tranquil place for all to enjoy have remained constant.

Moving forward Abney Park will be a place that understands, respects and celebrates its biodiversity, built heritage and landscape. A safe and inclusive space, well used by locals and those visiting from further afield that caters for the wide range of interests held by Park users.

Abney Park was originally designed as a garden cemetery, complete with arboretum and rosarium. The site has learning at its heart, and acts as a vast outdoor classroom for those interested in discovering more about biodiversity, local history and built heritage. Education will remain a core value of Abney Park and its unique qualities and features should be used to proactively engage and inspire the local community.

## OBJECTIVES

Abney Park should be a place...

**... that celebrates its unique qualities and features**

Abney Park has a wonderful social history and thousands of personal stories. It is a landscape with an ecology, biodiversity and beauty that proudly embraces its urban setting. Visitors should be amazed equally by the built and natural heritage of the site and these various aspects of Abney Park will require careful management and conservation. By the end of 2021 Abney Park should have none of its listed monuments or buildings on Historic England's 'At-Risk Register' and its management as a whole will be underpinned by a conservation management plan that understands the biodiversity and designed landscape of the site.

**... which is financially stable and supported by good governance structures**

The governance of Abney Park will be accountable, transparent, responsive, inclusive, effective, efficient and participatory. By the end of 2021 Abney Park



will have developed its income generation sufficiently to cover all its costs and be operating in a self-sufficient manner for the future.

**... whose infrastructure is well cared for, is accessible and as such welcomes its users**

Welcoming and accessible entrances and a properly maintained network of paths will encourage visitors to step inside and explore Abney Park.

**... that has strong community links**

Abney Park must proactively engage all areas of the community, using its unique qualities and features to encourage local schools, community groups and residents to use the site. By 2021 a vibrant events programme will attract a total annual audience of more than 2,000. Annual volunteer hours will exceed 5,000 and local schools will have the opportunity to use the Park as part of their everyday teaching.

**... that is safe, welcoming, inclusive, well used and supported**

Abney Park users should feel safe and supported in the Park. By the end of 2021 Abney will have an annual footfall of more than 400,000; coupled with increased volunteering numbers the Park will feel better used and safer, whilst still remaining a place for peaceful relaxation.

**... with 'learning' at its heart**

By 2021 Abney Park will better cater for the range of interests held by Park users. Abney Park will feature a dedicated space for learning that can be open all year, regardless of weather.

**... with an accessible and well used Chapel**

The Chapel should be accessible so that by 2021 it is back in use and no-longer on Historic England's 'Heritage at Risk Register'.

### **6.1.3 Round 1 Submission**

In December 2017, Hackney Council applied for a Development Grant for the Abney Park Restoration Project.

The following summary gives an overview of the works that will be included in the project. The proposed designs can be found in Appendix 1.

The Abney Park Restoration Project will reverse the decline of Abney Park and build in a sustainability that will allow the site to not only be conserved, but improved for years to come. A combination of restoration to the original buildings and designed landscape and new buildings and landscaping will provide spaces that give Abney Park the ability to look after itself and for visitors to fully engage with the many facets of its heritage. Ground Source

Heat Pumps will be installed to provide a sustainable, low carbon form of heating for the new café building, reducing the site's reliance on fossil fuels.

Abney Park was originally designed as an arboretum and garden cemetery and the unique and atmospheric mix of stone and wood remains the reason why people love the site to this day. The management of the site has historically been focused on fixing problems once they occur rather than proactively managing them, however. This has meant that opportunities to improve Abney Park have been missed in the past, and the Abney Park Restoration Project will remedy this.

### **Activities and interpretation**

The Abney Park Restoration Project will allow Park users from the local community and visitors from further afield to fully engage with Abney Park's heritage. Those visiting with specific interests will be provided with tailored interpretation and those wanting a beautiful peaceful place to get away from the hustle and bustle of the city will find a well-maintained and high quality Park.

The project will build on Abney's existing volunteer programs; from gardening and event stewarding to tours, walks and talks, volunteers will be the lifeblood of the site.

In the financial year 2016/17 Abney benefited from around 1,000 volunteer days; a mix of local regular volunteers and one-off corporate groups. Due to a lack of basic infrastructure and insufficient staffing numbers, the volunteer program has reached capacity despite lots of work still needing to be done and a large and ever increasing pool of willing volunteers to draw from.

The Abney Park Restoration Project will facilitate even more volunteering by providing a new base for volunteers and employing a full time Park Manager. On top of the benefits brought to the Park and local community by these volunteers, an increased staff presence onsite will help combat the perception of Abney Park as an unsafe place.

The Abney Park Restoration Project will provide space for an on-site stone mason, who will keep the skills of memorial masonry alive, providing courses and opportunities for education whilst assisting with the restoration, repair and conservation of the 60,000 graves onsite. Likewise, the Abney Park Restoration Project will provide space and infrastructure for a green woodworking studio to allow visitors to learn the ancient skills of spoon making and bowl turning using trees from the site to create beautiful memorials of Abney Park.

New interpretation will allow visitors to learn about Abney's history as an arboretum.

### **Area around the High Street Lodges**

The buildings inside the Stoke Newington High Street entrance are currently in a poor state of repair. All educational and volunteer activities are currently run out of an old leaky portacabin that is frequently infested with mice. The stone masons are based in rooms with no ventilation and the woodcarvers work out of a shipping container. The site office located in one of the original lodges leaks and is drafty and damp. The toilets frequently block and overflow requiring portaloos to be brought in to the site as a backup. Improvement works in this area will restore the original lodges and replace the old portacabins and shipping containers with new buildings that will provide space for education, craft activities, volunteers, offices, a café and a forest school.

The new buildings and restored lodges will be fit for purpose, with modern facilities that encourage and facilitate regular use. They will be designed to not detract from the original lodges which will be restored to their former glory. The activities that take place in the buildings will be overt, allowing visitors to understand and engage with the management of the site. Visitors will see and be able to engage with a stone mason restoring a monument or wood carvers making something beautiful from an Abney tree.

The landscape around the High St. will also be improved to encourage those that have never stepped through the gates to come in and experience the site. Barriers in front of the site help inhibit access and a lack of visible activity behind the gates mean many locals have never been to Abney Park. All of the works to the area at the High St. gates will encourage and enable more people to visit and enjoy the Park. The new cafe in particular will be a significant draw for Abney Park encouraging more people through the gates.

### **The Chapel**

The Abney Park Restoration Project will complete the restoration of the Abney Park chapel – a building at the heart of Abney Park that has in recent times been a symbol of the site, abandoned and becoming a ruin. The project will enable sensitive restoration that will allow maximum different uses of the building, helping with the financial sustainability of Abney Park and keeping the building relevant. The chapel will be able to host art events, music and theatre productions, to be used by local community groups for education and health and wellbeing activities and be somewhere for people to get married and celebrate.

The project will reinstate windows, a floor and stairs in the turrets leading to tiered seating above the porch. Services will be provided to allow the building to be well-used without losing any of its charm. The immediate setting of the chapel will also be improved to provide a fitting setting for this symbolic structure, one of the only parts of the site not be covered in graves. These works will see the chapel removed from the Historic England Heritage at Risk Register.

### **The Entrance at Church St.**

The entrance at Church St. has long been a barrier to visitors, as it has a very narrow entrance with stepped access. As part of the Abney Restoration Project this area will be redesigned to become more welcoming and accessible. Gentle ramps will replace steep stairs allowing all visitors to access the Park. New interpretation and landscaping works will encourage those who have only ever peered through the gates to enter and explore the site.

### **The Wider Landscape at Abney Park**

Much of the work to the landscape of Abney Park recommended by the recent Conservation Plan has already started and is being undertaken by volunteers who have achieved a huge amount over the past two years. To complete the works recommended by the Conservation Plan and to maintain the Park going forward, however, more volunteering is needed. Although there is appetite for more volunteering at Abney, numbers are limited by infrastructure and staffing. Several corporate groups have been turned away because of a lack of supervisors.

The Abney Park Restoration Project will provide dedicated space and staff to oversee an expansion in volunteering on site thereby allowing the Park landscape to continue improving for years to come.

### **New Staff**

The Abney Park Restoration Project will implement a staffing structure that aims to be financially self-sustaining and able to deliver the wide range of activities described elsewhere in this report. This structure will be made up of three positions, a full time Manager, Head Gardener and Venues and Marketing Officer.

### **Self-Sustainability**

A key objective for the Abney Park Restoration Project is to make Abney Park financially self-sustaining. Income from a cafe, bookings in the chapel and other events will be used to pay for the maintenance of the Park.

### **Governance**

Abney Park is managed by Hackney Council, who will oversee the Restoration Project. The Abney Park Trust work in partnership with the Council to put on walks, talks and events, and will assist in the delivery of the Activity Plan.

## **6.2 Policy Context**

### **6.2.1 Mayor's priorities**

The Mayor has identified 5 priorities for the Council, one of which is “prioritising quality of life and the environment...and protecting our parks and green spaces”.

### **6.2.2 Libraries, Leisure and Green Spaces Service’s vision**

The Libraries, Leisure and Green Spaces service seeks ‘to enhance the health and wellbeing of the local community by providing excellent leisure and green spaces services.’ The restoration project will play a key role in meeting this vision.

### **6.2.3 Hackney Joint Health and Wellbeing Strategy**

By increasing accessibility to Abney Park, and increasing the number of activities for children and families, the Abney Park restoration project supports a number of the priorities of the joint Health and Wellbeing Strategy. These include ‘Improving the health of children and young people’, ‘tackling childhood obesity’ and ‘focusing on relieving depression and anxiety for working age adults’.

### **6.2.4 The restoration project supports the above strategies in the following ways**

- Establishing a volunteering programme that has proven beneficial for people experiencing mental health issues.
- Enhancing facilities to encourage nursery and school aged children to be active outdoors
- Providing opportunities for young unemployed people through volunteering to gain employment related skills and experience.

## **6.3 Equality Impact Assessment**

An Equality Impact Assessment (EIA) has been undertaken for this project. It highlights the benefit of providing a ramp at Stoke Newington Church Street to increase the accessibility of the site, of consulting widely to ensure support for the project from local communities, and the importance of the activity plan to increase the audiences who use the site. The EIA can be found in Appendix 2.

## **6.4 Sustainability**

The restoration of Abney Park will have a positive impact on the sustainability of the Park in the following areas:

- The proposed new cafe on site will have a green roof, creating a habitat for various species present on site.
- A Ground Source Heat Pump is proposed to heat the new buildings, reducing the site’s reliance on fossil fuels.
- The new café and restored chapel seek to improve the financial sustainability of the site.

- It is proposed that waste materials (e.g. fallen trees) from the Park will be reused on site (e.g. as wood chippings) wherever possible.

## 6.5 Consultations

Consultations have been a key part of the application and its development to date. The consultations which have taken place to date include:

### ▪ **Use of Hackney Parks: Hackney Matters Survey (February – May 2015)**

An online survey was completed by 395 people in early 2015 which explored the use of parks and green spaces across Hackney, and provided useful information about how people use local parks and what kind of activities and events would be popular.

The survey found that parks and green spaces across Hackney are currently widely used (99%), with most people using parks at least once a week during the spring/summer. Those using parks and green spaces less often may be drawn in by improved facilities (44% toilets / 39% seating) as well as publicised, affordable events.

There is a good appetite for events among residents, with 92% feeling that these are important in the community. Community events are most popular (72%), but there was also interest in food events (66%), market events (64%), music events (62%) and events for children (60%). 70% felt they would use parks more often if there were events they wanted to go to.

Nearly nine in ten (87%) exercise in parks and green spaces. Most take part in activities they have organised themselves, but 16% take part in Council run activities. There is some interest in more fitness classes, particularly among women (34%).

### ▪ **Initial User Survey – Abney Park (2017)**

There were 129,474 visitors to the Park in 2017. A user survey was carried out between December 2016 and January 2017 to which participants could respond on paper or online. 409 people responded, over 97% of whom had visited the Park.

More than 70% of respondents ticked more than one option as their principle reason for visiting, suggesting that the Park is used and appreciated in a number of different ways. Likewise, many respondents listed more than one theme that they like about the Park, demonstrating that the mixture of built and natural heritage is an asset. 46% of respondents visit the Park once a fortnight or more frequently.

Of the current users 44% wanted to see new facilities, and mostly mentioned toilets and a café. 76% wanted to see more events and activities in the Park – in particular events about the site itself and more of

the kind of events that already take place. This suggests a high level of satisfaction with the current events programme and an appetite for more of the same.

The profile of respondents were 64% female and 35% male, predominately white British and 90% without any disability. Most users, 67%, were aged between 35 and 65, with only 14% over 65 and 2% under 25.

- **Abney Park – Public Consultation (October – November 2018)**

Further public consultation took place at Abney's Autumn Fayre in October 2018. More than 100 visitors voted on the types of activities they would like to see in an improved Abney Park.

## 6.6 Risk Assessment

A Risk Register was established for the Restoration Project at an early stage. The key risks are outlined below with relevant mitigation measures:

- **Business Plan Targets**
  - **Risk:** Making the Park more financially sustainable has been a core focus for the project. A Business Plan is being developed and thorough research compiled on potential income generating elements of the project. However, if the assumptions made in the Business Plan do not materialise, the Park will fail to generate sufficient revenue to meet the cost uplifts.
  - **Mitigation:** A thorough business planning process has been undertaken, and due consideration has been given to a number of alternative income streams, so that the Park has a diverse range of revenue generating activities.
- **Construction Costs**
  - **Risk:** Costs exceed estimated budgets.
  - **Mitigation:** A Quantity Surveyor forms part of the Design Team, and costs have been monitored throughout the design process. Where required, value engineering will bring the project back within budget.
- **Ecology**
  - **Risk:** That protected or invasive species were found.
  - **Mitigation:** Ecological surveys have been undertaken. There will be pre-application discussions with Natural England and the completed surveys will be issued to them where required.

- **National Lottery Heritage Fund (NLHF)**

- **Risk:** Securing funding for the delivery stage of the project is subject to a successful submission to the National Lottery Heritage Fund (NLHF).
- **Mitigation:** Ensuring that the projected cost at development stage is on par with the initial costing estimate will deliver confidence to the HLF that the project is managed carefully and is likely to be delivered within budget. Ongoing discussions with the HLF provide feedback throughout the design process.

- **Planning Policy**

- **Risk:** The project does not receive planning permission
- **Mitigation:** The Council has opted for a PPA to address any potential issues in advance of a formal planning submission. In addition there is a number of meetings scheduled to review the design with Historic England (HE), Tree Officers, Conservation Officers and Natural England. A number of extra surveys (such as a bat survey in and around the Chapel) have been conducted to address any ecological concerns.

## **7. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES**

7.1 This report seeks approval to progress proposals for Abney Park restoration works as outlined in section 3.

7.2 The Council already has approval of a Stage 1 National Lottery Heritage Fund, grant of £314,100 to support design development work at Abney Park. This paper sets out proposals for delivery of the project, if an NLHF bid is successful.

7.3 The delivery of the project is estimated to cost approximately £5.1m. This will be funded as follows.

- NLHF grant £4,411,400
- Hackney Council funding £710,000
- External funding contribution of £80,000

7.4 A CPRP bid for £700,000 capital for the Abney Park project was endorsed by the Mayor and included in the Capital Update report for the Cabinet meeting on 23 Oct 2017.

7.5 Hackney Council will also be contributing £90,000 to the project from its reserves.



7.6 £80,000 of project costs should be raised from other external sources. This is seen as highly achievable, but Hackney Council will need to underwrite this amount in case it cannot be raised externally.

7.7 The table below sets out total financing requirements (i.e. for Stage 1&2)

Abney Park Budget Projection			
Project Phase	LBH (£)	HLF (£)	Total Budget Required (£)
Stage 1 – Design & Development	80,000	314,100	394,100
Stage 2 – Restoration Works	710,000	4,411,400	5,031,400
<b>Total Funding Required</b>	<b>790,000</b>	<b>4,725,500</b>	<b>5,425,500</b>

7.7 The outlined project seeks to establish additional revenue streams to help make Abney Park financially sustainable in the future. The café and wedding venue will bring additional income into the site, and help to pay for the additional staff and activity plan. Staff will be recruited on a fixed term basis, with match funding from the NLHF. Any new positions will only be retained if the site is able to achieve the income targets outlined in the site’s business plan.

7.8 At this juncture there are no financial risks outside the Planning decision outcome scheduled for later in 2019 and the NLHF Stage 2 application outcome. The investment proposal is fully supported and Finance will review costings once both decisions are known.

## **8. COMMENTS OF THE DIRECTOR OF LEGAL AND GOVERNANCE SERVICES**

8.1 Taking decisions on procurement exercises relating to major projects are reserved to the Mayor and Cabinet under the Mayor’s Scheme of Delegation (January 2017) so Cabinet will need to approve the recommendations in this Report.

8.2 Delegation is sought to permit the Group Director, Neighbourhoods and Housing to approve any amendments to the details of the arrangements in this Report. Paragraph 2.2 i) of the Executive Procedure Rules states that “If the Elected Mayor delegates functions to the Executive, unless s/he directs otherwise, then the Executive may delegate further to.....an officer” and therefore Cabinet is permitted to agree such delegation.

8.3 The Abney Park Restoration Project will initially require the Council to submit an application for grant funding of a maximum of £4.4m from the Heritage Lottery Fund. If successful the Council will then need to enter into a grant agreement with the Heritage Lottery Fund for such funding.

## BACKGROUND PAPERS

In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required

### Description of document

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<b>Comments for and on behalf of the Head of Finance – Neighbourhoods &amp; Housing</b>	Simon Theobald (Head of Finance) Ext. 4304 E-mail: <a href="mailto:simon.theobald@hackney.gov.uk">simon.theobald@hackney.gov.uk</a>
<b>Comments for and behalf of the Director of Legal and Governance Services</b>	Patrick Rodger (Senior Lawyer - Procurement) Legal Services Ext. 6187 Email: <a href="mailto:patrick.rodger@Hackney.gov.uk">patrick.rodger@Hackney.gov.uk</a>

## 9. APPENDICES

### 9.1 Please see below for

Appendix 1 – Abney Park Restoration Project Designs  
Appendix 2 – Equality Impact Assessment (EIA)

**Cabinet**

**15 JULY 2019**

**ABNEY PARK RESTORATION  
PROJECT  
KEY DECISION NO. NH P55**

**Appendix 1**

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## Appendix 1 – Abney Park Restoration Project Designs



Fig. 1: Site Masterplan



Fig. 2: New accessible entrance at Church Street

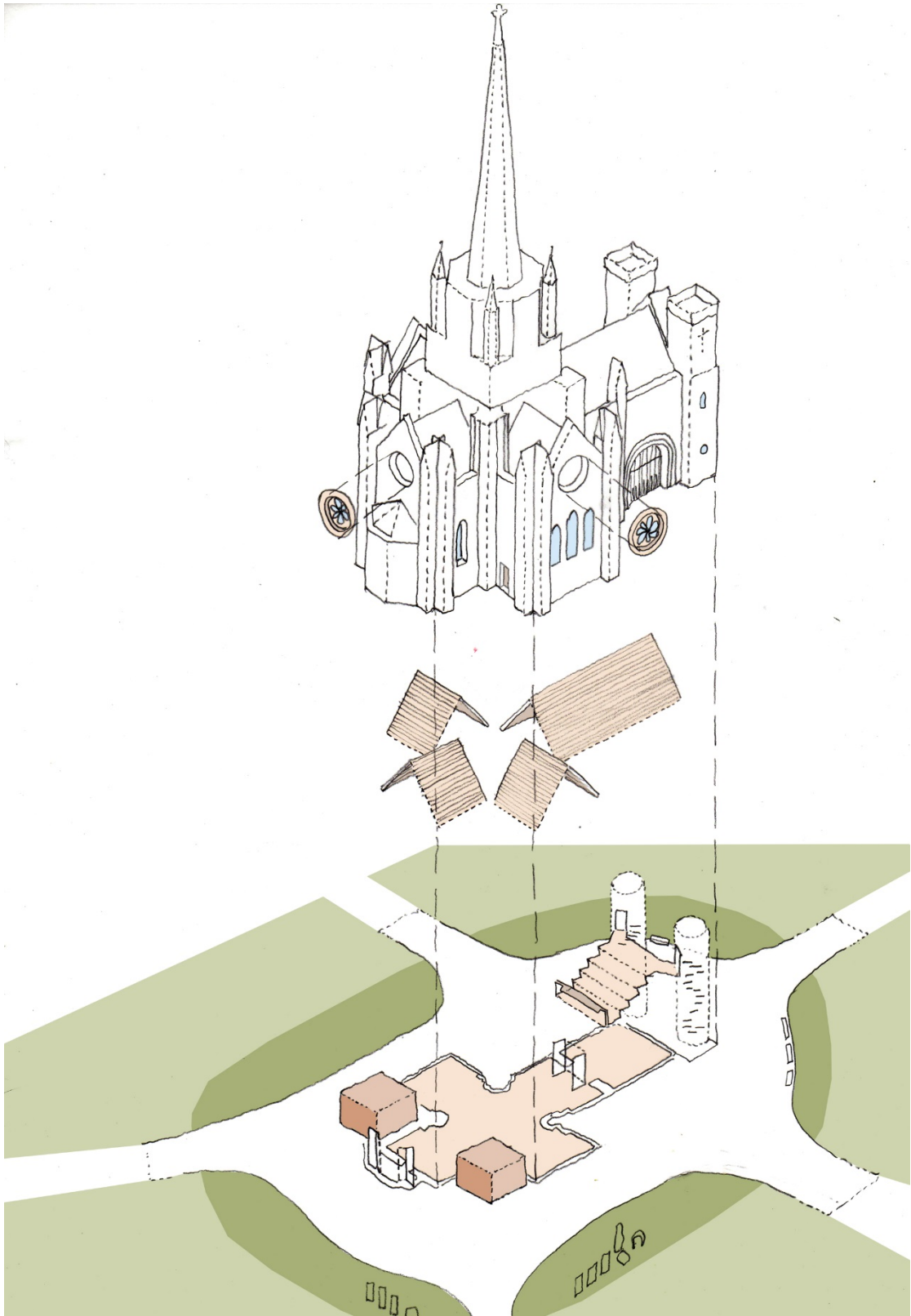


Fig. 3: New floor, toilets and upper seating in the Chapel

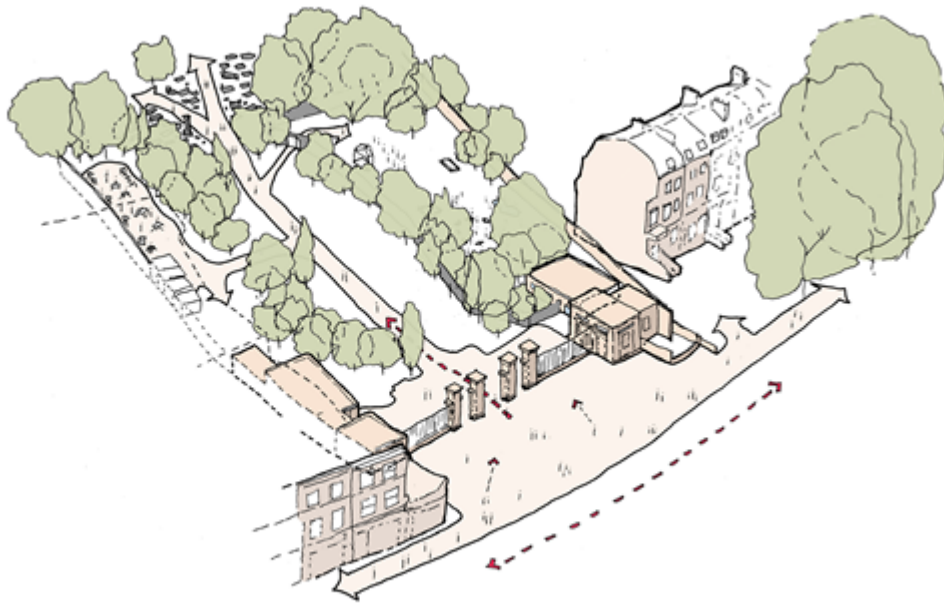


Fig. 4: Current layout at Stoke Newington High Street Entrance

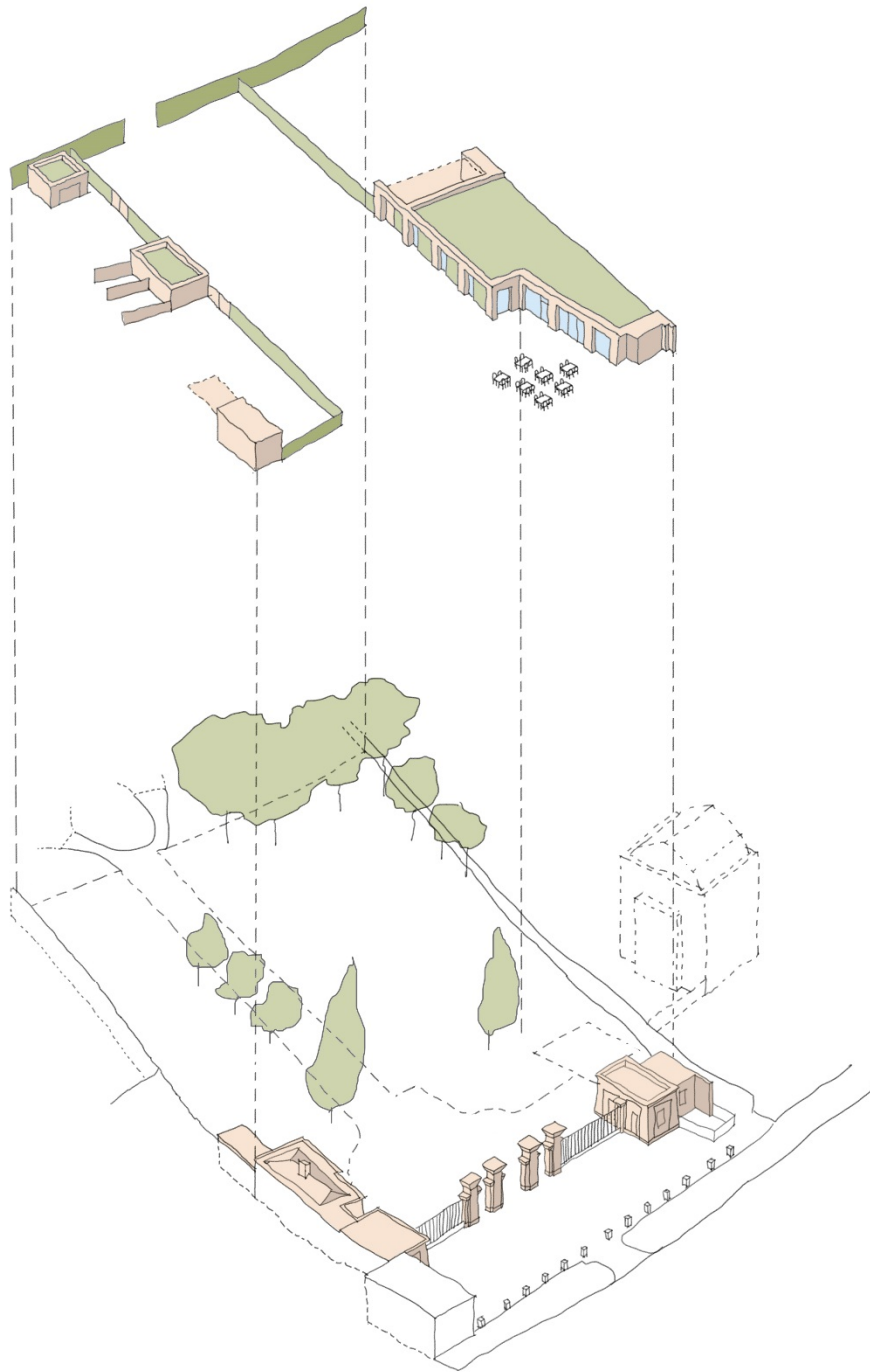


Fig. 5: Proposed new elements at East entrance





Fig. 6: Artist's impression of new café interior



Fig. 7: Artist's impression of new café exterior

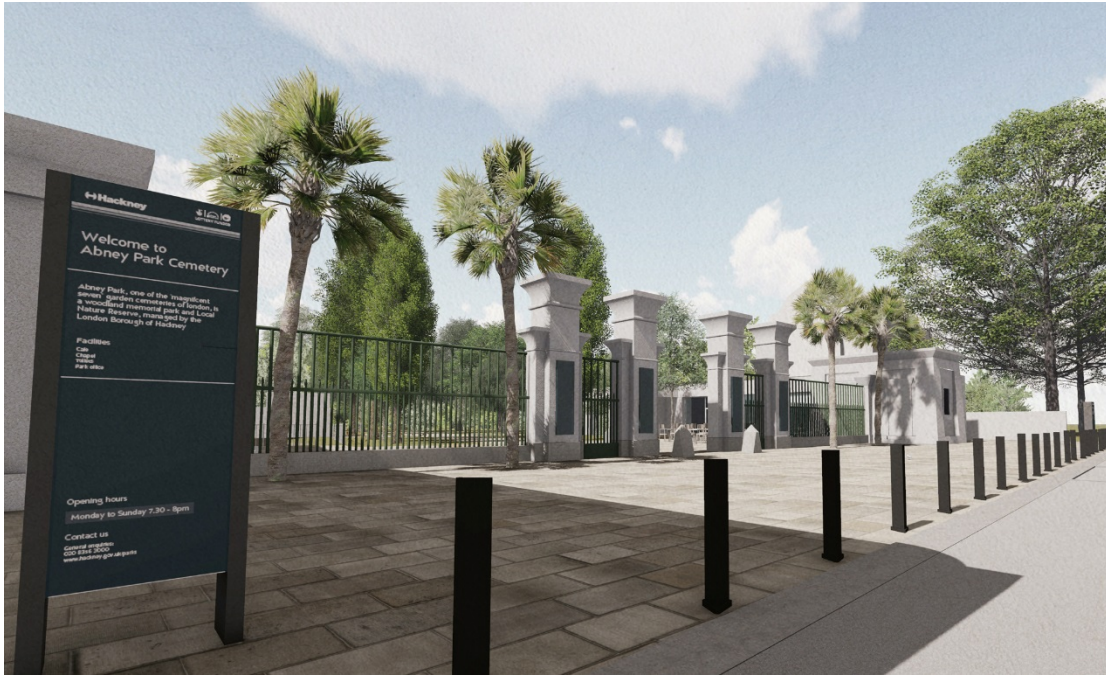


Fig. 8: Artist's impression of new forecourt in front of East entrance



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**Cabinet**

**15 JULY 2019**

**ABNEY PARK RESTORATION  
PROJECT  
KEY DECISION NO. NH P55**

**Appendix 2**

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## London Borough of Hackney Equality Impact Assessment Form

The Equality Impact Assessment Form is a public document which the Council uses to demonstrate that it has complied with Equalities Duty when making and implementing decisions which affect the way the Council works.

The form collates and summarises information which has been used to inform the planning and decision making process.

**All the information needed in this form should have already been considered and should be included in the documentation supporting the decision or initiative, e.g. the delegate powers report, saving template, business case etc.**

Equality Impact Assessments are public documents: remember to use at least 12 point Arial font and plain English.

The form must be reviewed and agreed by the relevant Assistant Director, who is responsible for ensuring it is made publicly available and is in line with guidance.

Guidance on completing this form is available on the intranet.

<http://staffroom.hackney.gov.uk/equalities-based-planning-and-decision-making>

### Title and purpose of this Equality Impact Assessment:

Abney Park HLF Project

### Purpose of this Equality Impact Assessment:

To address equalities linked to potential improvements in Abney Park

### Officer Responsible: *(to be completed by the report author)*

<b>Name: Sam Parry</b>	<b>Ext: 4899</b>
<b>Directorate: Neighbourhoods and Housing</b>	<b>Department/Division: Public Realm</b>

### PLEASE ANSWER THE FOLLOWING QUESTIONS:

- 1. Please summarise the service, function, policy, initiative or saving.**  
Describe the key objectives and outcomes you expect. Make sure you highlight any proposed changes.

The proposed restoration project in Abney Park will deliver significant improvements to both the landscape and historic buildings within the Park to facilitate a range of educational, employment and health benefits for the local community as well as the ability of the site to generate revenue for the Park's

future maintenance

**2. Who are the main people that will be affected?** Consider staff, residents, and other external stakeholders.

Users of Abney Park will be affected by the improvement project in Abney Park in a positive way - there will be more facilities available in the park for users to benefit from.

**3. What research or consultation(s) have been carried out?** Please provide more details, together with a summary of what you learned.

Consultations have been a key part of the application to date and its development. The consultations which have taken place to date include:

#### **§ Use of Hackney Parks: Hackney Matters Survey (February – May 2015)**

An online survey was completed by 395 people in early 2015 which explored the use of parks and green spaces across Hackney, and provided useful information about how people use local parks and what kinds of activities and events would be popular.

The survey found that parks and green spaces across Hackney are currently widely used (99%), with most people using parks at least once a week during the spring / summer. Those using parks and green spaces less often may be drawn in by improved facilities (44% toilets / 39% seating) as well as publicised, affordable events.

There is a good appetite for events among residents, with 92% feeling that these are important in the community. Community events are most popular (72%), but there was also interest in food events (66%), market events (64%), music events (62%) and events for children (60%). 70% felt they would use parks more often if there were events they wanted to go to.

Nearly nine in ten (87%) exercise in parks and green spaces. Most take place in activities they have organised themselves, but 16% take part in Council run activities. There is some interest in more fitness classes, particularly among women (34%).

#### **§ Initial User Survey – Abney Park (2017)**

There were 129,474 visitors to Abney Park in 2017. A user survey was carried out between December 2016 and January 2017 to which participants could respond on paper or online. 409 people responded, over 97% of whom had visited the park.

More than 70% of respondents ticked more than one option as their principle reason for visiting, suggesting that the Park is used and appreciated in a number of different ways. Likewise, many respondents listed more than one theme that they like about the park,



demonstrating that the mixture of built and natural heritage is an asset. 46% of respondents visit the park once a fortnight or more frequently.

Of the current users 44% wanted to see new facilities, and most mentioned toilets and a café. 76% wanted to see more events and activities in the park – in particular events about the site itself and more of the kind of events that already take place. This suggests a high level of satisfaction with the current events programme and an appetite for more of the same.

The profile of respondents were 64% female and 35% male, predominately white British and 90% without any disability. Most users, 67%, were aged between 35 and 65, with only 14% over 65 and 2% under 25.

**§ Abney Park – Public Consultation (October – November 2018)**

Further public consultation took place at Abney's Autumn Fayre on Oct 20 2018. More than 100 visitors voted on the types of activities they would like to see in an improved Abney Park.

#### **4. Equality Impacts**

##### **4 (a) What positive impact could there be overall, on different equality groups, and on cohesion and good relations?**

The project will ensure that the facilities offered at the site respond to the needs of local people. As a universal facility, this project is not likely to benefit any particular group more than others.

The improvements will make the site more welcoming for people of all ages, with upgraded facilities for education and an improved forest school area.

The site will be made more accessible than it currently is. Access for buggies and wheelchairs will be improved at the Stoke Newington Church Street entrance, with the introduction of an accessible ramp. This will make it easier for older people, disabled people and parents with young children to visit the site.

The activity programme related to the project will seek to enhance use of the site amongst under-represented groups. Activities and events will be curated to attract a new audience to Abney Park.

##### **4 (b) What negative impact could there be overall, on different equality groups, and on cohesion and good relations?**

Where you identify potential negative impacts, you must explain how these are justified and/or what actions will be taken to eliminate or mitigate them. These actions should be included in the action plan.

There is the potential for the improvements to have a positive impact on the wider

local community. Improvements could facilitate more community use and enhance community cohesion.

There are differing views on what facilities Abney Park should provide, however, and improvements may not be supported by everyone. It is proposed that consultation is carried out with residents and users to prioritise the elements of the project.



<p><b>TITLE OF REPORT</b></p> <p><b>Cabinet Nominations of Appointments to Outside Bodies 2019/20</b></p>
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<p><b>CABINET MEETING DATE (2019/20)</b></p> <p><b>15 July 2019</b></p>	<p><b>CLASSIFICATION:</b></p> <p><b>Open</b></p> <p><b>If exempt, the reason will be listed in the main body of this report.</b></p>
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<p><b>WARD(S) AFFECTED</b></p> <p><b>All Wards</b></p>
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<p><b>Group Director</b></p> <p><b>Tim Shields</b> <b>Chief Executive</b></p>
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**1. Background**

- 1.1 Each municipal year, the Council appoints or nominates people who are primarily though not exclusively elected Members of the Council to represent it on various Outside Bodies.
- 1.2 The Council's arrangements for the appointment or nomination of appointment of its representatives to Outside Bodies differ depending on the type of nomination or appointment that is being made. Under the Mayoral Scheme of Delegation, the Mayor and Cabinet have delegated responsibility for the approval of executive side nominations or appointments. Full Council is responsible for non-executive side nominations or appointments.
- 1.3 The various nominations of appointments to Outside Bodies listed below are nominations made by the Mayor for executive-side appointments which require Cabinet approval.

**Recommendations:**

**Cabinet is recommended:**

**2.1 To approve the following nominations:**

**Abney Park Trust**

Cllr Sophie Cameron  
Cllr Susan Fajana-Thomas

**Chats Palace Arts Centre**

Cllr Ian Rathbone

**Standing Advisory Council on Religious Education (SACRE)**

Cllr Kam Adams  
Cllr Sade Etti  
Cllr Katie Hanson  
Cllr Jessica Webb  
Cllr Harvey Odze

**LGIU Management Committee**

Cllr Sem Moema

**London Youth Games**

Cllr Mete Coban

**Shoreditch Trust**

Mayor Philip Glanville

**Create 1**

Cllr Guy Nicholson

*Positions remain open for expressions of interest as follows:*

**Bangla Housing Association**

One VACANT position

**Standing Advisory Council on Religious Education (SACRE)**

Two VACANT positions

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<b>Comments for and on behalf of the Director of Legal &amp; Governance</b>	Dawn Carter-Mcdonald Head of Legal and Governance <a href="mailto:dawn.carter-mcdonald@hackney.gov.uk">dawn.carter-mcdonald@hackney.gov.uk</a> 020 8356 4817



**School Governor Nomination**

<p><b>CABINET MEETING DATE (2019/20)</b></p> <p>15<sup>th</sup> July 2019</p>	<p><b>CLASSIFICATION:</b></p> <p>Open</p>
<p><b>WARD(S) AFFECTED</b></p>	
<p><b>Tim Shields Chief Executive</b></p>	

**1. Background**

1.1 In accordance with the School Governance Constitution (England) Regulations 2012, local authority governors are nominated by the local authority. They are appointed as governor by the governing body having, in the opinion of the governing body, met any eligibility criteria that they have set. It will therefore be for schools to confirm the appointment of individuals to their governing body.

**2. Recommendations:**

Cabinet is recommended:

**2.1 To approve the following re-nominations to the Schools as set out below.**

<b>Governing Body</b>	<b>Name</b>	<b>Date Effective</b>
William Patten	Donagh Collins	29 <sup>th</sup> April 2019
Federation of Daubeney, Sebright and Lauriston Primary Schools.	Rachael Claye	1 <sup>st</sup> July 2019

### **3. COMMENTS OF THE GROUP DIRECTOR, FINANCE AND CORPORATE RESOURCES**

There are no budgetary implications to this re-nomination.

### **4 COMMENTS OF THE DIRECTOR, LEGAL AND GOVERNANCE**

The re-nomination is made in accordance with the School Governance (Constitution) (England) Regulations 2012.

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<b>Comments for and on behalf the Group Director of Finance and Resources</b>	Ian Williams – Tel: 020 8356 3033 Group Director of Finance and Resources <a href="mailto:ian.williams@hackney.gov.uk">ian.williams@hackney.gov.uk</a>
<b>Comments for and on behalf of the Director of Legal and Governance</b>	Dawn Carter-McDonald - Tel: 020 8356 4817 Deputy Monitoring Officer, Interim Head of Litigation and Commercial <a href="mailto:Dawn.carter-mcdonald@hackney.gov.uk">Dawn.carter-mcdonald@hackney.gov.uk</a>