

Title of report: In Year Changes to Fees and Charges

Meeting: Audit and Governance Committee

Meeting date: Tuesday 24 October 2023

Report by: Head of Legal Services and Deputy Monitoring Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose

This report seeks to a change to Part 4 Section 7 of the Financial Procedure Rules to allow officers to make in year changes to fees and charges and to a use capital programme monies to be moved from a capital scheme to fund increased spend or variations in other existing capital schemes.

Recommendation(s)

That:

- a) **The changes in paragraph 9 are approved to enable in-year changes in fees and charges to be made by directors in consultation with Chief Finance Officer and relevant members; and**
- b) **the Monitoring Officer is authorised to amend the Financial Procedure Rules (Part 4 Section 7) and Financial Guidance (Part 4 Section 7b) of the Constitution to reflect recommendation a.**

Alternative options

1. Do not make any change – the current uncertainty will be resolved as officers will be clear that they are not authorised to make changes. The decision making will be clarified and will revert either to full Council or Cabinet, or their subcommittees (unless express and specific decisions have or will be made to delegate from those bodies). Where this option is preferred then it is recommended that the financial rules should be amended so the principles of charging (a. to l.) are complied with.

2. Allow the officers to make changes but with alternative preconditions. Although this is possible, it is considered that consultation with the Cabinet Member, Group Leaders and Chief Finance Officer are sufficient controls. The decision would still be subject to call-in should the pre-conditions not be met.

Key considerations

3. The Council budget setting process commences with officers in October in the financial year. This leads to a series of information gathering and decisions in services, directorates and Corporate Leadership Team. At the same time, the executive part of the Council determines its priorities and initiatives for the following year.
4. This all cumulates in a decision by Cabinet to recommend a budget to Full Council for decision ordinarily in February. This recommendation is made up of the income received and spend required to inform the budget. This is then used to determine the council tax precept. Part of the incomes received includes Fees & Charges levied by the Council for certain tasks.
5. The Fees & Charges include those where the Council doesn't have a discretion (such as some licensing and planning) but there are many charges which are discretionary. These range from the cost of car parking through to the cost levied to provide some adult social care services.
6. Although a comprehensive process, the budget takes many months to perfect and can due to external factors be out of date almost from the time it is passed by Full Council. As income from grants and council tax will not change, increases in costs often have to be funded by use of reserves or by estimating likely costs.
7. Where external factors impact (such as higher than expected inflation) the shortfall in income to the Council becomes even more acute. Similarly, where income is collected through third parties, then it is not always possible to align their processes with the Council budget setting.
8. Further, there is currently no clear mechanism in the Constitution whether additional charges can be made for new services or mechanism to reduce charges (for example: to operationally promote a particular service). These currently need a full executive decision and possibly a Council decision. It is unclear whether this would be an operational officer decision or change to the Budget.
9. The recommendation to the Committee is that officers are provided with a clear delegation to set and change the fees and charges. The change recommended is that the entirety of section 69 titled 'Review of Service Charges' of the "Finance Procedure Rules – Guidance Notes" below is deleted and replaced.

Currently section 69 states – '*As per Fees and Charges Policy*'. Officers are unaware of such a policy. Older versions of the constitution also include a link to a 2011 and 2012 Cabinet decision but it is not clear if that decision applies onto to 2014 only. As such the proposal is to include the principles as set out in the 2011 decision.

It is proposed that section 69 is replaced by:

Fees and Charges

These are set as part of the annual budget setting process by Full Council.

Fees and Charges may be changed (including increasing, reducing, stopping or introducing a new charge) in year by decision of the relevant Director.

Where a change is proposed by the Director (other than an inflationary increase) then the Chief Finance Officer, relevant Lead Members and Group Leaders must be consulted. The same group will then also be notified of the decision.

In all instances the changes should align with the following principles:

- a. The council should aim to charge for all services where it is appropriate to do so, unless there are conflicting policies or legal reasons not to do so.*
- b. The council should (subject to market conditions) aim to maximise income from fees and charges by ensuring that charges reflect the full cost of provision, unless there are contrary policies, legal or contractual reasons.*
- c. Decisions to subsidise services, or to not make a charge for a service should be clearly linked to council objectives, and the potential income that is not earned must be a consideration in the decision.*
- d. Where the council continues to subsidise the cost of services provided to customers, the level of subsidy should be clearly understood and publicised.*
- e. Comparisons and benchmarking with relevant sectors in terms of charges made, cost of service delivery, levels of subsidy and market variations should be used to inform fees and charging proposals.*
- f. Charges must be linked to both service and strategic objectives and must be clearly understood.*
- g. The direct implications of charging for residents, and the indirect implications for public, private and voluntary sector partners should be clearly understood.*
- h. Any concessionary scheme should be based on ability to pay and be applied in a consistent and transparent approach across all council services.*
- i. The council should, where appropriate, seek to influence the charging policies of partner organisations engaged in delivering council services align with council policies through robust commissioning arrangements.*
- j. Inflationary uplifts will be applied unless a decision is made not to do so.*
- k. Cost effective and efficient income collection channels should be in place. This includes all fees and charges being collected before a service is provided.*
- l. Services must be as efficient as possible when seeking full cost recovery so that the cost of collection is minimised.*

10. The above principles for charging were adopted by Cabinet decision [on 30 June 2011](#). They have not been included within the Constitution. The delegation above is different as the 2011 decision appears to apply only to that year and a specific fee increase. The delegation above requires additional consultation with the lead member, group leaders and CFO. Finally, there is a notification process to the Group Leaders (either via the Officer Decision process or email should the level of change fall below the notification threshold (£50k) for an Officer Decision).

Community impact

11. The flexibilities in this report will enable the Council to respond more quickly to external challenges that impact our finances. The Fees and Charges can be tailored to make a specific need or demand.

Environmental Impact

12. There are no direct impacts of these changes to the Financial Procedure Rules but the changes could help promote or deliver schemes in a more efficient manner.

Equality duty

13. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
14. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. Our providers will be made aware of their contractual requirements in regards to equality legislation.

Resource implications

15. There are no direct resource implications but there will be an improvement in efficiency for decision making allowing officers to respond quicker and more effectively to financial changes.

Legal implications

16. The Audit & Governance Committee has the delegated authority to update the Financial Procedure Rules (Part 3 Section 1 Table 3.1.1).
17. The Budget and certain policies must be approved by Full Council on recommendation from Cabinet but each Council can decide (within its Constitution) how services and its associated spend is delivered.
18. As Budgets are approved by Full Council, it is unclear what discretion officers have in relation to fees and charges and the recommendation give clarity what can be done and what factors should be considered when setting such.
19. If the recommendation is rejected, then clarity is also provided in that any changes to fees and charges must be approved by members as either an executive or full council decision (depending on the nature of the Fees and Charge) or to other committees/members/officers as specifically delegated.

Risk management

20. There are no specific risks identified by the changes to the Financial Procedure Rules. The changes require senior officer approvals as possible mitigations.

Consultees

21. Group Leaders were consulted on 07 September 2023. A Group Leader's view was that there was some sense in making it easier for changes to be made in year but considered that the proposal removed Councillors (other than Lead Members) from the decision process. A further point was raised about whether consideration was made to place controls or limitations on the charges that could be raised by officers.
22. As such the recommendation has been amended so that Group Leaders are consulted as part of the changes. This is considered to be analogous to the rights of Group Leaders to attend Cabinet and speak under 4.4.11(c) of the Constitution. If a decision is made to change, then Group Leaders will be notified.

Appendices

- None

Background papers

- None identified