

Report for:	Shadow Executive
Meeting Date:	10 March 2020

Title of Report:	CHARGING ARRANGEMENTS FOR REGISTERED PROVIDERS
Shadow Portfolio Holder	Isobel Darby
Responsible Officer	Michael Veryard
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Recommendations:	<p>1. Draft and implement a timetable for the development and introduction of a harmonised countywide system for charging Registered Providers to advertise tenancies via the Bucks Home Choice scheme with a target completion date of 30 September 2020.</p> <p>2. Continue the existing district-zoned Bucks Home Choice charging arrangements in Aylesbury Vale and Wycombe post-vesting day until new countywide harmonised charging arrangements are introduced</p> <p>3. Continue the existing Aylesbury Vale Affordable Housing Partnership Agreement from vesting day on the basis that the new Buckinghamshire Council will review working arrangements with Registered Providers and may develop and implement a new countywide Affordable Housing Partnership Agreement as required.</p>
Corporate Implications:	Financial implications are contained within the report and align with the Medium Term Financial Plan.
Options: (If any)	Options are covered in the report
Reason:	Not applicable

1. Purpose of Report

- 1.1 Following on from the previous report on the Bucks Home Choice scheme and the charging arrangements for Registered Providers (aka housing associations), this report now:
- summarises the status of the charging arrangements that currently operate within each district for (i) Bucks Home Choice adverts and (ii) development partnership arrangements, and
 - reviews the options for operating the charging arrangements from vesting day and recommends the approach that should be taken.



2. Executive Summary

- 2.1 Currently, there are varying arrangements between District Councils for charging Registered Providers in respect of either advertising tenancies (via Bucks Home Choice) or operating partnership arrangements for supporting new affordable housing development. Given the level of difference in arrangements across the District Councils, there is insufficient time available to develop and adopt new countywide harmonised arrangements for these charges ahead of vesting day.
- 2.2 Legal advice has confirmed that the existing charging arrangements can only be carried forward on vesting day to the new Council if they are part of a valid contractual agreement. It is recommended that the existing charging arrangements detailed in this report which are part of valid contractual agreements are carried forward to the new Council on vesting day. It is also recommended that we commence work to agree and implement a countywide harmonised arrangement for charging Registered Providers in connection with the cost to the Council of operating the Bucks Home Choice scheme. We will aim to have a new harmonised charging arrangement in place for Bucks Home Choice by 30th September 2020 (i.e. within 6 months of vesting day).

3. Content of Report

- 3.1 Legal advice has confirmed that any charging payable by Registered Providers must be harmonised across Bucks from 1 April 2020 when the statutory housing functions of the 4 district councils vest in the new Buckinghamshire Authority which becomes the local housing authority. The only exception to this will be where fees and charges are made as part of a valid contractual agreement that is carried over the new authority. Where valid contractual agreements exist, it is possible to continue operating different charges in different district-zones after vesting day.
- 3.2 Following the previous report to the Shadow Executive, the Housing Workstream has carried out a detailed review of the existing arrangements for charging Registered Providers in each of the District Councils. Different arrangements apply in different District Councils. Currently, there are two scenarios where Registered Providers are paying a fee or charge to the District Council. This is where the Council is either:
 - (i) charging Registered Providers for advertising tenancies for letting via Bucks Home Choice (in Aylesbury Vale and Wycombe) or
 - (ii) operating an Affordable Housing Partnership Agreement to promote new affordable housing provision with Registered Provider partners paying a membership fee (in Aylesbury Vale only).

These are not statutory charges. There are a total of four specific charging arrangements that fall into (i) or (ii) above. A summary of the existing arrangements is in **Appendix 1**.

- 3.3 Legal advice has confirmed that different charging arrangements in different districts can only continue beyond vesting day if they are being charged as part of an ongoing valid contract agreement. Otherwise, charges need to be harmonised

across the whole county from vesting day. **Appendix 1** includes details of the specific legal advice for each of the four existing charging arrangements. It has been confirmed that there is a valid contractual agreement in place in three of the four arrangements and a final legal opinion is pending on the fourth one.

- 3.4 The Workstream has considered whether the two charging streams in 3.2(i) and (ii) above could potentially be combined in a single harmonised charge to Registered Providers. The conclusion is that this would not be appropriate at the present time. The two charging streams relate to very different elements of the housing service which will also potentially sit in different services areas within the new Buckinghamshire Council structure. One charging stream is linked to the specific service delivery of weekly property adverts. The other is a much broader agreement relating to new affordable housing delivery and how this can be supported. There are over 30 Registered Providers with varying amounts of rental stock in Buckinghamshire and differing levels of development programmes (with some providers not developing any new homes at all). Overall, it would not be helpful or appropriate to try to combine these two different elements of the housing service into a single charging arrangement. As stated above, the two charging streams constitute very separate elements of the housing service and there is no clear benefit that would be derived from having a single charge that tries to cover both property adverts and development partnership arrangements. With specific regard to the development partnership, trying to create a single combined charge would also pre-empt any wider strategic decisions on how the new Council wants to manage affordable housing delivery (including partnerships with Registered Providers).
- 3.5 In view the above, the remainder of this report will look separately at the options and recommendations for the two existing charging streams.

Registered Provider Charging Arrangements – Bucks Home Choice

- 3.6 A reminder of the Bucks Home Choice scheme and how it operates is in **Appendix 2**. The review of existing arrangements (as summarised **Appendix 1**) has confirmed that there is currently no common approach across the District Councils to charging Registered Providers in relation to the costs of operating the Bucks Homes Choice scheme. Aylesbury Vale District Council is the only authority operating a universal scheme charging all Registered Providers for advertising their vacancies. Wycombe District Council charges an annual fee to Red Kite (in return for maintaining Red Kite's Transfer Register for their tenants and providing nominations to vacant Red Kite properties) but does not charge any other Registered Providers. Neither Chiltern District Council nor South Bucks District Council operate any charging arrangements.
- 3.7 The current diversity of Bucks Home Choice-related charging arrangements between districts means that any proposed countywide harmonised charging arrangements will require a full and formal six-week consultation exercise with Registered Providers and an equality impact assessment before they can be agreed and introduced. Any harmonised charging arrangements would also need to be underpinned by clear evidence of the actual costs of administering the Bucks Home Choice scheme (which the Buckinghamshire Council is seeking to recover via the charges). Although we can commence work on developing harmonised charging options and consulting Registered Providers, the issues highlighted above mean that it will not be possible to complete this exercise and introduce a new harmonised charging policy by vesting day.

- 3.8 Legal advice has confirmed that the existing Bucks Home Choice charging arrangements in Aylesbury Vale District Council (subject to final confirmation on the specific arrangements with VAHT – see paragraph 3.12) and the arrangements between Wycombe District Council and Red Kite all constitute valid contractual arrangements which could continue beyond vesting day under the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008. The Bucks Home Choice Allocations Scheme will continue to operate on a district-zoned basis from vesting day so it will be possible to continue to operate different charging arrangements in different district zones pending the introduction of a countywide harmonised charging policy.
- 3.9 It is proposed that officers proceed with:
- agreeing a timetable for the development and introduction of a harmonised countywide charging system for Bucks Home Choice for Registered Providers (including the timescales for consulting providers and the anticipated implementation date for the harmonised system),
 - establishing the evidence base for the costs that the Buckinghamshire Council is seeking to recover from the charging system,
 - identifying options for harmonised charging and undertaking a formal consultation with Registered Providers and an equality impact assessment and
 - presenting a final recommendation to the Buckinghamshire Council on the preferred option and implementing the new harmonised charging system by a target date of 30th September 2020.

It is estimated that the broad timeline for implementing a new harmonised charging system for Bucks Home Choice would be as follows (some of the tasks listed will be undertaken concurrently):

Development and Implementation of Harmonised Charging System for Bucks Home Choice (Estimated Timetable)		
Task		Timescale
1	Clearly identify and quantify the cost to the Council of administering Bucks Home Choice adverts and agree level of cost that Council wants to recover by charging Registered Providers	2 weeks
2	Identify and review options for charging that will recover the costs identified in (1)	2 weeks
3	Consult Legal and Finance on cost recovery and proposed charging options	2 weeks
4	Agree proposals for consultation with Registered Provider partners	2 weeks
5	Consultation with Registered Providers on proposed charging arrangements	6 weeks
6	Review responses to consultation	2 weeks
7	Finalise Charging policy and undertake Equality Impact Assessment	2 weeks
8	Confirm Legal and Finance agreement to finalise charging policy and obtain necessary sign off and approval	4 weeks

9	Notify Registered Providers and adopt and commence charging policy	4 weeks
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3.10 As the exercise outlined in paragraph 3.9 above will run on beyond vesting day, a decision is required on how charging arrangements are operated in the interim period from 1st April 2020. The options are:

(a) Maintain existing district based charging arrangements until harmonised charging is implemented

In view of the legal advice that three out of four of the existing charging arrangements operated by Wycombe DC and Aylesbury Vale DC constitute valid contractual arrangements (see paragraph 3.8 above), these arrangements will be carried forward into the new authority post-vesting day. They would operate as currently in the Aylesbury Vale and Wycombe district-zones. This approach may be challenged by some Registered Providers who feel that it is inequitable in the new unitary authority to have varying charging arrangements (or no charging at all) in different parts of the county. This challenge can be mitigated by emphasising that this is an interim position pending the introduction of a harmonised county wide charging system and by providing a clear timetable for the introduction. However, our ability to proceed on this basis will depend on sensitive negotiation with Registered Providers to secure their agreement to this approach. It is worth noting that if Registered Providers withdraw from the existing charging arrangements from 1st April 2020, they will be unable to advertise their properties on the Bucks Home Choice system, which could be significantly disadvantageous to them.

(b) End the existing district based charging arrangements from vesting day and until harmonised charging is implemented

Alternatively, we could simply end all existing Bucks Home Choice charging arrangements from 1st April 2020 and have no charges until the new harmonised charging system comes into effect. This would be more straightforward and is likely to have the support of Registered Providers. It would avoid any challenges about operating inequitable interim arrangements that charge in some district-zones but not in others. However, it would also lead to an immediate drop in income from vesting day. Based on past years, the overall income from the charges made by Wycombe DC and Aylesbury Vale DC is approximately £70,000 per annum. The impact of this notional loss could be limited by getting a new harmonised arrangement in place as soon as possible after vesting day.

3.11 It is recommended that we follow Option (a) and open discussions with Registered Providers proposing that we maintain existing district-based charging arrangements post-vesting day until new countywide harmonised charging is introduced. If agreed, this will ensure that the new Buckinghamshire Council does not face an immediate drop in income from 1st April 2020.

3.12 The specific charge of £2,000 made by Aylesbury Vale District Council to VAHT in respect of the costs associated with Bucks Home Choice is part of a wider local agreement that is in place between the two parties. Under this agreement, VAHT directly administers and manages approximately one third of the Bucks Home Choice applications in the district. We can potentially carry forward the £2,000

charge beyond vesting day (subject to legal confirmation) as part of the work to develop a countywide Bucks Home Choice charging policy as discussed above.

- 3.13 The other elements of the local agreement between AVDC and VAHT will be subject to separate negotiations going forward. The aim of these negotiations will be to bring this arrangement to an end and transfer the administration of all Bucks Home Choice applications to the Buckinghamshire Council. This will ensure that all applications across the county are being administered by the new Council. These negotiations will be complex and will potentially include TUPE implications because VAHT employ some officers whose sole or main role is to administer Bucks Home Choice applications. These officers may need to transfer to the new Council if it takes over these duties. Consequently, negotiations will not be completed by vesting day. and the existing arrangements between AVDC and VAHT will transfer to the new authority from 1st April 2020.

Registered Provider Charging Arrangements – Affordable Housing Development

- 3.13 As shown in **Appendix 1**, Aylesbury Vale District Council is the only one of the four District Councils which operates an Affordable Housing Partnership Agreement with designated Registered Providers. Currently, nine providers are partners in this agreement paying an annual fee of £7,500 apiece. The Agreement commits AVDC to work pro-actively with the nine partners to maximise affordable housing delivery by providing relevant advice, information and promotion and by providing grant funding when appropriate. In turn, the Registered Provider partners commit to working pro-actively with AVDC to identify opportunities, discuss proposals, maximise public funding for local schemes operate standard nomination agreements and engage with tenants and key agencies. The Agreement does not exclude other Registered Providers from providing and developing new affordable housing in the district.
- 3.14 The current agreement runs from 1st April 2019 to 31st March 2020. The legal advice is that there is no legal reason why this agreement would have to be abandoned on vesting day. Therefore, it could be carried forward to the new Buckinghamshire Council from vesting day without needing to have a harmonised charging policy across the whole of the county. It could continue to apply to the Aylesbury Vale district-zone. If we do this, the risk of challenge is seen to be low and the risk of a successful challenge lower still.
- 3.15 The existing Aylesbury Vale Affordable Housing Partnership Agreement has had a positive impact on promoting new affordable housing provision in the district. It is important that this continues to be promoted at a time of significant growth within the district. Therefore, it is proposed that this Agreement should be continued beyond vesting day in the new Council where it will apply specifically to the Aylesbury Vale district zone. This will be subject to having a clear understanding and identification of which directorate and officers would have ownership and responsibility for the delivery of the new Council's commitments under the agreement from 1st April 2020 (e.g. Adults Health and Housing Directorate or Planning Growth and Sustainability Directorate?).
- 3.16 Continuing the Agreement beyond vesting day will protect the existing arrangements in Aylesbury Vale. At the same time, it will also allow the new Council to consider how it might want to operate a fully countywide Registered Provider Partnership Agreement in the longer term and, if so, how it should work and what fees would be charged. It can then proceed to implement a new

Partnership Agreement as required which would supersede the existing Aylesbury Vale-specific agreement.

- 3.17 Continuing the Agreement will also mean that there should be no budgetary impact as the fee income stream would continue. This was a total of £67,500 during 2019/20. This will be dependent of having the equivalent number of Registered Providers signing up to the Agreement for 2020/21. If the Agreement does not continue beyond vesting day, then this will result in a drop in income for the new Council (although this impact could be mitigated by the new Council seeking to review the question of a countywide Registered Provider agreement as soon as possible after vesting day and implementing any new fee paying arrangements within a reasonable timescale).
- 3.18 The key tasks in carrying forward the existing Aylesbury Vale Affordable Housing Partnership Agreement will be:
- Officers will review the commitments made by AVDC in the existing agreement and confirm how these can continue to be delivered in the Aylesbury Vale district zone post vesting day.
 - Officers will confirm the ownership of these commitments post vesting day and which services and/or officers will be responsible for ensuring that the new Council meets these commitments in the Aylesbury Vale district zone from 1/4/2020.
 - Subject to confirming that all existing commitments in the Agreement can be met going forward, officers will confirm the Registered Provider partners to be included in the agreement from 1/4/2020 and will put a new agreement in place for 2020/21 to apply to the Aylesbury Vale district zone.
 - Concurrently, we will need to establish where the management of Registered Provider development partnerships will sit in the new Council and which service directorate will be responsible. Once this is clarified, we will need to agree a process and timeline for determining how the new Council wants to manage its relationship with Registered Provider developers on a countywide basis.

Summary

- 3.19 To summarise the proposed way forward in this section:
- (i) The existing district-based valid contractual agreements for charging Registered Providers for Bucks Home Choice adverts will be carried forward to the new Council post vesting day
 - (ii) We will undertake work to develop a new countywide Bucks Home Choice charging system that will replace the existing arrangements (in (i) above) by 30/9/2020 at the latest.
 - (iii) The existing Affordable Housing Partnership Agreement in Aylesbury between AVDC and Registered Provider developers will be carried forward to the new Council post vesting day (subject to confirmation that it will still be possible to meet the Council's commitments in the Agreement post vesting day)
 - (iv) We will identify which service directorate will manage Registered Provider development partnerships going forward and agree a process and timetable for how the new Council wants to manage these partnerships on a countywide basis.

4. Financial Implications

- 4.1 Currently, the charging arrangements covered by this report generate overall income of approximately £72,000 from charging RPs in regard to Bucks Home Choice (based on 2018/19 figures) and £67,500 from AVDC's preferred development partner agreement. The recommendation in this report to seek to continue these arrangements beyond vesting day will mean that these income streams are protected and there will not be a detrimental impact on the new Council's budget in the short term.
- 4.2 In the event that some partners choose to withdraw, then there will be a reduction in income compared to the current position in the District Councils. This loss can be mitigated by the new Council seeking to introduce new countywide harmonised charging arrangements within a reasonable timescale.

5. Legal Implications

- 5.1 Any fees and charges payable by Registered Providers should be harmonised across Bucks from vesting day of the new Buckinghamshire Authority. The only exception to this will be where fees and charges are made as part of a valid contractual agreement that is carried over the new authority. Where valid contractual agreements exist, it may be possible to continue operating different charges in different district-zones after vesting day. The proposals and recommendations in this report reflect this legal advice.

6. Other Key Risks

- 6.1 The key risks are covered in the report.

7. Dependencies

Not applicable

8. Consultation

Officers have held informal discussions with Registered Provider partners via existing forum meetings on the intention to review the current charging arrangements as we move to becoming a new authority and no significant issues were raised. Proposals for introducing harmonised countywide charging on Bucks Home Choice fees and Affordable Housing Partnership Agreements will be subject to formal consultation with Registered Providers at the appropriate time.

9. Communications Plan

Not applicable

10. Equalities Impact Assessment Summary

Proposals for harmonised charges will be subject to an Equalities Impact Assessment at the appropriate time

11. Data Privacy Implications

[This is not required as there is no proposed change to the nature, scope, context or purposes of our processing of personal data.](#)

12. Next Steps

To continue the current charging arrangements post vesting day and undertake the necessary preparation and development work to implement new arrangements during 2020/21.

Background Papers	Appendix 1 – Registered Provider Charging Arrangements – Bucks Home Choice Appendix 2 – Bucks Home Choice and Charging Registered Providers in Advertising Tenancies (an overview of the Bucks Home Choice scheme)
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