



Council Executive

West Lothian Civic Centre
Howden South Road
LIVINGSTON
EH54 6FF

26 September 2024

A hybrid meeting of the **Council Executive** of West Lothian Council will be held within the **Council Chambers, West Lothian Civic Centre, Livingston** on **Tuesday 1 October 2024 at 10:00am**.

For Chief Executive

BUSINESS

Public Session

1. Apologies for Absence
2. Declarations of Interest - Members must declare any interests they have in the items of business for consideration at the meeting, identifying the relevant agenda items and the nature of their interests.
3. Order of Business, including notice of urgent business, declarations of interest in any urgent business and consideration of reports for information.

The Chair will invite members to identify any such reports they wish to have fully considered, which failing they will be taken as read and their recommendations approved.
4. Confirm Draft Minutes of Meeting of Council Executive held on Tuesday 03 September 2024 (herewith)

Public Items for Decision

5. Whitburn and Blackburn Local Government By-election - Report by Chief Executive (herewith)
6. Procurement Approval Report - Report by Head of Corporate Services (herewith)

7. Scottish Government Programme for Government 2024/25 and Pre-budget Fiscal Update - Report by Head of Finance and Property Services (herewith)
8. Scottish Welfare Fund Budget Pressures - Report by Head of Finance and Property Services (herewith)
9. 2024/25 Winter Plan – Roads and Transportation - Report by Head of Operational Services (herewith)
10. Sandbag Deployment Policy - Report by Head of Operational Services (herewith)
11. Consultation on Moving on From Care Into Adulthood - Report by Head of Social Policy (herewith)
12. Contributions Policy Update 2024/2025 for Adult Non-residential Social Care - Report by Head of Social Policy (herewith)
13. West Lothian Council Consultation Response: Scottish Government Proposed Changes to Adults With Incapacity Act - Report by Depute Chief Executive (herewith)

Public Items for Information

14. West Lothian Leisure – Financial Statements for the Year Ended 31 March 2024 - Report by Head of Finance and Property Services (herewith)

NOTE **For further information please contact Karen McMahan on tel. no. 01506 281621 or email karen.mcmahan@westlothian.gov.uk**

CODE OF CONDUCT AND DECLARATIONS OF INTEREST (2021)

This form is a reminder and an aid. It is not a substitute for understanding the Code of Conduct and guidance.

Interests must be declared at the meeting, in public.

Look at every item of business and consider if there is a connection.

If you see a connection, decide if it amounts to an interest by applying the objective test.

The objective test is whether or not a member of the public with knowledge of the relevant facts would reasonably regard your connection to a particular matter as being so significant that it would be considered as being likely to influence your discussion or decision-making.

If the connection does not amount to an interest then you have nothing to declare and no reason to withdraw.

If the connection amounts to an interest, declare it as soon as possible and leave the meeting when the agenda item comes up.

When you declare an interest, identify the agenda item and give enough information so that the public understands what it is and why you are declaring it.

Even if the connection does not amount to an interest you can make a statement about it for the purposes of transparency.

More detailed information is on the next page.

Look at each item on the agenda, consider if there is a “connection”, take advice if necessary from appropriate officers in plenty of time. A connection is any link between the item of business and:-

- you
- a person you are associated with (e.g., employer, business partner, domestic partner, family member)
- a body or organisation you are associated with (e.g., outside body, community group, charity)

Anything in your Register of Interests is a connection unless one of the following exceptions applies.

A connection does not exist where:-

- you are a council tax payer, a rate payer, or a council house tenant, including at budget-setting meetings
- services delivered to the public are being considered, including at budget-setting meetings
- councillors’ remuneration, expenses, support services or pensions are being considered
- you are on an outside body through a council appointment or nomination unless it is for regulatory business or you have a personal conflict due to your connections, actions or legal obligations
- you hold a view in advance on a policy issue, have discussed that view, have expressed that view in public, or have asked for support for it

If you see a connection then you have to decide if it is an “interest” by applying the objective test. The objective test is whether or not a member of the public with knowledge of the relevant facts would reasonably regard your connection to a particular matter as being so significant that it would be considered as being likely to influence your discussion or decision-making.

If the connection amounts to an interest then:-

- declare the interest in enough detail that members of the public will understand what it is
- leave the meeting room (physical or online) when that item is being considered
- do not contact colleagues participating in the item of business

Even if decide your connection is not an interest you can voluntarily make a statement about it for the record and for the purposes of transparency.

The relevant documents are:-

- [Councillors’ Code of Conduct, part 5](#)
- [Standards Commission Guidance, paragraphs 129-166](#)
- [Advice note for councillors on how to declare interests](#)

If you require assistance, contact:-

- James Millar, Interim Monitoring Officer and Governance Manager, 01506 281613, james.millar@westlothian.gov.uk
- Carol Johnston, Chief Solicitor and Depute Monitoring Officer, 01506 281626, carol.johnston@westlothian.gov.uk
- Committee Services Team, 01506 281604, 01506 281621
committee.services@westlothian.gov.uk

January 2022

MINUTE of MEETING of the COUNCIL EXECUTIVE held within COUNCIL CHAMBERS, WEST LOTHIAN CIVIC CENTRE, LIVINGSTON, on 3 SEPTEMBER 2024.

Present – Councillors Lawrence Fitzpatrick (Chair), Tony Boyle (substituting for Councillor Kirsteen Sullivan) , William Boyle (substituting for Councillor Pauline Orr), Tom Conn, Angela Doran-Timson, Damian Doran-Timson, Carl John (substituting for Councillor Janet Campbell), Danny Logue, Anne McMillan, Craig Meek, Sally Pattle, George Paul and Pauline Stafford

Apologies – Councillors Kirsteen Sullivan, Janet Campbell and Pauline Orr

1. DECLARATIONS OF INTEREST

There were no declarations of interest made.

2. ORDER OF BUSINESS

Council Executive agreed, in accordance with Standing Order 8(3), that agenda items 19 (*2024/25 Housing Capital Report – Month 4 Monitoring Report*) and 20 (*2024/25 Housing Revenue Account – Month 4 Monitoring Report*) were to be taken as read and their recommendations noted without further consideration.

Council Executive agreed, in accordance with Standing Order 8(3), to ask questions on agenda item 21 (*Reinforced Autoclaved Aerated Concrete (RAAC) - Homeowners*), which was on the agenda for information only.

Council Executive agreed to hear a deputation from Mr Wilson Chowdhry concerning agenda item 21 (*Reinforced Autoclaved Aerated Concrete (RAAC) - Homeowners*).

The Chair ruled, in terms of Standing Order 11, that the deputation and agenda item 21 (*Reinforced Autoclaved Aerated Concrete (RAAC) - Homeowners*) would be considered immediately following agenda item 4 (*Minutes*).

3. MINUTES

- (a) The Council Executive confirmed the minute of its meeting held on Tuesday 13 August 2024 as a correct record. The minute was thereafter signed by the Chair.
- (b) The Council Executive noted correspondence arising from previous decisions.

4. REINFORCED AUTOCLAVED AERATED CONCRETE (RAAC) - HOMEOWNERS

Deputation

The Council Executive heard from Mr Wilson Chowdhry, Chairman of the UK RAAC Campaign Group, as he discussed the problem and residents' concerns about their property's safety. Mr Chowdhry stated that he considered the Council had the flexibility to provide homeowners with financial mechanisms, emphasised a need to establish a surveyor framework to assess necessary repairs, and referred to issues with underwriters causing structural engineers' hesitation to take on RAAC-related work. He also requested clarity on sector-specific guidance. Furthermore, Mr Chowdhry spoke about cases of insurance cancellations affecting mortgages and urged the Council to engage with insurers and lenders. He also inquired about the timescales for decisions on potential government funding and, if unavailable, whether the Council could finance necessary repairs to its current stock. Lastly, he asked if any other repair plans were being explored beyond roof replacement. Mr Chowdhry concluded by stating that homeowners deserved clear answers, real support, and immediate action to address uncertainties about insurance, mortgages, and the safety of their homes.

Mr Chowdhry then responded to questions from the Council Executive.

Report

The Council Executive considered a report (copies of which had been circulated) by the Head of Housing, Customer and Building Services providing an update on the outcome of meetings with homeowners in West Lothian affected by Reinforced Autoclaved Aerated Concrete (RAAC) and the meeting with the Minister for Housing.

It was recommended that the Council Executive note the:

1. engagement and meetings with homeowners;
2. issues raised by homeowners; and
3. actions from the meeting with the Minister for Housing and proposed next steps.

Motion

'Council Executive notes the steps undertaken to date by the council to support homeowners whose homes may be affected by RAAC, the issues raised by homeowners and the actions from the meeting with the Minister for Housing and proposed next steps.

Council Executive notes that whilst the council has no statutory obligations in relation to privately owned properties, it has supported homeowners to raise their concerns with the Minister for Housing through facilitation of meetings in areas affected by RAAC, collation of issues raised by homeowners and raising these directly with the Minister.

The Council Executive also acknowledges the challenges faced by homeowners and it is committed to continue to support a dialogue between homeowners and the Scottish Government to explore any support which may be available to homeowners.

The Council Executive therefore agrees:

1. To note the work undertaken to date by the council to facilitate meetings with homeowners in RAAC affected properties in Linlithgow, Broxburn, Bathgate and Craigshill, Livingston to gather feedback to inform a meeting with the Minister for Housing.
 2. To note that the meeting with the Minister for Housing took place on 8 July 2024 and that the main themes raised during the homeowner meetings were set out, with a number of actions agreed.
 3. To note that the council has written to all homeowners whose homes may be impacted by RAAC to provide an update from the meeting with the Minister for Housing.
 4. To note that the Minister for Housing has been invited to attend a further meeting with the council, the purpose of which is to seek an update on progress on the matters discussed and agreed at the meeting on 8 July 2024, as follows:-
 - Scottish Government engagement with the Association of British Insurers to seek confirmation that affordable insurance will continue to be available to homeowners with homes affected by RAAC;
 - Scottish Government engagement with UK Finance to seek confirmation from mortgage lenders that mortgages will continue to be available to those seeking to purchase homes with RAAC;
 - The development of a national framework of available structural surveyors for homeowners to be able to use for surveys;
 - The development and circulation of sector specific guidance and information for housing, with a particular focus on safety to alleviate the significant fear that homeowners face;
 - The development of better guidance for the construction industry in the production of home reports to ensure these more accurately reflect any non-traditional or different methods of construction
 5. To instruct officers to provide a further update to the Council Executive following the next meeting with the Minister for Housing.'
- Moved by the Chair and seconded by Councillor George Paul

Amendment

As per the terms of the motion with the addition of "The Chief Executive to write to the Scottish Government to ask for grant funding to support homeowners in the immediate future, and then a report to come back to the Policy Development and Scrutiny Panel and full Council on the outcome."

- Moved by Councillor Angela Doran-Timson and seconded by Councillor Damian Doran-Timson

An electronic vote was conducted for members attending in person with verbal votes cast by those participating remotely. The result was as follows:

Motion

Tony Boyle
Tom Conn
Lawrence Fitzpatrick
Danny Logue
Anne McMillan
Craig Meek
Sally Pattle
George Paul

Amendment

William Boyle
Angela Doran-Timson
Damian Doran-Timson
Carl John
Pauline Stafford

Decision

1. To note the deputation by Mr Wilson Chowdhry; and
2. Following a vote, the motion was successful by 8 votes to 5, and it was agreed accordingly.

5. PROCUREMENT APPROVAL REPORT

The Council Executive considered a report (copies of which had been circulated) by the Head of Corporate Services seeking approval to enter into a contract where committee approval was required by the Council's Standing Orders.

It was recommended that the Council Executive approve an exemption from Contract Standing Orders for:

1. a direct award of a contract to West Lothian Drug and Alcohol Services for the period 1 October 2024 to 31 March 2027, of £80,500 for the continuation of training provision in the administration of and supply to Take Home Naloxone across West Lothian; and
2. a direct award of a contract to Change Grow Live for the period 1 October 2024 to 31 March 2027 of £129,500 for the continuation of Hospital Outreach Worker services across West Lothian.

Decision

To approve the terms of the report.

6. 2024/25 GENERAL SERVICES CAPITAL BUDGET – MONTH 4 MONITORING REPORT

The Council Executive considered a report (copies of which had been circulated) by the Head of Finance and Property Services which provided a report on the financial position in relation to the General Services capital programme following the completion of the month 4 monitoring exercise.

It was recommended that the Council Executive:

1. note the outcome of the month 4 monitoring exercise including the progress in delivery of the overall programme and the projected outturn; and
2. agree that Asset Lead Officers and the Head of Finance and Property Services keep under review factors that impacted on delivery of the approved capital programme.

Decision

To approve the terms of the report.

7. 2024/25 GENERAL FUND REVENUE BUDGET - MONTH 4 MONITORING REPORT

The Council Executive considered a report (copies of which had been circulated) by the Head of Finance and Property Services which provided an update on the outcome of the General Fund revenue budget monitoring exercise at month 4 including an update on material budget pressures, progress made with the delivery of approved budget savings for 2024/25 to 2025/26 and projected expenditure against the one-off resources in 2024/25 and 2025/26.

It was recommended that the Council Executive:

1. note the outcome of the month 4 monitoring exercise, which was a substantial overspend position of £5.527 million after taking account of savings from one-off time limited resources of £175,000 in 2024/25;
2. note the remaining uncommitted balance in the inflation and risk reserve of £3.145 million;
3. note the material recurring pressures of £6.609 million and the updates from relevant Heads of Service on progress made against the agreed actions to mitigate these pressures;

4. agree that Heads of Service take urgent management action necessary to wherever possible curtail spend and preserve any in year underspends to minimise the projected overspend in 2024/25;
5. agree Heads of Service progress the necessary action agreed to help manage recurring pressures to help ensure spend could be managed within approved budgeted resource each year;
6. agree Heads of Service take all action necessary to fully deliver the approved savings for 2024/25 that were categorised as Amber, given the magnitude of the financial challenges facing the council and ensure all approved budget savings from 2025/26 were fully delivered within approved timescales;
7. agree that officers undertake further work, as a matter of urgency, to identify potential options to mitigate the reported overspend and impact of recurring pressures including recruitment controls, reduction/cessation of discretionary or uncommitted spending, scope to bring forward future year approved savings and identification of additional income options, and that an update on this would be provided to Council Executive as part of the month 6 monitoring report in November 2024; and
8. agree officers would consider any additional savings measures that could be approved in advance, or as part of, the annual budget setting report in February 2025 to help balance the 2025/26 budget.

Decision

To approve the terms of the report.

8. CONSULTATION RESPONSE: SCOTTISH GOVERNMENT CONSULTATION ON POST LEGISLATIVE SCRUTINY OF THE CHILD POVERTY (SCOTLAND) ACT 2017

The Council Executive considered a report (copies of which had been circulated) by the Head of Finance and Property Services informing about the Scottish Government consultation on the impact of the Child Poverty (Scotland) Act 2017 since it came into effect. A response was to be returned by 13 September 2024.

It was recommended that the Council Executive:

1. note the content of the proposed consultation response at appendix 1; and
2. approve the proposed consultation response to be submitted on behalf of West Lothian Council.

Decision

To approve the terms of the report.

9. FOOD INSECURITY FUNDING UPDATE

The Council Executive considered a report (copies of which had been circulated) by the Head of Finance and Property Services updating on the work of the West Lothian Food Network (WLFN) to support households facing food insecurity in quarter 1 of 2024/25 and to note the continued planned activities of the WLFN for 2024/25.

It was recommended that the Council Executive:

1. note the work of the WLFN Funding in quarter 1 of 2024/25;
2. note the ongoing work undertaken by network partners to become more sustainable;
3. note WLFN's Transition Activity Plan 2024/25, as set out in Appendix 1 of the report;
4. note the networks successful transition to becoming a Scottish Charitable Incorporated Organisation (SCIO);
5. agree that a further update on WLFN's Activity Plan and transition to a sustainable operating model using the Shared Prosperity Funding would be provided to Council Executive in February 2025; and
6. note the initial findings from the Fraser of Allander Institutes report on the 'Impact of the Scottish Child Payment on the need for food banks'.

Decision

To approve the terms of the report.

10. FORMER TRINDLEYKNOWE CENTRE, 63/3 BATHGATE ROAD, BLACKBURN, PROPOSED SALE TO MR ABDUL MANAN

The Council Executive considered a report (copies of which had been circulated) by the Head of Finance and Property Services seeking approval for the sale of the former Trindleyknowe Centre, 63/3 Bathgate Road, Blackburn to Mr Abdul Manan for the sum of £110,000.

It was recommended that the Council Executive:

1. approve the sale of the former Trindleyknowe Centre, 63/3 Bathgate Road, Blackburn to Mr Abdul Manan for the sum of £110,000 on the terms set out in this report; and
2. authorise the Head of Finance and Property Services to carry out

any further negotiations in respect of the terms of sale for the property, on the basis that any revised terms and conditions still represented the achievement of best value for the council.

Decision

To approve the terms of the report.

11. 2023/24 ANNUAL RETURN ON THE CHARTER

The Council Executive considered a report (copies of which had been circulated) by the Head of Housing, Customer and Building Services advising on the performance against the Annual Return on the Charter (ARC) and seeking approval of the Annual Assurance Statement following the submission of the ARC to the Scottish Housing Regulator on 31 May 2024.

It was recommended that the Council Executive:

1. note the content of the 2023/24 Annual Return on the Charter, the commentary, improvement actions and benchmarking; and
2. approve the Annual Assurance Statement for submission to the Scottish Housing Regulator by 31 October 2024.

Decision

To approve the terms of the report.

12. CRAFT WORKER PAY SCALES

The Council Executive considered a report (copies of which had been circulated) by the Head of Housing, Customer and Building Services which presented proposed changes to the Council's pay scale for Craft Workers.

It was recommended that the Council Executive:

1. note the background to the proposed changes to the Craft Workers pay scale; and
2. approve the proposed changes to the Craft pay scale enabling officers to progress further consultation with the relevant Trade Unions and impacted workforce.

Decision

To approve the terms of the report.

13. CLIMATE CHANGE TARGETS BILL CALL FOR VIEWS

The Council Executive considered a report (copies of which had been circulated) by the Head of Planning, Economic Development and Regeneration that presented a proposed response to the Scottish Government's 'Call for Views' on proposed changes to the Climate Change Targets Bill, and sought approval for its submission to the Scottish Government.

It was recommended that the Council Executive:

1. note the contents of the report and the response at Appendix 1; and
2. approve the response for submission to Scottish Government for publication.

Decision

To approve the terms of the report.

14. INFRASTRUCTURE LEVY FOR SCOTLAND: DISCUSSION PAPER

The Council Executive considered a report (copies of which had been circulated) by the Head of Planning, Economic Development and Regeneration seeking approval of a council response to the Scottish Government Discussion Paper on an Infrastructure Levy for Scotland.

It was recommended that the Council Executive:

1. note the terms of the Discussion Paper from the Scottish Government and the reasons for it (Appendix 1);
2. approve the proposed response to the consultation (as set out in Appendix 2 to the report); and
3. agree to submit Appendix 2 to Scottish Government as the council's consultation response before the deadline of 30 September 2024.

Decision

To approve the terms of the report.

15. REVOCAION OF LINLITHGOW AIR QUALITY MANAGEMENT AREA

The Council Executive considered a report (copies of which had been circulated) by the Head of Planning, Economic Development and Regeneration making members aware of the final revocation report for the Linlithgow Air Quality Management Area, and that the process required to consider revocation had been followed and a final determination was now

required by Council Executive.

It was recommended that the Council Executive:

1. note the content of the final revocation report;
2. note that the air quality objectives in Linlithgow had been met continuously over a number of years since the designation of the air quality management area;
3. note the process of consideration and consultation on the proposal to revoke the air quality management area in Linlithgow had been completed; and,
4. agree to revoke the West Lothian Council (Linlithgow) Air Quality Management Area Order 2016.

Decision

To approve the terms of the report.

16. REVOCAION OF NEWTON AIR QUALITY MANAGEMENT AREA

The Council Executive considered a joint report (copies of which had been circulated) by the Head of Planning and Economic Development making members aware of the final revocation report for the Newton Air Quality Management Area, and that the process required to consider revocation had been followed and a final determination was now required by Council Executive.

It was recommended that the Council Executive:

1. note the content of the final revocation report;
2. note that the air quality objectives in Newton had been met continuously over a number of years since the designation of the air quality management area;
3. note the process of consideration and consultation on the proposal to revoke the air quality management area in Newton had been completed; and
4. agree to revoke the West Lothian Council (Newton) Air Quality Management Area Order 2016.

Decision

To approve the terms of the report.

17. SCOTTISH GOVERNMENT CONSULTATION UNDER SECTION 36 OF ELECTRICITY ACT 1989 – POND INDUSTRIAL ESTATE, WHITBURN

ROAD, BATHGATE

The Council Executive considered a report (copies of which had been circulated) by the Head of Planning, Economic Development and Regeneration seeking approval for a response to the Consultation from the Scottish Government on application 0379/EXC/24, under Section 36 of the Electricity Act 1989, for the installation of a battery energy storage system and associated infrastructure with a generating capacity of up to 200MW on land at Pond Industrial Estate, Whitburn Road, Bathgate.

It was recommended that the Council Executive:

1. note the contents of the consultation from the Scottish Government for the proposed installation of a battery energy storage system and associated infrastructure;
2. agree to raise no objections to the proposal and to include draft conditions (Appendix 1) in the response that could be used, where appropriate, to cover matters raised by consultees;
3. note that officers intended to report to full council on 24 September 2024 to recommend that the council's Scheme of Administration was updated so that going forward the Development Management Committee would respond on behalf of the council to statutory consultations and notifications of all licence applications associated with Section 36 of the Electricity Act 1989; and
4. note that consideration of this consultation was continued from Council Executive on 13 August 2024 and to note the additional information provided in Part D5.

Motion

'Council Executive notes recommendations 1, 3 and 4, and in relation to recommendation 2, agrees to raise no objections to the proposal and to include draft conditions (Appendix 1 of the report) in the response, where appropriate, to cover matters raised by consultees.

Council Executive also agrees to convey to the Scottish Government that any consent granted should take into account concerns raised by members at Council Executive on 13 August 2024 as set out in section D5 of the report, in relation to the following:

- Fire Safety
- Disposal of batteries/decommissioning
- Pollution

In addition to give attention to the 5 biggest lithium-ion-battery fires to date. <https://eridirect.com/blog/2022/03/the-5-biggest-lithium-ion-battery-fires-to-date/>

Council Executive agrees to instruct officers to respond to the Scottish Government's consultation in the terms as outlined above.'

- Moved by the Chair and seconded by Councillor Danny Logue

Decision

To unanimously agree the terms of the motion.

18. CALL FOR VIEWS: STAGE 2 SCRUTINY OF THE NATIONAL CARE SERVICE (SCOTLAND) BILL

The Council Executive considered a report (copies of which had been circulated) by the Depute Chief Executive advising of the Call for Views by the Scottish Parliament's Health, Social Care and Sport Committee in relation to stage 2 amendments to the National Care Service (Scotland) Bill, and seeking approval of the draft consultation response included in Appendix 1.

It was recommended that the Council Executive:

1. note the contents of the report; and
2. agree that the draft response, included in Appendix 1 was submitted to Health, Social Care and Sport Committee.

Motion

To agree the terms of the report.

- Moved by the Chair and seconded by Councillor Anne McMillan

Amendment

'We note acknowledgement from West Lothian Council that improvement by way of reform is welcome but we are concerned that the multiple-choice response to Questions 1, 2 and 3 do not reflect the text and would request the responses be changed to "part support and part oppose".

In section 7, the blanket strong opposition to Direct Funding, Inclusion of children's services and the inclusion of Justice Social Work is without any comment and for that and other reasons we cannot support this section. We would respectively request the responses are changed to "partly support and partly oppose".'

- Moved by Councillor Pauline Stafford and seconded by Councillor Carl John

An electronic vote was conducted for members attending in person with verbal votes cast by those participating remotely. The result was as follows:

Motion

Tony Boyle
Tom Conn

Amendment

William Boyle
Carl John

Angela Doran-Timson
Damian Doran-Timson
Lawrence Fitzpatrick
Danny Logue
Anne McMillan
Craig Meek
Sally Pattle
George Paul

Pauline Stafford

Decision

Following a vote, the motion was successful by 10 votes to 3, and it was agreed accordingly.

19. 2024/25 HOUSING CAPITAL REPORT

The Council Executive considered a report (copies of which had been circulated) by the Depute Chief Executive which reported on the financial position in relation to the Housing Capital Programme following the completion of the month 4 monitoring exercise.

It was recommended that the Council Executive note the outcome of the month 4 Housing Capital Monitoring exercise and the projected outturn for 2024/25.

Decision

To note the terms of the report.

20. 2024/25 HOUSING REVENUE ACCOUNT – MONTH 4 MONITORING REPORT

The Council Executive considered a report (copies of which had been circulated) by the Depute Chief Executive which reported on the financial performance following the month 4 monitoring exercise.

It was recommended that the Council Executive note the outcome of the month 4 monitoring exercise and the projected outturn.

Decision

To note the terms of the report.

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

WHITBURN AND BLACKBURN LOCAL GOVERNMENT BY-ELECTION

REPORT BY CHIEF EXECUTIVE

A. PURPOSE OF REPORT

The purpose of the report is to advise the Council Executive of the Local Government By-Election to be held in the Whitburn and Blackburn ward and seek agreement on a change to the agreed polling scheme.

B. RECOMMENDATIONS

It is recommended that the Council Executive:

1. Note the arrangements being made
2. Agree the polling scheme in the report

C. SUMMARY OF IMPLICATIONS

I Council Values	Focusing on our customers' needs Providing equality of opportunities Working in partnership
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Local Government (Scotland) Act 1973 Representation of the People Act 1983 Electoral Administration Act 2006 Electoral Registration & Administration Act 2013
III Implications for Scheme of Delegations to Officers	No change
IV Impact on performance and performance Indicators	
V Relevance to Single Outcome Agreement	
VI Resources - (Financial, Staffing and Property)	The cost of the by-election will be met from existing budgets
VII Consideration at PDSP	
VIII Other consultations	Leader of the Council, Leaders of the other Political Groups, Independent Councillor, Local Elected Members (ongoing)

D. TERMS OF REPORT**D1 Background**

Following the resignation of Councillor Kirsteen Sullivan, a casual vacancy has arisen in the Whitburn and Blackburn ward, and arrangements are being made to hold a by-election to fill this vacancy. This involves working with other council services, and external partners.

D2 Date of Poll

Section 37 of the Local Government (Scotland) Act 1973 requires that an election to fill the vacancy be held within three months of the date on which the vacancy is deemed to have occurred.

The date of the poll is determined by the Returning Officer. An update on the date of the poll will be provided to elected members when information is available.

The count will be an e-count and will be held the following day.

D3 Polling Scheme

The Council Executive agreed a polling scheme at its meeting on 16 April 2024. The Council Executive is asked to agree a change to the polling scheme, as shown in Table 1 below, which would come in for this by-election. The change is in respect of polling district BLA7L. This polling district currently votes at Polbeth Village Hall and contains 9 electors, 6 of which were postal voters at the last election.

Table 1

Polling District	Polling Place	Change
	Ward 7 Whitburn and Blackburn	
BLL7A	Greenrigg Primary School	No Change
BLL7B BLL7C	Whitburn Bowling Club	No Change
BLL7D	Whitburn South Parish Church Hall	No Change
BLL7E	Brucefield Church Hall	No Change
BLL7F	Whitburn Partnership Centre	No Change
BLL7G	East Whitburn Community Centre	No Change
BLL7J BLL7H BLL7I	Blackburn Partnership Centre	No Change
BLA7K	Seafield Community Centre	No Change
BLA7L	Polbeth Village Hall	Move voters to Seafield Community Centre.

Using Polbeth Village Hall as a polling place for such a small number of electors is not an efficient use of resources. The polling place for the nearest neighbouring properties is Seafeld Community Centre, and the Returning Officer recommends that the BLA7L move to use this polling place, and merges with BLA7K on publication of the next register. This would remove the crossover of ward and now Westminster constituency at Polbeth Village Hall going forward, which reduces the potential for confusing voters at these polls, as well as minimising confusion for in person electors in BLA7L by making the change permanent rather than for one poll only.

The Leader of the Council, Leaders of the Political Groups and local elected members are being consulted on this proposal and any feedback will be provided at the meeting of the Council Executive.

It should be noted that the Chief Executive has delegated authority to make any required changes (e.g. as a result of the loss of a polling place) to the polling scheme, in consultation with the Leader of the Council, Leaders of the other Political Groups, and local elected members, when there is not time to seek the approval of the Council Executive before a particular poll.

D4 Incorporating Guidance and Learning

The experience and learning from both the recent local government elections held in May 2022 and the two local government by-elections held since will be used to ensure that the poll can be delivered effectively for all stakeholders. The robust risk assessment and planning processes used for these polls will continue to be used for this by-election.

E. CONCLUSION

Arrangements are being put in place to allow a by-election to be delivered in the Whitburn and Blackburn ward. The Executive is asked to note the arrangements, and to agree the proposed change to the polling scheme to allow arrangements to progress.

F. BACKGROUND REFERENCES

Council Executive 16 April 2024 – Election Preparations and the Impact of the Elections Act

Appendices/Attachments: None
 Contact Person: Caroline Burton; 01506 281651; caroline.burton@westlothian.gov.uk
 Name of CMT Member: Graham Hope, Chief Executive,
 Date: 1 October 2024

DATA LABEL: PUBLIC

**COUNCIL EXECUTIVE****PROCUREMENT APPROVAL REPORT****REPORT BY THE HEAD OF CORPORATE SERVICES****A. PURPOSE OF REPORT**

To seek Council Executive approval to enter into a contract where Committee approval is required by the Council's Standing Orders.

B. RECOMMENDATION

It is recommended that Council Executive approve an exemption from Contract Standing Orders for a direct award of a contract to Action for Children for the period 1st April 2025 to 31st March 2027 with a possible extension for a further 12 months of £392,040 for Child Disability Service outreach one to one support and personal care services.

SUMMARY OF IMPLICATIONS

	Council Values	Caring and Compassionate Open, Honest and Accountable Collaborative, Inclusive and Adaptive
C.	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Standing Orders of West Lothian Council and the Public Contracts (Scotland) Regulations 2012
	Implications for Scheme of Delegations to Officers	None
	Impact on performance and performance Indicators	None
	Relevance to Single Outcome Agreement	Our Children have the best start in life and are ready to succeed. People most at risk are protected and supported to achieve improved life chances

D. TERMS OF REPORT

Background and Context

The Child Disability Service was established in 2000, as a response to substantial duties, placed on local authorities, as outlined in the Children (Scotland) Act 1995 to assess children's and carers needs. The Service work with vulnerable young people and their families who are impacted by disability but also where young people are looked after and accommodated, at risk of becoming looked after and accommodated, where they are on the child protection register, or where statutory measures of care are required.

The Service aims to limit the impact of disability within the whole family network and ensure the welfare and protection of the children within the families including providing children with specific outreach one to one support and personal care. The personal care and one to one support provided helps support families and prevents breakdown in care which could lead to the requirement for out of area residential provision.

Children with disabilities are entitled to an assessment of need and where this assessment identifies the requirement for personal care and one to one support in the home, the council are required to provide.

Service Provision

This provision is key to the sustainability of some of West Lothian's most complex packages of care. Without this provision, care for some of these children at home, could break down and the council currently has no in-house residential provision. This provision forms part of our statutory duties. The United Nations Convention on the Rights of the Child Article 31 states that children and young people have a right to relax and play. Article 23 in regards to Children with Disability states they have the right to enjoy a full and decent life with dignity. The Scottish Government has recently embedded these rights in law with the passing of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. The service is specialist in nature and targeted at children where their disability is impacting on their ability to engage in community-based activities, who have significant and complex needs and who meet the eligibility criteria to receive a budget. It is targeted at families of children with Autism Spectrum Disorder, Intellectual and Physical disabilities and those with a high level of Additional Needs.

The outreach, one to one support and personal care service is delivered both in the child's home and outreach one to one support is delivered in the wider West Lothian area, with the service provider utilising community resources and amenities, such as community centres, groups, outdoor activities, all in line with agreed assessed outcomes. Action for Children works with the Child Disability Service which is a council Service and other stakeholders such as Schools, Children and Adolescent Mental Health Service (CAMHS) and NHS to ensure a robust care plan is delivered for children and young people with disabilities.

The service is designed to be able to flex delivery dependent on the needs of the children at any particular time so a range of support provision can be delivered. The overall outcomes of delivery of the care and support to these young people include but are not limited to:

- Reducing social isolation – ensuring children and young people have access to inclusive experiences and positive opportunities to meet others, build social skills and form friendships.
- Provide a break in care – providing children and young people and

parents/Carers some respite and time outside their normal routine. This enhances their ability to maintain resilience in caring duties.

- Provide a befriending/mentoring support role– ensuring access to a wide range of inclusive opportunities and fun activities in which children and young people have an interest and can become included and active within their local community.
- Develop independence skills – involving children and young people in safe, meaningful activities that offer them opportunities to try different things, gain new experiences, develop skills and broaden their horizons.
- Provide a level of personal care – through respectful, dignified personal care undertaken by trained staff in line with robust organisational policies and procedures.
- The service also delivers to SHANARRI outcomes for each child and reports annually on these outcomes for each child in addition to quarterly activity reporting.

Service Delivery/Quality of Provision

In 2023/24 the service provided support for 23 individual Children over the course of the year. Each child receives an assessed number of support hours weekly or fortnightly. Support is delivered over multiple days in the period with individual children receiving between 28 to 56 hours of support over the weekly or fortnightly period. The service delivered a total of 3190 hours of support during the year which was 196 hours above the contracted level of 2944. The children were supported either at home or were assisted to attend community venues/events where they had opportunities to engage with others / take part in organised activities. Parents of children who were supported by the service all reported significant levels of satisfaction with the type and level of support their Child had received. Feedback from parents and Carers is positive with 31 parents engaging in feedback of which 30 strongly agreed or agreed that that they were very happy with the service provided to their children and that their children enjoyed the activities/ experiences offered.

Proposed Delivery

It is proposed that Action for Children who presently undertake service provision will provide contracted services for 3600 hours per annum.

Procurement and Legislative Considerations

Public procurement legislation and Contract Standing Orders require advertising of contracts for supplies and services of £50,000 and above. The aggregated contract value including previous expenditure over the past 12 months is £522,720. With aggregated expenditure in excess of the level whereby the Head of Corporate Services is permitted to authorise Council Executive is, as permitted by Section 6A of Contract Standing Orders, Council Executive is requested to approve a direct award of a contract to Action for Children for a period of 2 years from 1 April 2024 with a total estimated value of £392,040 to allow Action for Children to provide services as contained within D of this Report.

A direct award would be permissible within procurement regulations as the cumulative value is below the GPA threshold of £552,950 ex vat. Regulation 3 (10) of the Public Procurement (Scotland) Regulations 2016 makes provision for the aggregation of public contracts where the value of all contracts for similar supplies and services awarded during the previous 12 months must be aggregated. The aggregated value determines whether the contract is over the Government Procurement Agreement (GPA) threshold.

The total proposed contract value of £392,040 is below the Light Touch Regime threshold (£552,950 excluding VAT) and therefore, in line with the Scottish Government guidance on the Procurement of Care and Support. The Council can choose not to seek offers for Social Care and Other Related Services contracts on a case by case basis.

E. CONCLUSION

It is recommended that Council Executive approve an exemption from Contract Standing Orders for a direct award of a contract to Action for Children for the period 1st April 2025 to 31st March 2027 with a possible extension for a further 12 months of £392,040 to deliver on behalf of the Council's Child Disability Service both outreach one to one support and personal care services”

F. BACKGROUND REFERENCES

Appendices/Attachments: None

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Lesley Henderson
Interim Head of Corporate Services

Date of meeting: 1 October 2024

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

SCOTTISH GOVERNMENT PROGRAMME FOR GOVERNMENT 2024/25 AND PRE-BUDGET FISCAL UPDATE

REPORT BY HEAD OF FINANCE AND PROPERTY SERVICES

A. PURPOSE OF REPORT

The purpose of this report is to provide Council Executive with an overview of the Cabinet Secretary's Pre-Budget Fiscal update that was presented to Parliament on 3 September 2024 and the Programme for Government for 2024/25 announced by the Scottish Government on 4 September 2024.

B. RECOMMENDATION

It is recommended that the Council Executive:

1. Notes the key announcements made by the Cabinet Secretary to parliament in the Pre-Budget fiscal update on 3 September 2024;
2. Notes the key announcements made by the Scottish Government as part of their Programme for Government plans for 2024/25;
3. Notes the substantial projected overspend for 2024/25 in the revenue budget, the current financial planning assumptions and actions being taken to help mitigate the projected pressure in the current year and future years to 2027/28;
4. Agrees that the Head of Finance and Property Services should continue to report to Council Executive on relevant UK and Scottish Government announcements.

C. SUMMARY OF IMPLICATIONS

I Council Values	Open, honest and accountable and collaborative, inclusive and adaptive.
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	The council is required to approve a balanced revenue budget for each financial year. The CIPFA Financial Management Code requires financial plans to be prepared for at least five years in duration, and detailed budgets are prepared for at least three years.
III Implications for Scheme of Delegations to Officers	None
IV Impact on performance and performance Indicators	Ongoing restraint in relation to government funding inevitably has implications for the council's budget and performance.
V Relevance to Single Outcome Agreement	Government funding provides resources to help deliver the Single Outcome Agreement, Corporate Plan priorities and council activities. Effective prioritisation of resources is essential to achieving key outcomes.

- VI Resources - (Financial, Staffing and Property)** Resource implications of the Programme for Government plans will be incorporated into future financial planning assumptions.
- The revenue budget 2024/25 to 2027/28 approved on 22 February 2024 had a recurring budget gap over the first two years of £2.9 million, currently funded by one-off resources, and a total budget gap over the four years of £9.5 million.
- Based on updated planning assumptions, reported to Council Executive in June 2024, it was forecast that the Council may have a budget gap of £814,000 in 2025/26 and £10.4 million over the three years to 2027/28. Given the latest monitoring position for 2024/25, it is likely that this gap will increase further.
- VII Consideration at PDSP** Quarterly horizon scans are presented to Corporate Policy and Resources PDSP.
- VIII Other consultations** This report is part of the ongoing process of briefing elected members on a range of factors that impact on the council's financial position.

D. TERMS OF REPORT

D.1 Background

On 4 September 2024, the Scottish Government announced its Programme for Government, which set out the government's policies and legislative plans for the next year.

A day earlier, on 3 September 2024, the Cabinet Secretary delivered the Pre-Budget fiscal update to Parliament. This report sets out details of both of these announcements.

D.2 Scottish Fiscal Commission (SFC) Fiscal Update

The SFC published a Fiscal Update in August 2024. This update was originally intended to be published at the same time as the Scottish Government's Medium-Term Fiscal Strategy (MTFS), however this was postponed due to the General Election. This update of the economic and fiscal forecasts preceded the Pre-Budget Fiscal update by the Cabinet Secretary on 3 September 2024.

The main points to note from the SFC's update are as follows:

- In recent years, public sector wage settlements have been higher in Scotland than England. This means the median pay for a full-time public sector employee in Scotland was £2,400 (6.5%) higher than in the UK in 2023 (and even higher when compared to England alone). As a result, a public sector pay increase of the same percentage terms in Scotland as has been seen in England would not be fully covered by additional Barnett Consequentials.
- A further pressure on the Scottish Budget in this area reflects the fact that, proportionally, Scotland has a higher share of public sector workers than England.
- In addition, the Chancellor of the Exchequer, has made it clear that all departments will have to fund about a third of such a pay rise from internal efficiency savings, which means no Barnett Consequentials would apply to this share. Taken together these three factors demonstrate that a considerable extra sum will require to be found to match the UK public sector settlement.
- Decisions by the Scottish Government on devolved aspects of tax, mainly, Income Tax and social security payments continue to impact on whether or not these decisions translate into a net extra pressure or a net source of extra income.

- Income Tax revenues have been growing relatively faster in Scotland than for the UK recently. This means that the reconciliation for financial year 2022/23 is positive as opposed to negative, as has been seen in recent years, with the adjustment to be applied to the 2025/26 budget. The final reconciliation figure has not yet been confirmed as further changes are due, although it is still likely to remain positive and substantial.
- On social security, the latest estimate for 2023/24 is that Scottish Government spending exceeded what is received from the UK Government by £900 million. The SFC estimate that the social security funding gap will rise to £1.5 billion by 2028/29 putting even more pressure on other budgets.
- The SFC report reinforces how uncertain future funding levels will be and how dependent they are on Scottish Government decisions.

D.3 Scottish Government Pre-Budget Fiscal Update

The Pre-Budget Fiscal update was presented to the Scottish Parliament on 3 September 2024 by the Cabinet Secretary. The key points from the announcement are as follows

Pay

- Pay is a significant driver of in-year pressures with up to £0.8 billion in additional costs expected for this year. Public sector wages totalled around £25 billion last year, more than half of the day-to-day spending budget. The Scottish Government believes that the workforce needs to evolve with further information on this to be set out as part of the Scottish Budget. The government's announcement implied that there will need to be cuts in the workforce by comparing the size of the public sector in Scotland with that in England.

Balancing the Budget

- The Cabinet Secretary expressly stated that there cannot be spend out with available resources.
- The main lever to balance the budget is to reduce spending. Some budget savings were mentioned in the statement to parliament however a list of all proposed savings and additional income was set out in a letter to the Finance & Public Administration Committee.
- £60 million from previously announced emergency spend controls.
- Savings included removing free bus travel for asylum seekers, the reintroduction of peak rail fares from 27 September 2024 and an agreement with local government to draw on existing programmes to fund the non-teaching pay award for 2024/25.
- Up to £460 million of additional ScotWind revenue funding will be utilised.
- A further £188 million from additional specific savings across all portfolios, including increased interest income on Scottish Water loan balances and reducing spending on sustainable and active travel. Acknowledgement that further significant action will be required, especially if the UK Government tightly constrain funding as is expected in the Chancellor's Budget in October 2024.

Outlook

- Current capital commitments are not affordable; therefore, the focus will be directed towards spend on essential infrastructure. This means that previous commitments around new infrastructure are likely to be postponed or cancelled.
- The Cabinet Secretary reinforced her commitment to health, with an increase in funding confirmed for 2025/26. Reform of health and social care was mentioned in the statement, along with the need to realign spend to match need.
- Recruitment freeze to be extended across all public bodies.
- The Scottish Government Tax Strategy will be published alongside the 2025/26 Scottish Budget which will set out long-term aspirations. It was noted that there would need to be substantial reform to the tax system before further significant sums could be raised from income tax.
- The Scottish Budget will highlight how the government will focus efforts on reform opportunities and maximise efficiencies. Options to lower spending will consider use of buildings, procurement, fund management and income generation.

D.4 Scottish Government Programme for Government Summary of Proposals

The Scottish Government plans in the Programme for Government for 2024/25 are categorised into four priorities:

- Eradicating Child Poverty
- Growing the Economy
- Tackling the Climate Emergency
- Ensuring High Quality and Sustainable Public Services

The key commitments announced by the Scottish Government within each of these areas are outlined below.

D.4.1 Eradicating Child Poverty

- Work with local authorities to increase take up of early learning and childcare for eligible two-year olds, with a particular focus on boosting take up among families most at risk of poverty and areas with some of the lowest take up rates.
- Provide employability support on a demand led basis to help parents and carers enter and stay in work.
- Expansion of place-based 'fairer futures partnerships' to five more areas supporting local approaches to joined up services.
- Over the next two years, a new childcare offer, backed by £16 million will be designed and delivered for priority families within six 'Early Adopter Communities' in Dundee, Clackmannanshire, Inverclyde, Glasgow, Fife and Shetland.
- Second round of Child Poverty Practice Accelerator fund announced.
- Delivery of the Islands Cost Crisis Emergency Fund to support projects which include free school meal top-ups, breakfast clubs and a "love local" card for families on low incomes.
- Commitment to reducing developmental concerns at 27-30 months by 25% by 2030.
- Prioritise funding to increase the pay of workers in adult social care who are delivering direct care in commissioned services, early learning and childcare workers delivering funded hours and children's social care workers, so that they are paid at least the real living wage from April 2025.
- Invest in community-based youth work, focussed on reaching young people outside the classroom and supporting access to education, training and employment.
- Improve access to higher education for students from the most socio-economically disadvantaged communities to meet the target of 20% of all students being from the 20% most deprived communities by 2030.
- Launch of Pension Age Disability and Carer's Additional Person payments.
- £1.5 million additional funding to expand advice in accessible settings, including community centres and hospitals, with eight new projects this year.
- Expansion of free school meals to those in receipt of the Scottish Child Payment in Primary 6 and 7, and the provision of free school meal alternatives for eligible families during school holidays.
- Investment of nearly £600 million in affordable housing in 2024/25. The majority of this will be directed at boosting social housing supply with £40 million of this funding being used to bring existing homes into affordable use.
- £2 million in additional support to local authorities facing the most significant and sustained temporary accommodation pressures to maximise the use of existing housing stock.

D.4.2 Growing the Economy

- Investment of more than £315 million over the 2024/25 academic year to enable universities to drive local economic growth by helping develop early career researchers and promoting knowledge exchange.
- Commitment to increase funding for culture and the arts so that it is at least £100 million more a year by 2028/29.
- Support local authorities to implement the visitor levy.
- Deliver three of the six new major ferries currently under construction and progress the procurement of seven new electric ferries through Phase 1 of the Small Vessels Replacement Programme.

- Progress the Scotrail fleet replacement programme through the further development of specifications for life expiring rolling stock.
- Upgrade and reconfigure rail power supplies to support existing and future electrification of the railways with a further four 'feeder stations' to enter service by 2027.
- Progress dualling the A9, commencing construction of the Tomatin to Moy contract, and continuing procurement for the Tay Crossing to Ballinluig project.
- Support Screen Scotland to deliver on its strategy to 2030, ensuring the film and TV sector can reach £1 billion gross value added to the Scottish Economy by 2030.
- Up to £25 million funding available from the Affordable Housing Supply Programme to support the five-year Rural Affordable Homes for Key Workers Fund.
- £1.9 billion commitment to regional economic development across Scotland.
- Develop two Green Freeports in Inverness and Cromarty Firth and the Forth estuary, and establishing two new Investment Zones, in Glasgow and the North East of Scotland.
- Up to £500 million Scottish Government funding over five years, aiming to leverage £1.5 billion of private investment in the offshore wind sector.
- Connect over 20,000 premises to gigabit capability broadband in areas of market failure by March 2025, through delivery of three regional, multi-year contracts with Openreach.

D.4.3 Tackling the Climate Emergency

- Take forward the focused work of the ten-year, £500 million Just Transition Fund for the North East and Moray and set out the next steps for future deployment.
- Support Scotland's manufacturing industries to invest in energy efficiency and decarbonisation projects, with investment of up to £9 million in 2024/25 through the Scottish Industrial Energy Transformation Fund and work with industry stakeholders to develop the future industrial decarbonisation programme.
- Provide £2 million to support the repurposing of existing oil and gas infrastructure to transport carbon dioxide for permanent storage in the North Sea.
- Set a route map for enabling the delivery of approximately 24,000 additional public electric vehicle charge points by 2030 to support the move to electric vehicles, with 6,000 electric vehicle public charge points delivered before the end of this year.
- Make it easier for people to walk, wheel or cycle on everyday journeys through the Active Travel Infrastructure Fund, the National Cycle Network and People and Place Programme.
- Restore 10,000 hectares of degraded peatland and create 10,000 hectares of woodlands, which will include over 4,000 hectares of native woodland.
- Launch the final four Community Climate Hubs by Autumn 2024, ensuring every area in Scotland has access to one.

D.4.4 Ensuring High Quality and Sustainable Public Services

- Provide £120 million of additional funding for NHS Boards to support continued improvements across a range of mental health services and treatments, including meeting the Child and Adolescent Mental Health Services waiting times standard nationally, with backlogs cleared by December 2025.
- £16 million in 2024/25 through the Victim Centred Approach Fund to support 23 organisations to provide practical and emotional support.
- Continue to work with COSLA to identify options for the removal of non-residential care charges as part of wider work with partners on social care improvement.
- Continue to provide local authorities with £145.5 million to protect teacher numbers.
- Start construction of a further eight projects through the Learning Estate Investment Programme.
- Review Junior Doctor and Dentist contracts, bringing forward recommendations on a Pay Review mechanism.
- Invest in the prison estate, supporting replacement prisons in Inverness and Glasgow.
- Provide nearly £2.5 billion to support public transport in 2024/25 and £1 billion in ensuring the motorway and trunk road network is safe, resilient and efficient.
- Widening access to Residential Rehabilitation, increasing capacity by 50% to 650 beds, with 1,000 people to access public funding for rehab placement every year by 2026.

- Work with COSLA and Health and Social Care Partnerships to increase access to the care and support people living with dementia receive following a diagnosis. This includes an expansion of community-based approaches, reducing demand for more intensive health and social care support.
- Test the approach to Bairns' Hoose across ten areas, providing safe, trauma-informed environments for child victims and witnesses to access multi-agency support and recovery services, ahead of a national rollout, incrementally, from 2027.
- Opening a further Rapid Cancer Diagnostic Service, bringing the national total to six.
- Deliver around 20,000 extra orthopaedic, ophthalmology and general surgery procedures annually in the new National Treatment Centres.

D.5 2024/25 Revenue Budget Position and 2025/26 to 2027/28 Financial Plans

The first full monitoring exercise of 2024/25, at month 4, has identified a net projected overspend of £5.527 million. Material recurring pressures included in the forecast outturn total £6.609 million, after taking account of one-off resources in 2024/25 and implementation of agreed actions to date. Pressures in homelessness, mainstream school transport, older people care homes and external placements for children have occurred over a number of years whilst there are growing pressures, which first emerged during 2023/24, in commissioned care for adults and older people and housing with care costs.

As agreed in the budget monitoring report to Council Executive on 3 September 2024 officers will take urgent management action to curtail spend and preserve any in-year underspends to minimise the projected overspend in 2024/25. It was also agreed that officers undertake further work, as a matter of urgency, to identify potential options to mitigate the reported overspend and impact of recurring pressures including recruitment controls, reduction/cessation of discretionary or uncommitted spending, scope to bring forward future year approved savings and identification of additional income options. An update will be provided to Council Executive as part of the month 6 monitoring report in November 2024, however it is likely that despite the action to be taken a substantial projected overspend will remain.

There are also a number of risk areas which could further deteriorate the financial position, as noted in the risk section of this report. These could result in very substantial unfunded pressures whilst also jeopardising the council's ability to meet the legal requirement to deliver best value services.

In February 2024, Council agreed that officers should consider options to address the remaining budget gap and that options should be incorporated into the Phase 3 public consultation. Reflecting the financial position in 2024/25, Council Executive agreed in September 2024 that officers should consider any additional saving measures that could be approved in advance, or as part of, the annual budget setting report in February 2025 to help balance the 2025/26 budget. Additional savings required to balance 2025/26 will be progressed in line with the council's established approach to budget savings, including reporting to PDSPs.

In addition to considering options to identify saving options, the budget model to 2027/28 will be reviewed and updated by officers before the Scottish Budget to reflect latest circumstances, forecasts and current base budgets following the 2024/25 budget realignment exercise. This is consistent with the council's established approach to revenue financial planning and is undertaken annually each Autumn. The Chancellors Autumn Budget will be published on 30 October, with the Scottish Budget due to be published thereafter on 4 December 2024. Reports on these announcements will be brought to Council Executive in due course.

D.7 Risks to the Council's Budget Position

Although the council approved balanced budgets for 2024/25 and 2025/26, albeit with the use of one-off funding, a recurring budget gap remains across the period to 2027/28. In addition to the deteriorating budget position in the current year, which will impact on future years if recurring solutions are not found and implemented, there are also a number of risks that could increase current anticipated budget gaps further. These include:

- Future level of Scottish Government grant funding, especially for non-protected areas. The Cabinet Secretary's Pre-Budget Fiscal update has only served to reinforce this as a major risk to the council's budget position.
- Policy changes which restrict flexibility to deliver services locally (e.g. education restrictions and the National Care Service).
- Demand for services grows at a pace not anticipated when setting the budget, particularly within the high-risk areas of social care and homelessness where recurring pressures already exist.
- Inadequate funding for new legislation and national commitments.
- Affordability of future year pay awards for all staffing groups.
- Increase in costs in demand led services greater than forecasts.
- Contract inflation greater than amounts provided for in the model.
- Market price increases following procurement exercises.
- Full delivery of approved budget saving measures.
- Implementation of significant actions to ensure overall pressures across the council can be brought back within the revised budget.
- Full exhaustion of one-off resources before the end of the four-year period due to in-year overspends and pressures in the budget model not funded by recurring budget saving measures.

E. CONCLUSION

This report provides Council Executive with an overview of the key announcements made by the Cabinet Secretary's Pre-Budget fiscal update, the Scottish Government as part of their Programme for Government plans for 2024/25 and an update on the current revenue budget for 2024/25 and beyond. It is proposed that officers will continue to monitor these plans as they are progressed and more information becomes available. Any potential policy, service and financial implications for the council will be assessed and reported to elected members as appropriate.

F. BACKGROUND REFERENCES

Revenue Budget 2024/25 to 2027/28 – Report by Head of Finance and Property Services to West Lothian Council on 22 February 2024

2025/26 to 2027/28 Budget Strategy Update – Report by Head of Finance and Property Services to Council Executive on 26 June 2024

2024/25 General Fund Revenue Budget – Month 4 Monitoring Report – Report by Head of Finance and Property Services to Council Executive on 3 September 2024

Appendices/Attachments: None.

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Patrick Welsh
Interim Head of Finance and Property Services

1 October 2024

DATA LABEL: Public



COUNCIL EXECUTIVE

SCOTTISH WELFARE FUND BUDGET PRESSURES

REPORT BY HEAD OF FINANCE AND PROPERTY SERVICES

A. PURPOSE OF REPORT

To update the committee on the Scottish Welfare Fund budget position and measures required to address an anticipated budget overspend for 2024/25

B. RECOMMENDATION

It is recommended the committee:

1. Notes that the council has made Scottish Welfare Fund payments on a "High Priority" level since April 2023 from the funding available from the Scottish Government, supplemented each year by the council
2. Notes that reduced funding has resulted in an unsustainable anticipated overspend in 2024/25 of £144,000 if payments continue on that level
3. Agrees a move as soon as possible to the "High Most Compelling Priority" level for both Crisis Grants and Community Care Grants until 31 March 2025, subject to any change that may be made by the council when it sets its budgets for 2025/26
4. Notes that a further update be brought to Council Executive in March 2025.

C. SUMMARY OF IMPLICATIONS

I Council Values	Caring and compassionate, Open, honest and accountable Collaborative, inclusive and adaptive.
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	The Welfare Reform Act 2012 provided for significant changes to Housing Benefit, a Benefit Cap, and the introduction of the Council Tax Reduction scheme and the Scottish Welfare Fund, both administered by local authorities in Scotland. In addition, further Department for Work and Pensions (DWP) led welfare changes are continuing to be introduced. The Scotland Act 2016 also devolved certain aspects of welfare in Scotland to the Scottish Parliament which are being implemented on an ongoing basis
III Implications for Scheme of Delegations to Officers	None.
IV Impact on performance and performance Indicators	Corporate and service performance indicators continue to be monitored.

V	Relevance to Single outcome Agreement	People most at risk are protected and supported to achieve improved life chances.
VI	Resources - (Financial, Staffing and Property)	An overspend of £144,000 is forecast for 2024/25. Officers will continue to assess the ongoing financial and staffing implications for the council.
VII	Consideration at PDSP	None.
VIII	Other consultations	With internal partners as well as Glasgow City Council, Scottish Public Services Ombudsman and the Scottish Government.

D. TERMS OF REPORT

D.1 Background

Since April 2013, local authorities have had a statutory duty to administer Scottish Welfare Fund (SWF) on behalf of the Scottish Government. The fund consists of two grants: Crisis Grants and Community Care Grants.

Crisis Grants (CG) meet short term financial emergencies and Community Care Grants (CCG) provide furniture for homes to help applicants set up or maintain their home.

The Scottish Government (SG) is responsible for providing funding on an annual basis to local authorities for both the Programme funding and Administration funding. Programme funding is the amount of funds the local authority (LA) receives to make awards to successful applicants and Administration funding is the funds provided to administer the SWF scheme.

Reducing levels of funding and increased demand have led to an anticipated overspend for 2024/25 of £144,000. This report highlights the options available to minimise the overspend position at the end of the financial year and recommends a course of action until 31 March 2025 to tackle the budgetary pressures.

D.2 Budget

In 2019/20 the SG Budget allocation for SWF was £37.9 million. In 2020/21, the budget increased to £40.9 million and has remained at that level since with no increase in funding other than the additional financial resources provided to councils during the Covid-19 pandemic. The SG Programme funding is calculated for each council using the agreed Income Domain of the Scottish Index of Multiple Deprivation (SIMD) methodology, based on the most recent publication in 2020.

Between 2021/22 and 2023/24, the council has committed an additional £2.316m to the Programme funding of which £2.242m was spent, as detailed in the table below. In addition, the annual Administration budget from SG of £171,000 on average does not fully cover the cost of administering the scheme with WLC supplementing the costs year on year.

The table below provides an overview of the funding from the SG and the council over the last four years. The council always sets the Programme budget at £1,164,000 which is reflected in the table below

	2021/22 (£)	2022/23 (£)	2023/24 (£)	2024/25 (£)
Programme	1,134,159	1,134,149	1,134,538	1,134,538
WLC starting point	1,164,000	1,164,000	1,164,000	1,164,000
WLC top up	1,000,000	1,198,000	118,000	
TOTAL	2,164,000	2,362,000	1,282,000	1,164,000

The above table demonstrates that Scottish Government funding has remained static but that overall funding has reduced.

The table below provides an overview of the administration budget provided by the Scottish Government, whilst the budget has remained static this budget is insufficient to fully deliver the SWF scheme. In 2023/24 the total admin costs were £299,081 and so far, this financial year up to and including August 2024 the admin costs are £123,449, with still 2 quarters remaining.

	2021/22 (£)	2022/23 (£)	2023/24 (£)	2024/25 (£)
Administration	171,841	174,851	171,715	171,715

D.3 Scottish Welfare Fund Expenditure

Local authorities are responsible for monitoring spend against the budget. To help manage the budget, councils can move the priority level on which awards are assessed. The priority levels are High, Medium and Low. High priority is usually used when budgets are being stretched due to the demand on the fund. Councils on high priority can only award grants to highly vulnerable individuals/families and the need for the financial support or goods they have asked for must be of high priority to their health and safety.

The council is currently paying on High priority and has been since April 2023. The information contained in D.2 indicates that it is not possible to pay on a lower priority level. The table below illustrates the spend against the available budget for the corresponding years in D.2.

	Crisis Grant		Community Care Grant		Spend (£)	Budget (£)	Shortfall with council top up (£)	Shortfall without council top up (£)
	Apps received	Paid	Apps received	Paid				
2021/22	12,284	7938	2866	1664	2,237,910	2,164,000	104,000	1,103,751
2022/23	12,795	7,895	3,451	1,824	2,240,137	2,362,000	0.00	1,105,988
2023/24	9,849	4,861	2,945	1,310	1,255,982	1,282,000	0.00	121,444
2024/25 (to 31 August 24)	3,815	2,161	1,206 **	608	529,491	1,164,000		

** Not all applications received in August 24 are complete therefore these figures only reflect the number awarded. At the time of writing this report there were 53 Community Care Grants still outstanding.

The move to High Priority had an impact on the application numbers which is demonstrated in the reduction in applications received from April 2023 onwards. However, lower application numbers do not necessarily correlate to lower spending. The average award rate for Crisis Grant remains at around £88 and for Community Care Grants it is £610.

It is important to recognise that cost saving exercises have been introduced to attempt to minimise the anticipated overspend. Some of the cost saving measures introduced are:

- Awarding grants for carpets without underlay
- Undercounter fridge/freezer is given to households with up to 2 adults rather than 1 adult previously
- Paying the exact amount of a Crisis Grant award rather than rounding to the nearest pound
- Tailoring a Crisis Grant for food to the individual household composition based on a local supermarket shop.

The projected overspend, after the cost saving measures were introduced, and on the assumption that the application numbers and spend for the remainder of the financial year will reflect that of the first quarter, would be £144,000. The cost saving measures introduced will not further mitigate or minimise overspend. The council must therefore consider introducing alternative options made available to them by Scottish Government in such circumstances.

D.4 High Most Compelling priority level

The SG Statutory Guidance on SWF does provide councils with a 4th option in relation to priority levels. “High Most Compelling” can be used when budgets are under significant threat and the council is at risk of running out of funds prior to the end of the financial year. To move to this priority level a number of measures need to be in place. These are:

- Completion of an Integrated Impact assessment to confirm what category of applicants would be impacted and the level of impact that would have.
- A letter must be sent to the deputy director of the Scottish Public Services Ombudsman (SPSO) along with Scottish Government confirming the intention to move to high most compelling priority level.
- All SWF Staff must receive training from the SPSO.

At present it is known that Glasgow City Council and Edinburgh City Council have already moved to High Most Compelling. A number of other councils (Aberdeen, Clackmannanshire, East Dunbartonshire, Fife and Stirling) are considering making the move at some point in this financial year.

Glasgow City Council has recognised a 22% reduction in Community Care Grant spend and a 9% reduction in Crisis Grant spend by moving to High Most Compelling. The comparative saving for West Lothian Council could reduce the projected overspend to an approximate from £144,000 to approximately £30,000 if introduced as early in the third quarter as possible.

D.5 Options

Whilst the Scottish Government's statutory guidance provides local authorities with an option to move to the High Most Compelling Priority Level, consideration and approval must also be given to how this is managed on a local level. There are 2 options available:

Option 1: Moving to High Most Compelling Priority level for both Crisis Grants and Community Care Grants.

Glasgow City Council has recognised a 22% reduction in Community Care Grant spend and a 9% reduction in Crisis Grant spend by moving to High Most Compelling. The comparative saving for West Lothian Council could reduce the projected overspend to approximately £30,000 from an approximate £144,000 if introduced as early in the third quarter of 2024/25 as possible.

Option 2: Moving to High Most Compelling Priority level for Community Care Grants only.

A 22% reduction in Community Care Grant spend was achieved by Glasgow City Council by moving to High Most Compelling priority. The comparative saving for West Lothian Council could reduce the projected overspend to approximately £64,000 if introduced as early in the third quarter of 2024/25 as possible.

Officers recommend option 1 to reduce as far as possible the risk of an overspend in this financial year.

The council may wish to make a different budgetary provision when it sets its budgets in February 2025. Officers will return to Council Executive in March 2025 with a view to reporting on the impact of changes approved today and agreeing a priority level for 2025/26.

D.6 Integrated Impact Assessment

A move to High Most Compelling will not restrict who can make an application to the fund. People will still be able to seek support from the fund for both Crisis and Community Care Grants if they find themselves in financial crisis or need support to set up or maintain a settled home. The change in priority level will still provide the most vulnerable with funds to heat their home, purchase food and have somewhere to rest. Each case will be assessed on its own merit and in line with all other relevant qualifying conditions. However, to meet the High Most Compelling criteria, only those applicants with significant vulnerabilities and those whose safety and wellbeing would be at risk without a grant will qualify. This means that although the fund will remain open to everyone to apply, the stricter criteria will reduce the support available and may result in applicants with less vulnerabilities not being awarded at all. Awards will be restricted to the minimum award for food and utility costs and in most cases, only items for the home to allow the applicant to cook and sleep will be awarded.

To move to High Most Compelling, consultation is necessary with Scottish Government, the Scottish Public Ombudsman, internal and external partners. Discussions with Glasgow Council highlighted the benefits of protecting and maintaining the budget by moving priority levels which the council hope to replicate to minimise the risk of overspending the allocated funding.

E. CONCLUSION

The council's Advice Shop will continue to deliver benefit take up campaigns to support households maximise their incomes and deal with problem debt to help reduce applications and reliance on the SWF.

The available budget for 2024/25 is insufficient to support the council continuing to award SWF grants on High priority. The cost saving measures introduced have reduced spend marginally but will not reduce the gap in funding alone. Council Executive is asked to consider the options outlined above and approve a move to the High Most Compelling priority for all grant payments. It will reduce spend to a level that will minimise overspend but only if introduced as early into the 3rd quarter of the financial year 2024/25 as possible.

F. BACKGROUND REFERENCES

None.

Appendices/Attachments: Appendix 1: Scottish Welfare Fund Integrated Impact Assessment

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Patrick Welsh
Interim Head of Finance and Property Services
1 October 2024



Integrated Impact Assessment Toolkit

**Corporate Services
Revised August 2023**

Data Label: Public

Appendix 1: Scottish Welfare Fund Integrated Impact Assessment

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Section 1 What is Integrated Impact Assessment

1.1.1 Introduction

West Lothian Council provides services to a diverse community and the decisions made by the council can have a profound influence on the health and wellbeing of that community.

Integrated Impact Assessment (IIA) aims to enable the council to meet its legal duties to consider equality, human rights and health when considering changes to 'policy' or services or implementing new policies or services. It also provides an opportunity to identify and tackle any unanticipated impacts on the wider causes of poor outcomes in our communities, such as inadequate housing, low educational achievement, low income, reliable and accessible transport, poverty, stigma and social inequality. This process will also allow the council to critically assess whether a 'Policy' has wider impacts beyond its intended outcomes and if it impacts differentially on different groups in our communities.

For the purposes of this toolkit the term IIA refers to both Integrated Relevance Assessment (IRA) (the screening aspect) and the full Integrated Impact Assessment unless otherwise stated.

1.2 Legal Context

1.2.1 Public Sector Equality Duty (PSED)

Section 149 of The Equality Act 2010 came into force in April 2011, introducing a new Public Sector Equality duty. The Public Sector Equality Duty (PSED) (often referred to as the 'general duty') requires public bodies in the exercise of their functions, to have due regard to the need to:

1. Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct
2. Advance equality of opportunity between those who share a protected characteristic and those who do not; and
3. Foster good relations between those who share a protected characteristic and those who do not

Supplementary legislation was introduced by the Scottish Government in 2012 (the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012). This legislation was introduced with the express purpose of enabling the better performance of the PSED contained in s149 (1) of the Equality Act 2010. This supplementary legislation requires Local Authorities to be proactive in meeting the general duty of eliminating unlawful discrimination, advancing equality and fostering good relations.

1.2.2 Protected Characteristics

The legislation requires that people are not discriminated against, harassed or victimised on the grounds of their 'Protected Characteristic'. The Protected Characteristics are;

- age,
- disability,
- gender reassignment,
- marriage and civil partnership,
- pregnancy and maternity,
- race – this includes ethnic or national origin, nationality and also includes Gypsy/Travellers,
- religion or belief (including lack of belief),
- sex,
- sexual orientation.

Every person has one or more of the protected characteristics; therefore the Act protects all individuals against unfair treatment.

Undertaking an IIA is one way to ensure council policies meet these legal requirements.

Assessing the likely impact of our plans and services also makes good business sense, as it is important in developing any proposal to understand the needs of different population groups.

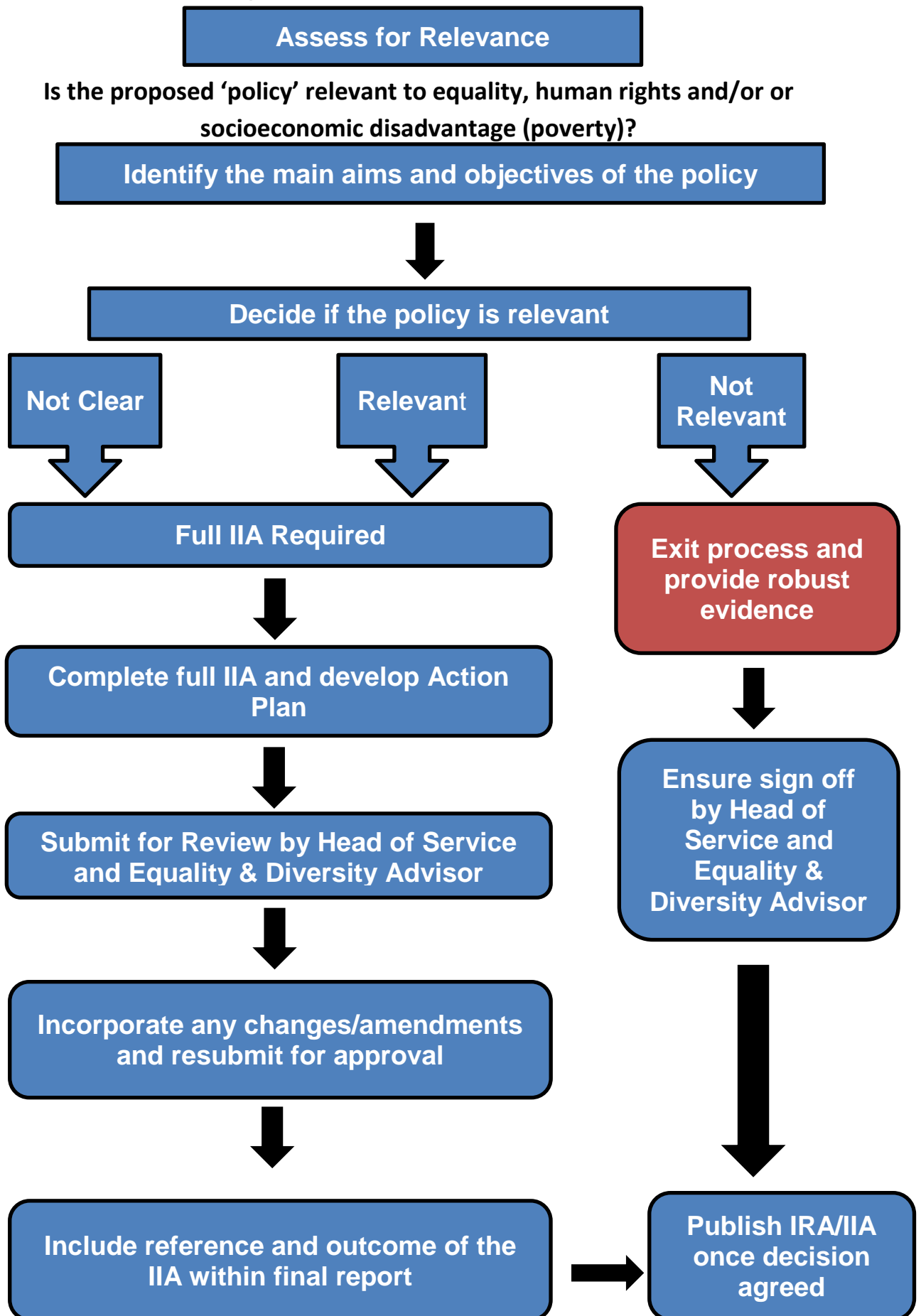
One of the main aims of the PSED is to improve transparency and accountability and this is also a priority for the Council when it comes to reporting on potential 'policy' changes and other equality related issues.

1.3 Definition of Policy

The term 'policy' is used throughout this toolkit and the guidance notes (separate document) and applies to policies, strategies, provisions, criteria, functions, practices, budget savings and activities, including the delivery of services.

Everything we do as a council has the potential to impact on equality, human rights and socioeconomic disadvantage and have relevance to the Public Sector Equality Duty (PSED) in the Equality Act (2010) and the corresponding supplementary 'Specific Duties' contained within the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, Fairer Scotland Duty (part 1 of the Equality Act 2010), Human Rights Act 1998 and the Child Poverty (Scotland) Act 2017, therefore Integrated Impact Assessment (IIA) should not be restricted to a review of formal 'policy' documents or written action plans.

1.4 Integrated Impact Assessment Flowchart



Data Label: Public

Appendix 1: Scottish Welfare Fund Integrated Impact Assessment

Appendix 1



Integrated Relevance Assessment Form

1. Details of proposal	
Policy Title (include budget reference number if applicable)	Scottish Welfare Fund
Service Area (detail which service area and section this relates to)	Finance and Property Services
Lead Officer (Name and job title)	Patrick Welsh, Head of Finance and Property Services
Other Officers/Partners involved (list names, job titles and organisations if applicable)	Pamela Roccio – Equality and Diversity Officer Nahid Hanif – Anti-Poverty Service Manager Nicola Reid – Financial Support Team Manager Kirsty Rodger – Senior Section Leader
Date relevance assessed	06/09/2024
2. Does the council have control over how this policy will be implemented?	
YES	<input checked="" type="checkbox"/> NO <input type="checkbox"/>
3. The General Duty of the Equality Act 2010 requires public authorities, in the exercise of their functions, to have due regard to the need to:	
<ul style="list-style-type: none"> • Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct • Advance equality of opportunity between those who share a protected characteristic and those who do not; and • Foster good relations between those who share a protected characteristic and those who do not 	
NB: In this section you must also consider the Human Rights Act and the key PANEL (Participation, Accountability, Non-Discrimination, Empowerment and Legality) principles of Human Rights – (further detail on what these are, are provided in the guidance document)	
Which groups of people do you think will be, or potentially could be, impacted upon by the implementation of this policy? You should consider employees, clients, customers and service users (Please tick below as appropriate)	
Age - Older people, young people and children	Yes
Disability - people with disabilities/long standing conditions	Yes

Data Label: Public

Appendix 1: Scottish Welfare Fund Integrated Impact Assessment

Gender reassignment – proposing to undergo, undergoing or having undergone a process to reassign your sex.	Yes
Marriage or Civil Partnership – people who are married or in a civil partnership	
Pregnancy and Maternity – woman who are pregnant and/or on maternity leave	Yes
Race - people from black, Asian and minority ethnic communities and different racial backgrounds	Yes
Religion or Belief – people with different religions and beliefs including those with no beliefs	
Sex - female, male and intersex	Yes
Sexual Orientation – lesbian, gay, bisexual, heterosexual/straight	
4. Do you have evidence or reason to believe that this policy will or may impact on socio-economic inequalities? Consideration must be given particularly to children and families	
Socio-economic Disadvantage	Impact – please tick below as appropriate)
Low Income/Income Poverty – cannot afford to maintain regular payments such as bills, food, clothing	Yes
Low and/or no wealth – enough money to meet basic living costs and pay bills but have no savings to deal with any unexpected spends and no provision for the future	Yes
Material Deprivation – being unable to access basic goods and services i.e. financial products like life insurance, repair/replace broken electrical goods, warm home, leisure and hobbies	Yes
Area Deprivation – where you live (rural areas), where you work (accessibility of transport)	Click here to enter text.
Socioeconomic Background – social class i.e. parents education, employment and income	Yes
5. Integrated impact assessment required? (Two ticks (✓) above = full assessment necessary)	
YES	<input checked="" type="checkbox"/>
NO	<input type="checkbox"/>
6. Decision rationale – if you have ticked no above, use this section to evidence why a full IIA is not required	
There is evidence to suggest that many people with protected characteristics experience a disproportionate impact of low income and are at higher risk of poverty. Socio-economic factors also	

Data Label: Public

Appendix 1: Scottish Welfare Fund Integrated Impact Assessment

have a significant impact on the life chances of those who experience poverty with evidence of reduced educational attainment and lower life expectancy. The strategic approach adopted by Community Planning Partners creates opportunities to reduce inequality and promote equity, leading to positive outcomes for West Lothian residents. A full impact assessment is therefore required

Signed by Lead Officer	Nahid Hanif
Designation	Anti-Poverty Service Manager
Date	12/09/2024
Counter Signature (Head of Service or Depute Chief Executive responsible for the policy)	Head of Finance and Property Services
Date	12/09/2024

- **No assessment required – process ends**
- **Include** a detailed summary of the decision rationale in any council reports and include a copy of the IRA with the background papers.
- **Full Assessment required – continue to Full Assessment Form**

Full Integrated Impact Assessment Form

1. Details of proposal	
Details of others involved	Pamela Roccio – Equality and Diversity Officer Nahid Hanif – Anti-Poverty Service Manager Nicola Reid – Financial Support Team Manager Kirsty Rodger – Senior Section Leader
Date assessment conducted	12/09/2024
2. Set out a clear understanding of the purpose of the policy being developed or reviewed (what are the aims, objectives and intended outcomes) including the context within which it will operate.	
<p><u>PURPOSE OF THE SCOTTISH WELFARE FUND</u></p> <p>A local authority may only use its SWF to provide occasional assistance (financial or otherwise) to individuals, specifically by way of a Crisis Grant or a Community Care Grant .</p> <p>Crisis Grants are provided where an individual is facing a disaster or emergency situation, and where there is an immediate threat to the health or safety of that individual or their family.</p> <p>Community Care Grants are provided where a qualifying individual needs help to establish or maintain a settled home. A Community Care Grant may also be provided to support individuals and families facing exceptional pressure</p> <p>In order to achieve consistency of service provision across Scotland, local authorities should apply a financial management approach to managing Community Care Grant and Crisis Grant budgets that shares similar principles. It is expected that local authorities should manage expenditure in such a way as to ensure effective budgetary management of funds over the financial year. Local authorities should establish and monitor at least two budget headings for ‘Community Care Grant Provision’ and ‘Crisis Grant Provision’.</p> <p>Local authorities are free to vire between Community Care Grants and Crisis Grant budget headings without restriction. It is, however, an aim of the national scheme over time to seek a real terms reduction in expenditure on Crisis Grants as a result of successful intervention preventing crisis reoccurring, thereby increasing funds available for preventative spend on Community Care Grants.</p> <p>Although the application of virement can be helpful for monitoring purposes, local authorities should take decisions to apply priorities and cap spend at SWF level within the authority, i.e. Community Care Grants & Crisis Grants collectively. This means expenditure on Crisis Grants cannot be suspended whilst resources remain within the Community Care Grant budget heading and vice versa.</p> <p>It is envisaged that budget holders will assess the demand pattern of actual activity against budget profile throughout the financial year, making operational decisions about whether it is possible to make awards for high priority applications only, high and medium or high, medium and low.</p> <p>The priority can be set at different levels for Community Care Grants and Crisis Grants. Local authorities to reject any application which has been judged to match the priority level applying at the</p>	

time the application is considered (i.e. at the time of decision) if funds remain in either the Community Care Grant or the Crisis Grant budget headings.

INTENDED OUTCOME

The available budget for SWF 2024/25 is insufficient to support the council continuing to award SWF grants on High priority a move to the High Most Compelling priority will be required to manage the remaining budget. The council did not receive any additional SWF budget for 2024/25 from the Scottish Government and given the council's financial position of constrained overall funding, increased cost of service delivery and need to deliver budget savings of £13.4 million in 2024/25 no additional budget could be provided to top up the core SWF budget.

Cost saving measures have been introduced to attempt to minimise or mitigate ending the financial year in an overspend position. The projected overspend, after the cost saving measures were introduced, and on the assumption that the application numbers and spend for the remainder of the financial year will reflect that of the first quarter, overspend would be £144,000. From this it is clear to see that the cost saving measures introduced will not mitigate or minimise overspend therefore the council will need to consider introducing alternative options made available to them by Scottish Government in such circumstances.

The Scottish Government's statutory guidance provides local authorities with an option to move to the High Most Compelling Priority Level, consideration must also be given to how we manage this on a local level as there are 2 options available:

Option 1: Moving to High Most Compelling Priority level for both Crisis Grants and Community Care Grants.

Glasgow City Council has recognised a 22% reduction in Community Care Grant spend and a 9% reduction in Crisis Grant spend by moving to High Most Compelling. The comparative saving for West Lothian Council could reduce the projected overspend to approximately £30,000 from an approximate £144,000 if introduced as early in the third quarter of 2024/25 as possible.

Option 2: Moving to High Most Compelling Priority level for Community Care Grants only.

A 22% reduction in Community Care Grant spend was achieved by Glasgow City Council by moving to High Most Compelling priority. The comparative saving for West Lothian Council could reduce the projected overspend to approximately £64,000 if introduced as early in the third quarter of 2024/25 as possible.

Option 1 would ensure to reduce as far as possible the risk of an overspend in this financial year 2024/25.

As a consequence of the above we intend to move to a 'high most compelling' priority rating with as soon as possible in the third quarter of 2024/25.

3. Please outline any needs and/or barriers which equality groups (People with Protected Characteristics) may have in relation to this policy

<p>Age</p>	<p>What effect/difference will the policy have on people</p> <p>99% of those that access the SWF in West Lothian are of working age. The priority change will not stop anyone who is currently eligible accessing the SWF, they can still make an application based on the level of their vulnerability and need. The award will be determined under the headings of heat, eat and sleep, which could potentially leave more vulnerable people with access to less resources.</p> <p>There is limited data available on how people will be affected by the change to the criteria levels of the Scottish Welfare Fund. It is commonly understood from traditional data sources that older people and younger people are recognised as potentially vulnerable groups of experiencing poverty and will therefore be impacted in the reduction of provisions being made available.</p> <p>How do you know that</p> <p>A report by the Health Foundation in January 2023 indicates that, across all ages, people who experience poverty are more likely to report poor health.</p> <p>Persistent poverty is an issue for 11% of pension age adults and latest data from the Scottish Government estimates that 19% of those aged 55-64 experience poverty.</p> <p>Labour market statistics for West Lothian show that young people aged 18-24 experience higher rates of unemployment at 4.4% compared to 3.1% for the 25- 49 age group and 1.5% of those aged 50+</p> <p>Young people are over-represented in the homeless system in Scotland. A report by Crisis shows that although young people aged 16-24 represent around 12% of the population, they make up almost a quarter of homeless applications in Scotland.</p>
<p>Disability</p>	<p>What effect/difference will the policy have on people</p>

	<p>79% that apply to the SWF consider themselves to have a disability. The priority change will not stop anyone who is currently eligible accessing the SWF, they can still make an application based on the level of their vulnerability and need. The award will be determined under the headings of heat, eat and sleep, which could potentially leave more vulnerable people with access to less resources.</p> <p>How do you know that A report by disability charity Scope concluded that households with a disabled family member need, on average, an additional £975 per month to afford the same standard of living as non-disabled counterparts. The report also found:</p> <ul style="list-style-type: none"> • Households with 2 disabled adults and at least 2 children, face on average extra costs of £1,248 a month • Disability related expenditure costs are equivalent to 63% of a disabled households income, after housing costs. <p>They also found disabled people often face higher costs for their gas and electricity. Scope’s Disability Price Tag 2023 report states that many disabled people say they need more heating to stay warm, yet others say they have to use extra electricity to charge up items of assistive technology.</p>
<p>Gender Reassignment –</p>	<p>What effect/difference will the policy have on people</p> <p>The priority change will not stop anyone who is currently eligible accessing the SWF, they can still make an application based on the level of their vulnerability and need. The award will be determined under the headings of heat, eat and sleep, which could potentially leave more vulnerable people with access to less resources.</p> <p>How do you know that A 2021 survey from TransActual highlighted that 27% of respondents had experienced homelessness, which is a higher than average representation.</p> <p>Scottish Trans and Non-binary Experiences: Report Published July 2024 provides information on a recent survey that found:</p> <p>15% of respondents had experienced problems obtaining housing due to being trans or non-binary. Some people described being unable to obtain housing because of discrimination and/or had issues around identity documents and name changes.</p>

	<p>15% of respondents had experienced problems staying in housing due to being trans or non-binary. This happened most frequently when people were living with family – often young people living with their parents.</p>
<p>Marriage or Civil Partnership</p>	<p>What effect/difference will the policy have on people N/A</p> <p>How do you know that N/A</p>
<p>Pregnancy and Maternity</p>	<p>What effect/difference will the policy have on people 7.7% of applicants for the SWF are from this protected characteristic. Identifying with any of the protected characteristic does mean a detrimental effect to accessing the fund. The priority change will not stop anyone who is currently eligible accessing the SWF, they can still make an application based on the level of their vulnerability and need. The award will be determined under the headings of heat, eat and sleep, which could potentially leave more vulnerable people with access to less resources.. Additional support and increased costs are often required at this time.</p> <p>How do you know that Research carried out by Loughborough University for The Child Poverty Action Group in 2021 showed:</p> <ul style="list-style-type: none"> • The average cost of raising a child in Scotland is around £160,000 • This figure is higher for lone parent families, averaging £190,000 • These estimates include the cost of rent and childcare. With these costs removed, the average cost of raising a child still exceeds £75,000 • Lone parents in or out of work and couples not in paid employment are less likely to have enough income to cover the minimum cost of living. <p>The cost of living crisis is likely to further exacerbate financial strain on families. Research conducted by Loughborough University and</p>

	<p>funded by the Joseph Rowntree foundation indicates that families are spending an extra 9.3% on food over the past year and spending in the region of an extra £120 on energy bills each month. Childcare costs have also increased by about 6.7%, or an average of £65 per month, and increases in the cost of petrol have resulted in an average additional spend of £90 on transport.</p> <p>The culmination of these increases, is that the basic costs of a UK family with two children has increased by £400 per month, an annual rate of 13% in comparison to the official 9% increase.</p> <p>Lone parent families are at particular risk. Analysis of the Office for National Statistics figures shows that families have lower savings pots generally and there is a particular disparity between the overall average households' savings of £8,000 and the £400 of single parent households. Single parents have the lowest average net wealth of all demographic groups, causing more chance for reduced financial resilience in the face of rising living costs.</p> <p>Latest child poverty estimates from the End Child Poverty Coalition and Loughborough University indicate that 24.6% of children in West Lothian were living in poverty in 2022/23 (compared to the Scottish national average 24%). When compared to other local authorities in our local authority family group we can see that over an eight-year reporting period from 2014/15 to 2022/23, there has been an increase in the proportion of children in poverty across all local authority areas.</p>
<p>Race</p>	<p>What effect/difference will the policy have on people The effect will be little or none to this group as the priority change will not stop anyone who is currently eligible accessing the SWF, they can still make an application based on the level of their vulnerability and need. The award will be determined under the headings of heat, eat and sleep, which could potentially leave more vulnerable people with access to less resources.</p> <p>How do you know that Pre-pandemic, around one in six people in working-age families were in a household headed, by someone of black, Asian and minority ethnicity, but over one in four of people in poverty or very deep poverty were from such households.</p> <p>48% of ethnic minority children in Scotland live in poverty compared with 24% of children overall (Joseph Rowntree Foundation)</p>

	<p>The New Economics Foundation thinktank recently cautioned that people from Black, Asian and other ethnic minority households may feel the impact of the rising cost of living more acutely than white households. This may be attributed to the fact that BAME households tend to be larger and with a higher proportion of younger household members, resulting in higher living costs with lower average wages.</p> <p>Research carried out by Censuswide and reported by networking group People Like Us has revealed that more than one third of workers from minority ethnic backgrounds report that their salary will not cover their essential bills and 35% have reported taking on extra consumer debt as a result.</p>
<p>Religion or Belief</p>	<p>What effect/difference will the policy have on people N/A</p>
	<p>How do you know that N/A</p>
<p>Sex</p>	<p>What effect/difference will the policy have on people From those applicants that access the SWF 48% are male and 52% are female. This protected characteristic will not have a detrimental effect in accessing the fund. The priority change will not stop anyone who is currently eligible accessing the SWF, they can still make an application based on the level of their vulnerability and need. The award will be determined under the headings of heat, eat and sleep, which could potentially leave more vulnerable people with access to less resources..</p>
	<p>How do you know that Working age women on average do 1.5 fewer hours of paid work and 1.8 more hours of unpaid work per day than men (Institute for Fiscal Studies)</p> <p>The poverty rate has been consistently higher for female pensioners than for men, although the gap is starting to narrow (Joseph Rowntree Foundation)</p> <p>In 2017-20, the relative poverty rate after housing costs was higher for single women with children (38%) than for other single working-age adults, however, the gap between this group and single women without children (27%) and single men without children (34%) was smaller than it used to be</p> <p>The vast majority (92%) of lone parents are women.</p>

	<p>www.gov.scot/publications/annex-7-equality-impact-assessment/pages/4/</p>			
<p>Sexual Orientation</p>	<p>What effect/difference will the policy have on people N/A</p>			
	<p>How do you know that N/A</p>			
<p>4. Please outline any needs and/or barriers which may affect vulnerable groups falling into poverty and disadvantage in relation to this policy</p> <p>Vulnerable groups may include the following;</p>				
<table border="0"> <tr> <td> <ul style="list-style-type: none"> • Unemployed • Single parents and vulnerable families • People on benefits • Those involved in the criminal justice system • People in the most deprived communities (bottom 20 SIMD areas) • People who live in rural areas • People experiencing poverty </td> <td> <ul style="list-style-type: none"> • Pensioners • Care experienced • Carers including young carers • People misusing substances • Others e.g. students • Single adult households • People who have experienced the asylum system </td> <td> <ul style="list-style-type: none"> • Homeless people • People with low literacy/numeracy • People with lower educational qualifications • People in low paid work • People with one or more Protected Characteristic • Veterans </td> </tr> </table>		<ul style="list-style-type: none"> • Unemployed • Single parents and vulnerable families • People on benefits • Those involved in the criminal justice system • People in the most deprived communities (bottom 20 SIMD areas) • People who live in rural areas • People experiencing poverty 	<ul style="list-style-type: none"> • Pensioners • Care experienced • Carers including young carers • People misusing substances • Others e.g. students • Single adult households • People who have experienced the asylum system 	<ul style="list-style-type: none"> • Homeless people • People with low literacy/numeracy • People with lower educational qualifications • People in low paid work • People with one or more Protected Characteristic • Veterans
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<p>What effect/difference will the policy have on people</p> <p>Moving to the 'high most compelling' criteria could impact local child poverty figures and impact on the council's ability to meeting the outcomes of the Tackling Poverty Strategy. Fewer people will be eligible and as a consequence poverty and inequality will increase and become further entrenched for those currently experiencing poverty.</p> <p>Other potential impacts will include a detriment in relation to resilience, dignity and self-respect as this policy supports people and families who struggle to maintain a stable home life and constraints on the fund will therefore impact negatively on the council's capacity to support these groups. The implications of this are well documented and researched nationally.</p> <p>The lack of resource may have a detrimental impact on individuals' ability to sustain tenancies, increase individual cost of living (carpets etc)</p> <p>The Dignity and respect agenda will be undermined: Treating everyone with dignity and respect - gov.scot (www.gov.scot)</p>				

How do you know that

From the information held on our SWF systems we know that the following groups apply to the fund for assistance:

- people experiencing mental or physical health problems
- people with chronic and terminal illnesses
- people looking after children, including lone parents and kinship carers
- people experiencing eviction or re-possession
- homeless people
- people experiencing addiction problems
- carers
- older people
- people with a conviction or history of offending
- families caring for a person on temporary release from prison
- people experiencing family breakdown
- people fleeing domestic abuse
- pregnant women, women who have recently given birth or people adopting a child
- unemployed people
- care leavers, including young people

The cost of living crisis has created a rapidly growing disparity between the cost of goods and services, and the amount of disposable incomes that households have. Not everyone has been affected equally with socio-economic factors playing a key role in the individual experience of the current rising cost of living.

Among the worst affected households are those with low incomes. Households with lower disposable income have less, and often no, flexibility in their budgets to allow them to respond effectively to increased costs.

A recent report by the Resolution Foundation highlights the vulnerability of low-income families as the lowest income ten percent are four times less likely to have a savings buffer than the richest tenth. As a result, arrears of essential bills are more prevalent for lower income households; between 2018 – 2020 8.9% of financial liabilities for the ten percent lowest income families were for bill arrears compared to just 0.3% of the top tenth.

The recent Scottish Government Tackling child poverty delivery plan 2022-2026 impact assessment sets out the inequalities experienced by people with a protected characteristic. For example, it confirms that Disabled people are more likely to work in ‘lower paid employment and have less access to fair work’ and that ‘minority ethnic people continue to experience racism, discrimination as well as language and cultural barriers’

[Executive Summary - Best Start, Bright Futures: tackling child poverty delivery plan 2022 to 2026 - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2022/09/Executive-Summary-Best-Start-Bright-Futures-tackling-child-poverty-delivery-plan-2022-to-2026-gov.scot)

5. Action Plan

What action/s will be taken, by whom and what is the timescale for completion

Actioner Name

Pamela Roccio – Equality & Diversity Officer

12 September 2024

What is the issue

Send additional research about impact of poverty on the trans community to allow consideration to be given on the impact of the policy change to this group.

What action will be taken Information will be used within the IIA.	
Progress against action Complete	
Action completed Yes	Date completed 16/09/2024
Actioner Name Senior Section Leader – Kirsty Rodger	12 September 2024
What is the issue Kirsty to analyse statistical information regarding the protected characteristics to establish what percentage access the SWF for assistance.	
What action will be taken This information will be used to ascertain the impact on the policy change on those households with a protected characteristic.	
Progress against action This has been completed and information has been supplied and added to the IIA.	
Action completed Completed	Date completed 13/09/2024
6. Details of consultation and involvement Who will be or has been involved in the consultation process a. State which groups are involved in this process and describe their involvement. b. Describe any planned involvement saying when this will take place and who is responsible for managing the involvement process. c. Describe the results of the involvement and how you have taken this into account.	
<p>Due to the urgency and the potential substantial overspend there was little time to undertake a full consultation however those officers consulted internally from West Lothian Council are:</p> <p>Pamela Roccio – Equality and Diversity Officer Nahid Hanif – Anti-Poverty Service Manager Nicola Reid – Financial Support Team Manager Kirsty Rodger – Senior Section Leader</p>	

Discussion and information sharing have also been undertaken with Glasgow City Council and the Scottish Public Services Ombudsman.

Post Council Executive decision on moving to the High Most Compelling priority level a communication plan will be developed by the Anti-Poverty Service to update our stakeholders this includes internal council services, community planning partners and the third/voluntary sector.

The service will also consult with our lived experience panel about the move and how best to communicate this to the vulnerable groups who access the fund for assistance as outlined above.

7. Data and Information

What equality data, poverty data, research, information or other evidence has been used to inform this assessment?

(Information can include, for example, surveys, databases, focus groups, in-depth interviews, pilot projects, reviews of complaints made, user feedback, academic publications and consultants' reports)

- a. **What information or other evidence has been used in the development of the policy?**
- b. **What does research, consultation and other data or information tell you about the impact of the policy? (Describe the information and the conclusions, and state where the information can be found).**
 - (i) **Quantitative (numbers, percentages, statistical data)**
 - (ii) **Qualitative – (written/spoken words, opinions, surveys)**
- c. **Describe any gaps in the available information, and record within section five (Action Plan Section), action you are taking in relation to this (e.g. new research, further analysis) and when this is planned.**
- d. **Give details of any existing local or national evidence which has been used to inform the development of your policy.**

Consideration has been given to the following data sources:

- UK Poverty 2023 (Joseph Rowntree Foundation)
- Poverty and Income Inequality in Scotland 2019-22 (Scottish Government)
- Local Indicators of Child Poverty After Housing Costs 2022/23 (Loughborough University)
- The Living Standards Outlook 2023 (Resolution Foundation)
- Disability Price Tag 2023: the extra cost of disability (Scope)
- Best Start, Brighter Futures Tackling Child Poverty Delivery Plan 2022-26 (Scottish Government)
- Rapid Review of Evidence on the Impact of Childcare on Parental Poverty, Employment and Household Costs in Low Income Families (Glasgow Caledonian University Scottish Poverty and Inequality Research Unit)
- The Real Level of Unemployment 2022 (Sheffield Hallam University Centre for Regional Economic and Social Research)
- Couples Navigating Work, Care and Universal Credit (University of Bath, Institute for Policy Research, 2022)

Together with data gathered from sources including Scottish Government, National Records Scotland, the NOMIS service provided by the Office for National Statistics, Campaign to End Child Poverty and Joseph Rowntree Foundation, this has been analysed to establish how poverty affects different people and how this change in priority level may adversely impact vulnerable groups.

8. Mitigating Actions

If the policy has a negative/adverse impact on a particular group/s, but is still to be implemented, please provide justification for this.

Note: If the policy is unlawfully discriminatory under the Equality Act 2010 and/or is having a negative impact on poverty and socioeconomic disadvantage under the Fairer Scotland Duty, you MUST identify, how the policy can be amended or justified so the Council acts lawfully.

- a. How could you modify the policy to eliminate discrimination or to reduce any identified negative impacts? If necessary, consider other ways in which you could meet the aims and objectives.**
- b. How could you modify the policy to create or maximise the positive aspects of the proposals and to increase equality and reduce poverty and socioeconomic disadvantage.**
- c. Describe any modifications which you can make without further delay (for example, easy, few resource implications).**
- d. If you propose to make any of the modifications shown above, describe any potential new negative impacts on other groups in society or on the ability to achieve the aims and how you will minimise these.**
- e. Please describe the resource implications of any proposed modifications taking into account financial, people and property issues.**

The council's Advice Shop will continue to deliver benefit take up campaigns to support households maximise their incomes and deal with problem debt to help reduce applications and reliance on the SWF.

It is important to recognise that cost saving measures have been introduced to attempt to minimise the anticipated overspend. Some of the cost saving measures introduced are:

- Awarding grants for carpets without underlay
- Undercounter fridge/freezer is given to households with up to 2 adults rather than 1 adult previously
- Paying the exact amount of a Crisis Grant award rather than rounding to the nearest pound
- Tailoring a Crisis Grant for food to the individual household composition based on a local supermarket shop.
-

The service will continue to look at other cost saving measures that can be introduced to reduce spend. However, it is important to note that even with the cost saving measures which have already been introduced this will not further mitigate or minimise the overspend.

Those applying to the fund who are not awarded a grant are referred on for alternative support. This can be a range of internal support services or 3rd sector organisation depending on the individual's need and consent. The SWF staff work closely with the Advice Shop by referring applicants for foodbank voucher for example as well as benefit health checks and debt advice whilst agencies such as the school clothing bank, social work and Action for Children are regularly consulted to support vulnerable adults applying to the fund.

9. Monitoring and Review

- a. How will the implementation and impact of the policy be monitored, including implementation of any amendments? For example, what type of monitoring will there be? How frequent?
- b. What are the practical arrangements for monitoring? For example, who will put this in place? When will it start?
- c. How will results of monitoring be used to develop future policies?
- d. When is the policy due to be reviewed?
- e. Who is responsible for ensuring this happens?

Please detail below

The Financial Support Team Manager and Anti-Poverty Service Manager will closely monitor the SWF spend against the available budget with a further update provided to Council Executive in March 2025 with a view of agreeing a priority level for 2025/26.

The spend against budget will be reported to the Head of Finance and Property Services on a monthly basis to ensure close monitoring.

10. Recommendation and Reasoning

- Implement proposal with no amendments
- Implement proposal taking account of mitigating actions (as outlined above)
- Reject proposal due to disproportionate impact on equality, poverty and socioeconomic disadvantage

Reason for Recommendation

The available budget for 2024/25 is insufficient to support the council continuing to award SWF grants on High priority. The cost saving measures introduced have reduced spend marginally but will not reduce the gap in funding alone

Signed by Lead Officer	Nahid Hanif
Designation	Anti-Poverty Service Manager
Date	14/09/2024
Counter Signature (Head of Service or Depute Chief Executive responsible for the policy)	Patrick Welsh
Date	16/09/2024

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

2024/25 WINTER PLAN – ROADS AND TRANSPORTATION

REPORT BY HEAD OF OPERATIONAL SERVICES

A. PURPOSE OF REPORT

The *Code of Practice “Well-managed Highway Infrastructure” – 2016* recommends that councils should review and approve their Winter Service Plan annually. The purpose of this report is to seek approval for the council’s Winter Service Plan for 2024/25

B. RECOMMENDATIONS

It is recommended that the Council Executive approves the Winter Service Plan 2024/25 as detailed in Appendix A.

C. SUMMARY OF IMPLICATIONS

I Council Values	Caring and Compassionate. Open, Honest and Accountable. Collaborate, Inclusive and Adaptive.
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Council’s Winter Service Plan. Roads (Scotland) Act 1984 and The <i>Code of Practice “Well-managed Highway Infrastructure” – 2016</i>
III Implications for Scheme of Delegations to Officers	Not applicable.
IV Impact on performance and performance Indicators	The Plan will ensure that the winter service is delivered in a consistent and efficient manner which will meet existing performance targets and service standards.
V Relevance to Single Outcome Agreement	Not applicable.
VI Resources - (Financial, Staffing and Property)	Operational Services have a Winter Service budget for 2024/25 of £2.471 million to carry out their statutory duties under the Roads (Scotland) Act 1984 (Section 34). This is augmented by a further £168,000, the remaining balance of the £1 million Winter Resilience Fund approved by Council on 25 February 2021.
VII Consideration at PDSP	None

VIII Other consultations None.

D. TERMS OF REPORT

D.1 Background

In Scotland, Councils statutory responsibilities regarding the Winter Service are defined in the Roads (Scotland) Act 1984, Section 34 which requires “that a road authority shall take such steps as it considers reasonable to prevent snow and ice endangering the safe passage of pedestrians and vehicles over public roads”.

The Code of Practice recommends that councils should review and approve their Winter Service Plan annually.

D.2 Winter Service Plan

The council’s current Winter Service Plan (summarised in Appendix A), is well established and is based on The Code of Practice “Well-managed Highway Infrastructure” – 2016.

The Winter Service Plan includes; the service standards; a definition for an “Extreme Weather Event”; a statement on resilience and salt conservation strategy; details of strategic self-help salt pick-up points; grit bin policy; promotes the benefits of self-help in line with Government recommendations.

Delivery of the winter plan rests with Roads & Transportation however additional resources are utilised from NET’s, Land & Countryside Services to provide a robust and flexible rota. Trained HGV drivers from other service areas are also available should the need arise. A framework contract is also in place allowing the engagement of external resources and equipment if required.

Two dedicated crews will again be allocated to replenish grit bins on an ongoing basis throughout the winter period, similar to the last three years. The strategic self-help salt pick-up points will also continue as noted in the Winter Service Plan. These two services were introduced following the approval of a £1 million Winter Resilience Fund by Council on 25th February 2021, however it should be recognised that additional funding will be required for these services to continue beyond the 2024-25 winter period.

Engagement with the council’s Justice Services team has continued and it has been agreed that there is the potential for resources to be available from the Unpaid Work Team to assist with low risk activities such as snow clearance and hand gritting, similar to last year. Activities identified would not be relied upon to deliver core services or have any impact on our statutory obligations as it is recognised that this resource cannot be guaranteed. It should be noted that this was well received last year, particularly by the care homes where path clearing was undertaken.

Domain based forecasting continues to be utilised with separate forecasts being obtained for the north and south of the county. This allows treatment plans to be more specific, with resources being deployed appropriately providing an improved service to areas in most need.

Once again, the Gritter Tracking page will be available on the council’s website. This allows users to view the gritters deployed when treatment is deemed necessary, providing up-to-date information on the location of our vehicles.

Route maps are continually reviewed and updated to reflect any newly adopted streets, with additions being prioritised in line with the plan. These route maps and further information on how the council prioritise gritting can be found on the council website; along with details of our grit bin policy and self-help advice.

30,000 tonnes of salt will be available for the winter period. In addition, our salt contract includes alternative suppliers should the need arise.

E. CONCLUSION

Following review of the 2023/24 Winter Service Plan, by officers, it is recommended that no changes are required and that this plan as detailed in Appendix A is approved for the coming winter season 2024/25.

F. BACKGROUND REFERENCES

Roads (Scotland) Act 1984

The *Code of Practice "Well-managed Highway Infrastructure"* – 2016

Appendices/Attachments: Appendix A – Winter Service Plan

Contact Person: David Wilson, Roads Operations Manager, Tel: 01506 284598, Email: David.Wilson@westlothian.gov.uk

David Maule
Interim Head of Operational Services
1 October 2024

APPENDIX A

The Winter Service Plan 2024/25 is summarised as follows: -

CARRIAGEWAY CLASSIFICATION, COVERAGE AND TREATMENT (table 1)

Carriageways	Road Type	Treatment
Primary Routes (SNOW ROUTES)	Roads of primary importance which form a strategic network, these being Strategic, Main Distributor and Secondary Distributor roads including main traffic routes, bus routes connecting neighbouring council areas, major industrial estates, routes to railway stations and routes to Emergency Service establishments.	Gritting and/or snow ploughing 24 hours a day on all days. Pre grit if required. Planned or reactive.
Secondary Routes Level 1	Other classified routes, distributor routes, local bus routes, main accesses to schools, medical centres and residential areas.	Gritting and/or snow ploughing during normal working hours i.e. 0800 to 1505 hours Monday to Friday. Pre grit as resources allow.
Secondary Routes Level 2	Residential areas and other unclassified roads.	Gritting and/or snow ploughing during normal working hours i.e. 0800 to 1505 hours Monday to Friday. Reactive treatment only.
Secondary Routes Level 3	Surfaced areas within schools, routes to car parks and car park surfaces.	Gritting and/or snow ploughing during normal working hours i.e. 0800 to 1505 hours Monday to Friday. Reactive treatment only.

All carriageway routes can be viewed on the council website using the following link.

<https://maps.westlothian.gov.uk/wml/Map.aspx?mapName=WinterMaintenance>

FOOTWAY CLASSIFICATION, COVERAGE AND TREATMENT (table 2)

Footways	Footway Type	Treatment
Primary Routes (SNOW ROUTES)	Urban shopping areas and precincts. Routes to schools, accesses to health centres and medical centres, hospitals, etc. main routes to residential areas and bus stops.	During November and March, gritting of widespread ice/snow clearing 0500 to 1505 hours Monday to Friday. During December, January and February the service will be extended to cover weekends and public holidays (0500 to 1505 hours). Reactive treatment only.
Secondary Routes Level 1	Other routes to schools, residential areas and housing areas in general.	Gritting of widespread ice/snow clearing 0800 to 1505 hours Monday to Friday. Reactive treatment only.
Secondary Routes Level 2	Footway links to car parks, community centres, day centres etc and cycle routes	Gritting of widespread ice/snow clearing 0800 to 1505 hours Monday to Friday. Reactive treatment only.

All footway routes can be viewed on the council website using the following link.

<https://maps.westlothian.gov.uk/wml/Map.aspx?mapName=WinterMaintenance>

EXTREME WEATHER EVENT

An extreme weather event will be considered to be an event where continuous snow is forecast and likely to give significant accumulations in excess of 10cm covering the whole of the north or south expanse within the council area. The snow will also be expected to remain in untreated areas for a prolonged period due to low temperatures before a natural thaw disperses it.

During periods of extreme weather and heavy continuous snowfall when roads and footways are affected by significant levels of lying snow, priority will be given to primary carriageway routes and primary footpath routes and these routes will be known as West Lothian Council's "Snow Routes". These routes are defined within the council plan and will be published on the council website. Gritters and footpath resources will be deployed on these specified snow routes continuously until satisfactory snow clearance has been achieved before resources are deployed to any secondary routes.

The plan is aimed at providing a minimum strategic network during periods of extreme weather and will provide access to key facilities and other transport needs.

RESILIENCE and SALT CONSERVATION

West Lothian Council procures and stocks salt supplies for use on the whole of the public carriageway and footway network during the winter period. A stock level of 30,000 tonnes of salt will be available for the winter period.

In periods of an extreme weather event or periods of prolonged conditions that demand a high usage of salt it may be necessary to restrict the use of salt to snow routes only. For West Lothian Council, salt will be restricted to snow routes when the council reaches a minimum stock level of salt for 6 days resilience of continuous salting.

STRATEGIC SELF-HELP SALT PICK-UP POINTS

The provision of 25 self-help strategic salt pick-up points which will assist with community self-help during periods of winter weather. These will be located at: -

1. Armadale, Garage Site at McNeil Crescent
2. Bathgate, Xcite Centre, Torphichen Road
3. Bathgate (Wester Inch), Car Park adjacent to play area in Leyland Road
4. Blackburn, Partnership Centre, Ash Grove
5. Blackridge, Craig Inn Community Centre, Main Street
6. Bridgend, Car Park at Community Centre
7. Broxburn, Xcite Centre, Church Street
8. Craigshill, Tower Public House Car Park, Adelaide Street
9. East Calder, Xcite Centre, Langton Road
10. Ecclesmachan, Oatridge College Access Road
11. Eliburn, Livingston North Train Station (South Car Park)
12. Fauldhouse, Eastfield Road Car Park near the Bottle Banks
13. Greenrigg, Polkemmet Drive Garage Site
14. Kirknewton, Sports Pavilion

15. Linlithgow, Xcite Centre, McGinley Way
16. Livingston Village, Car Park at rear of Livingston Inn
17. Murieston, Livingston South Train Station Car Park
18. Newton, Community Education Centre
19. Threemiletown, B9080 adjacent to No. 1 St James Place
20. Torphichen, Community Centre, Bowyett
21. West Calder, Business Centre, Dickson Street
22. Westfield, north end of Strathlogie
23. Whitburn, Xcite Centre, Jubilee Road
24. Wilkieston, Linburn Park
25. Winchburgh, Community Centre, Craigton Place

GRIT BIN POLICY

In line with other authorities, criteria is set for Urban and Rural areas and flow charts have been introduced for transparency around each process.

The provision of grit bins in urban areas is to offer the public a self-help option to overcome localised difficulties of greatest risk in relation to the effect of winter conditions on roads and footpaths. It is important that the council encourages and helps facilitate self-help by those members of the public who are prepared to carry out this work.

However, the number of grit bins made available needs to be controlled. Maintaining adequate salt levels in the bins results in an operational burden therefore careful consideration is given to the provision and location of grit bins.

Consideration is also given to the following:

- New grit bins are only provided **in accordance with the urban and rural grit bin criteria** or in other locations in exceptional circumstances, to be determined by the Head of Operational Services.
- If the location is currently on a primary carriageway or footway route then a grit bin will not be considered as the risk should be mitigated from planned treatment
- Grit bins will only be located where they can be accessed and filled from a lorry.
- Grit bins will be replenished at the start of the winter period and then only as an when resources allow thereafter.
- Council grit bins will be left in place all year, we do not refill private grit bins.
- Both the grit bin and grit are purely for use on a public road or footway.
- The [locations of grit bins will be recorded](#) and made available online, to find your nearest grit bin use our map search.
- The council will not provide grit bins in private areas or car parks for use by any other council or any other public or private property such as schools, parks, hospitals, care homes, etc. unless a service level agreement is in place.

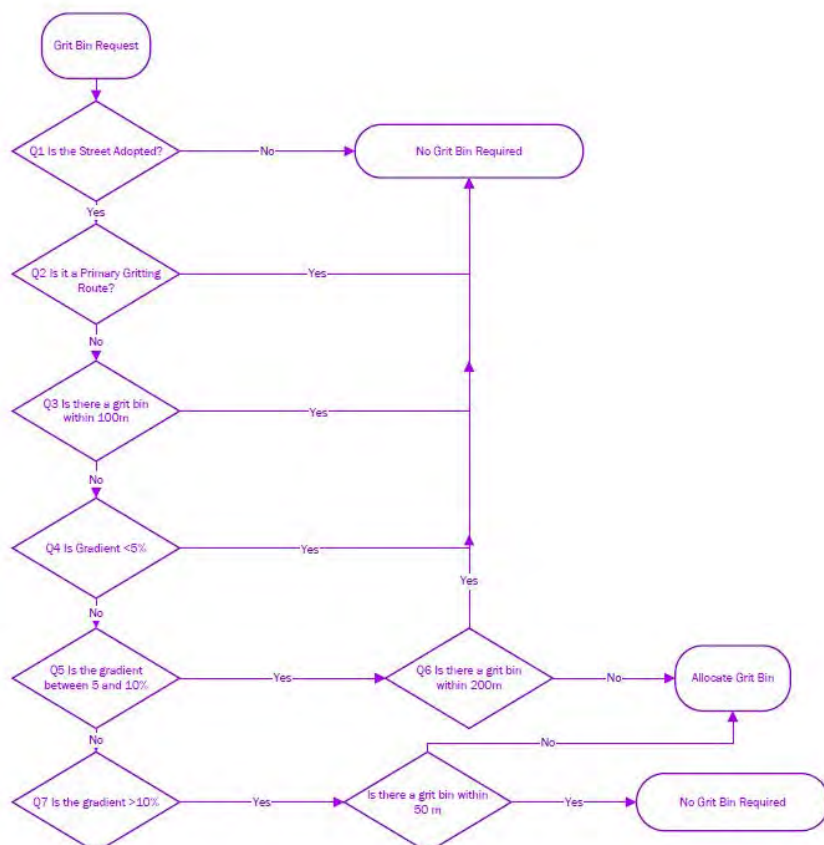
- Only those requests [submitted online](#) with the proposed location shown on a map will be considered.
- Applicants will be notified whether the application is successful or not, the responsible officers decision is final.
- A request will not be accepted unless a location to site the bin has been agreed with the responsible officer.
- Grit bins that are stolen/damaged or missing will be first reassessed in line with the criteria, a previous grit bin will not be replaced if the location does not meet the criteria.

In times of an extreme weather event it is not always possible to service and replenish grit bins due to their location and the deployment of resources in higher priority areas.

Urban grit bin criteria and flowchart.

Urban is where the speed limit is 40mph or less. For speed limits we define a village as a length of road of at least 600m where there are at least 20 houses and a density of at least 3 houses in every 100m section.

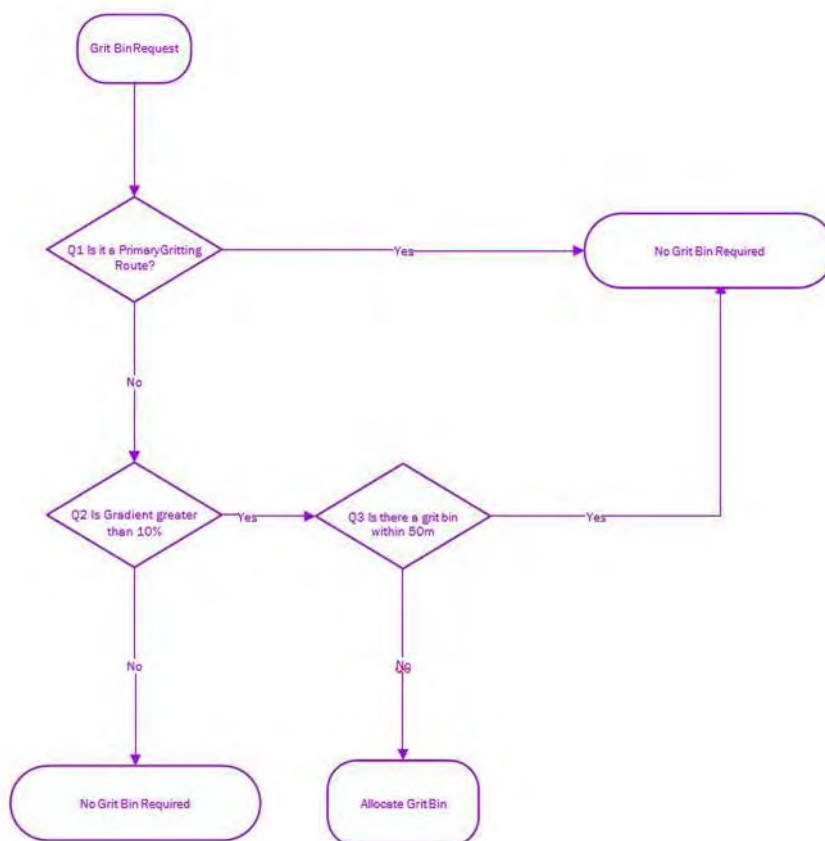
Urban Grit Bin Criteria



Rural grit bin criteria and flowchart

Rural is where the speed limit is greater than 40mph. For speed limits we define a village as a length of road of at least 600m where there are at least 20 houses and a density of at least 3 houses in every 100m section.

Rural Grit Bin Criteria



The flow charts will be made accessible to customers online as downloadable PDF's

All grit bins can be viewed on the council website using the following link.

<https://maps.westlothian.gov.uk/wml/Map.aspx?mapName=WinterMaintenance>

SELF HELP – WHAT CAN YOU DO?

There is no law preventing members of the public from clearing snow and ice from public roads and footways outside their properties and businesses. However, people should exercise care and caution when attempting to undertake any snow clearing so that they do not create any further hazards through careless or inconsiderate actions.

Being a good neighbour during severe winter weather is usually welcomed. Detailed below is some advice provided by the Government on clearing roads and footways yourself:-

- Do not use hot water as this could freeze, increasing the risk of injury to persons.
- Choose suitable clothing for the task to ensure that you remain warm, clearly visible to traffic and that footwear provides a good grip.
- Do not take unnecessary risks in the road and be aware that vehicles may find it difficult to stop quickly in icy conditions.
- If shovelling snow consider where you are going to put it to avoid shifting the problem elsewhere, for example, avoid blocking other footways and drainage features such as gullies.
- Use a shovel with a wide blade and do not overload the shovel with snow.
- It is easier to remove fresh snow before pedestrians have compressed the snow into compacted ice.
- Clear a line down the middle of the area to be cleared first to create a safer surface to work from.
- Spread some salt on the area cleared to prevent the formation of ice.
- Do not use too much salt as a few grams, about a tablespoon for each square metre that you clear should be sufficient.
- If there is no salt available then a little sand or grit is a reasonable substitute. It will not have the same de-icing properties as salt but will improve grip underfoot.
- Salt applied to the road or footway could be washed away by rain or snow and subsequently freeze – in this case a further application of salt should be used soon after the rain has ceased and before temperatures approach freezing.
- Particular care and attention should be given to steps and steep gradients to ensure that snow and ice is removed – it may be beneficial to apply additional salt at these locations to reduce the risk of injury.

DATA LABEL: PUBLIC

**COUNCIL EXECUTIVE****SANDBAG DEPLOYMENT POLICY****REPORT BY HEAD OF OPERATIONAL SERVICES****A. PURPOSE OF REPORT**

The purpose of this report is to inform the Council Executive of the proposed policy for sandbag deployment, identifying the roles and responsibilities in relation to flooding and the decision making process.

B. RECOMMENDATION

It is recommended that the Council Executive approves this sandbag deployment policy.

C. SUMMARY OF IMPLICATIONS

I Council Values	Caring and compassionate; open, honest and accountable; and collaborate, inclusive and adaptive.
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Policy – Cycle 2 (2021 – 2027) Forth Estuary Flood Risk Management Plan. Legal - The Flood Risk Management (Scotland) Act 2009.
III Implications for Scheme of Delegations to Officers	None.
IV Impact on performance and performance Indicators	None.
V Relevance to Single Outcome Agreement	The policy will contribute to: <ul style="list-style-type: none"> • We live in resilient, cohesive and safe communities. • We make the most efficient and effective use of resources by minimising our impact on the built and natural environment.

VI Resources - (Financial, Staffing and Property)	<p>Financial: Sandbag stock levels are funded from the Roads and Transportation revenue budget.</p> <p>Staffing: Will be carried out with existing Roads and Transportation resources.</p>
VII Consideration at PDSP	This report was considered at the Environment and Sustainability PDSP on 19 September 2024.
VIII Other consultations	Scottish Fire and Rescue service.

D. TERMS OF REPORT

D.1 Background

The frequency of reported incidents of flooding are increasing all across the UK. The highest profile of these have been where watercourses have overtopped their banks or retaining walls, resulting in the flooding of properties or agricultural land. However, it is important to note that this is not the only source of flooding, particularly in built-up areas.

Whilst run-off from heavy rainfall will eventually find its way into watercourses, a large contributor to flooding of properties is often surface water run-off from either cultivated or developed areas.

In recent years there has been an increasing trend of exceptionally high intensity rain storms. The magnitude of these is such that the capacity of drainage systems become quickly overwhelmed causing flooding of the surrounding area.

This problem is not unique to West Lothian. Historic drainage systems across the country do not have the capacity to cope with excessive rainfall events which inevitably causes them to surcharge, resulting in flooding. Modern drainage systems are designed along sustainable principles, but improving existing drainage systems to these new standards is not possible without considerable investment.

D.2 Responsibilities for dealing with flooding

Where flooding occurs or is expected to occur, it is important to note that the primary responsibility for keeping water out of the property lies with the property owner or occupier. Individuals are the first line of defence against flooding and have responsibilities to protect themselves from inundation. Being prepared by knowing what to do and who to contact if flooding happens can help reduce the damage and disruption of flooding events. The responsibility for planning flood risk management falls to SEPA, local authorities and Scottish Water.

Section 56 of the Flood Risk Management (Scotland) Act 2009 provides general powers to manage flood risk.

“A local authority may do anything which it considers will contribute to the implementation of actions in the local flood risk management plan or is necessary to reduce the risk of a flood which is likely to occur imminently and have serious adverse consequences for human health, the environment, cultural heritage or economic activity in its area.”

In addition, local authorities may also be responsible for maintenance of existing flood protection schemes or defences.

Sections 18 and 59 the Flood Risk Management (Scotland) Act 2009 requires the Council to inspect watercourses *“in its area for the purpose of ascertaining whether the condition of any such body of water gives rise to a risk of flooding of land within or out with its area. Where a body of water gives such risk, the local authority may undertake clearance and repair work it considers would substantially reduce that risk.”*

The Act does not give the Council a duty to increase the capacity of a watercourse, this remains the responsibility of the landowner under riparian ownership. If the landowner fails to remove the material, the local authority may remove the material and recover the cost of removal from the landowner.

During severe flooding, local authorities will work with the emergency services and co-ordinate shelter for people evacuated from their homes. There is no requirement for local authorities to provide flood protection products, like sandbags.

The Council has a statutory duty under the Road (Scotland) Act 1984 to maintain public roads, including drainage systems. It has no duty to improve drainage systems to cope with extreme storm events. West Lothian Council has a cyclical gully maintenance programme where gullies are inspected and cleared where required on a biennial basis (once every two years). In addition, West Lothian Council will reactively respond to any complaints of blocked gullies or drains. Road gullies are not designed to take excessive water and can quickly reach capacity. Regular cleaning of gullies can minimise the risk of flooding from drains but blocking can occur quickly during extreme weather as debris builds up.

Many of the flash flood events in recent years have been exacerbated as a result of poor land management practices by landowners. These include the removal and alteration of field drainage systems, piping of open ditches, ploughing of fields downhill rather than across the hill and failure to maintain forested areas resulting in more fallen trees in watercourses. The Council has no powers to require landowners to address these issues but can offer advice on environmental management and best practice.

Scottish Water has the public drainage duty and is responsible for the drainage of rainwater run-off from roofs and any paved ground surface within the property boundary. Private pipework or guttering within the property boundary remains the responsibility of the homeowner. Scottish Water helps to protect homes from flooding caused by sewers either overflowing or becoming blocked.

The Council has discretionary powers to take immediate action where an emergency or disaster has occurred or is likely to occur. The Civil Contingencies Act 2004 makes it a duty for the Council to assess, risk, warn, inform and advise the public.

D.3 Responding to Flood Events and Sandbag Policy

The responsibility for protection of private property during a flood lies with owners and not the council or any other agency. The Council does have permissive powers and duties in relation to flood protection and will fulfil its duties and use powers where appropriate to manage the risk of flooding and support local communities in preparing for and dealing with flooding.

During a flood event, West Lothian Council will give priority to its statutory obligations. However, every effort will be made, where resources allow, to supply filled sandbags to properties that are at imminent risk of flooding. A sandbag stock will be maintained where

possible and kept across depots for emergency use only. Sandbags will not be delivered in advance of a flood event.

This 'first rapid response' to flooding emergencies is essentially a 'self-help' exercise where affected proprietors would be expected to put measures in place to protect themselves from flooding. Property and business owners can take simple steps to reduce damage and disruption to their homes and businesses should flooding happen. This includes preparing a flood plan and flood kit, installing property flood resilience products, signing up to SEPA's Floodline service and ensuring properties and businesses are insured against flood damage.

The deployment of sandbags are often required very quickly and demand will usually outnumber availability. There is no guarantee that sandbags will be delivered to required locations within a specific timescale. The Roads and Transportation service seek to ensure that sandbags distributed by the council are done so in order of priority based on the following priority list of importance:

1. To prevent loss of life or serious injury.
2. Maintain access for emergency services.
3. Secure the safety of the road network.
4. Protecting vital facilities within communities, i.e. hospitals; emergency service facilities; publicly owned social care facilities.
5. Protection of West Lothian Council's community properties such as schools and other public buildings, if appropriate.
6. Protection of residential property within flood risk areas.
7. Protection of Business/Commercial property within the area.

The decision to deploy sandbags directly for use to communities/homeowners will be made in two ways: -

1. If, in the opinion of the council officers, flooding will affect the council area imminently, sandbags will be delivered to those locations and properties deemed most at risk of being affected by floodwater, as per the priority levels 1 to 7 set out above.
2. Requests for provision of sandbags can be made to the council on telephone number 01506 280000 or online by using [Report it - West Lothian Council](#). The Roads Officer can authorise the distribution of sandbags in accordance with the priority levels 1 to 7 set out above.

West Lothian Council will maintain a minimum stock of sandbags to meet emergency needs and will work closely with other agencies before, during and after flood events. The Council will support and encourage local communities, businesses and partner local flooding and resilience groups to prepare and instigate their own flood action plans to assist with managing emergency situations. Similarly, the Council can provide advice on how best to protect yourself from flooding.

D.4 Sandbag Stock Levels

- West Lothian Council will retain a minimum of 3000 filled sandbags at its Whitehill Service Centre Depot, Bathgate.

- West Lothian Council will provide a limited number of sandbags across 3 fire stations: - Linlithgow Fire Station, Polbeth Fire Station & Broxburn Fire Station. Officers will contact the Scottish Fire and Rescue Service to access these locations when deemed necessary.
- Sandbag stock levels will be inspected on a quarterly basis and/or following each flood event.

D.5 Consideration at the Environment and Sustainability PDSP

Panel members requested confirmation on the selection process for the three Fire Stations highlighted in section D4. The Panel was subsequently advised that these Fire Stations were selected historically to ensure comprehensive coverage of key flood risk areas identified within the Local Flood Risk Management Plan for West Lothian.

D.6 Summary

Sandbags will not be delivered to residents in advance of a flood event.

Sandbags will only be delivered when conditions align with actions 1-7 of the priority list.

Sandbags are regarded as a short-term, temporary solution only to the problem of flooding. Sandbags are not favoured as a long-term solution for the following reasons:

1. Filled sandbags are heavy and awkward to lift. (Note: care is required when placing sandbags as injury could result.)
2. Sandbags degrade in sunlight over time so they have a limited period of effectiveness.
3. When in use sandbags may often become contaminated and be a hazard to health. (Note: Contaminated sandbags must be disposed by the recipient in a responsible manner). Sand bags that have been issued will not be collected by the council and cannot be returned to the council.
4. Used / wetted sandbags will not be re-used.

E. CONCLUSION

The primary responsibility for avoiding or managing flood risk lies with land and property owners, certain public bodies are expected to take a proactive role in managing and, where achievable, lowering overall flood risk.

The council has no statutory duty to prevent properties from flooding, but will help residents and communities, as resources allow in line with this policy.

Approval of this policy will provide clarity upon the deployment of sandbags during flooding events and will ensure budgets and resources are used as efficiently as possible and in line with legal requirements.

F. BACKGROUND REFERENCES

Flood Risk Management (Scotland) Act 2009

Cycle 2 Flood Risk Management Plan for the Forth Estuary Local Plan District, published by Falkirk Council, March 2023.

[Responsibilities for flooding | Scottish Environment Protection Agency \(SEPA\)](#)

[Delivering sustainable flood risk management: guidance \(2019\) - gov.scot \(www.gov.scot\)](#)

Appendices/Attachments: None.

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David Maule
Interim Head of Operational Services

1 October 2024

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

CONSULTATION ON MOVING ON FROM CARE INTO ADULTHOOD

REPORT BY HEAD OF SOCIAL POLICY

A. PURPOSE OF REPORT

The purpose of this report is to advise the Council Executive of the Scottish Government consultation 'Moving on' from care into adulthood, and seek approval of the draft consultation response included in Appendix 1.

B. RECOMMENDATION

It is recommended that the Council Executive:

1. Note the contents of this report
2. Agrees that the draft response, included in Appendix 1 is submitted to the Scottish Government.

C. SUMMARY OF IMPLICATIONS

I	Council Values	Caring and Compassionate Open, Honest and Accountable Collaborate, Inclusive and Adaptive
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Getting it Right for Every Child (GIRFEC) The Promise Children (Scotland) Act 1995 The Children and Young People (Scotland) Act 2014 Children (Scotland) Act 2020 Progressing the Human Rights of Children in Scotland: An Action Plan 2021 to 2024 West Lothian Children's Services Plan 2023-2026 Corporate Parenting Plan 2023-2026 Looked After Children's (Scotland) Regulations 2009 Staying Put Scotland guidance 2013
III	Implications for Scheme of Delegations to Officers	No implications.
IV	Impact on performance and performance Indicators	None
V	Relevance to Single Outcome Agreement	Our children have the best start in life and are ready to succeed.

VI Resources - (Financial, Staffing and Property)	People most at risk are protected and supported to achieve improved life chances. None
VII Consideration at PDSP	The draft response was presented to the SWH PDSP on 05/09/24 and feedback is noted at section 3.2 of the report
VIII Other consultations	West Lothian Council services: Legal Services, Children & Justice Services, Education, Housing and Health Services

D. TERMS OF REPORT

1. Background

- 1.1 The Scottish Government has committed to Keeping the Promise to all children and young people by 2030, which includes making sure that all children and young people with care experience are given the support they need to help them move on from care into adulthood and more independent living. Many young people with care experience may not have the same informal support networks that other young people have during transition points in their lives.
- 1.2 Local authorities have a duty to provide throughcare to all looked after children under the Children (Scotland) Act 1995 s17(2). The term 'throughcare' refers to the advice and assistance provided to looked after children with a view to preparing them for the transition to adulthood when they are no longer looked after by a local authority.
- 1.3 Local authorities have a duty to provide aftercare supports under the Children (Scotland) Act 1995 s29 for all care leavers who cease to be looked after on or after their 16th birthday until their 19th birthday and support can continue to be provided until aged 26 years.
- 1.4 A pathway plan is produced which aims to prepare young people for leaving care. It sets out what is required to make sure the young person feels confident about making the transition to more independent living. This might include information on suitable accommodation, mental health, education, counselling or advice and skills to manage their home, health and income.

2. The Consultation

- 2.1 The consultation invites views on the support available to young people as they leave care and enter adulthood. The areas covered in the consultation are:
 - Planning and Preparation for moving on from care into adulthood
 - Accessing information, services and support
 - Continuing Care
 - Aftercare
 - Lifelong Care
 - Support for specific groups leaving care (from secure care, from young offender institutions/prisons, unaccompanied asylum seeking young people, disabled young people, young people who are parents)
 - Supports moving into adulthood
 - Health and Wellbeing
 - Housing
 - Education
- 2.2 This consultation will build on the existing evidence base and seek to understand:
 - the good practice already happening and having a positive impact on young people

leaving care;

- what is missing in our scaffolding of support for young people leaving care;
- the potential solutions to the issues and challenges facing delivery partners and young people leaving care; and
- the best way to deliver the required changes, as highlighted in The Promise.

- 2.3 Responses will be analysed and used as part of the decision-making process, alongside a range of other available information and evidence. The responses received may:
- indicate the need for policy development or review;
 - inform the development of a particular policy;
 - help decisions to be made between alternative policy proposals; and
 - be used to shape legislation as it develops

3. Proposed West Lothian Response

- 3.1 The proposed response at appendix 1 was produced with engagement from relevant services. All of the representatives are involved in work with children and young people with care experience.
- 3.2 The draft response was presented to members of the Social Work and Health PDSP on 05/09/24 and no amendments were required to the response. There were questions raised in relation to when work starts to prepare young people for moving on, transitions to adult services and access to Aftercare for those with Continuing Care and these were addressed.

E. CONCLUSION

Relevant services have contributed to the proposed response to the 'Moving on' from care into adulthood consultation.

F. BACKGROUND REFERENCES

['Moving On' From Care Into Adulthood Consultation \(www.gov.scot\)](http://www.gov.scot)

Appendices: Appendix 1: Draft Proposed Consultation Response
 Contact Person: Susan Mitchell, Senior Manager, Children's Services
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Jo MacPherson
 Head of Social Policy

Date of meeting: 01 October 2024

Questionnaire

Planning and preparation for moving on from care into adulthood

Positive transitions for those moving on from care go some way in improving the opportunities and likelihood of positive destinations. We know that the planning and preparation for transition should begin as early as possible and that the young person, supported by the adults in their lives, should be at the heart of all planning and decision making.

[ARC Scotland's Principles of Good Transitions](#) advocate that planning should start early (from the age of 14) and should continue to age 25 (up until a young person's 26th birthday).

A pathway plan is produced which aims to prepare young people for leaving care. It sets out what is required to make sure the young person feels confident about making the transition to more independent living. This might include information on suitable accommodation, mental health, education, counselling or advice and skills to manage their home, health and income. During 2022-23, 71% of children who were 16 years or over on the date they ceased to be looked after had a pathway plan upon discharge and just over half (52%) had a pathway co-ordinator. Planning can, and should, begin before the young person turns 16. Sharing knowledge and information is crucial to build confidence in young people moving on from care into adulthood.

We want to improve our understanding of how we can better support caregivers and care providers to support positive transitions for our young people leaving care. We know that caregivers and care providers are facing increased pressures and challenges, linked to matters such as workforce gaps, the financial climate, and the impact of the Covid-19 pandemic.

Question 1

How can we ensure that young people, and those who support them, are given enough time, advice and resources to effectively prepare them for moving on from care?

Please explain your answer in the open text box.

- Training and support for the workforce regarding good transitions
- Review of pathway materials to bring it in line with National Policy such as The Promise, GIRFEC refresh, and the UNCRC
- Transition from care to be considered and recognised holistically within a broader transition from childhood to adulthood
- Financial investment to fully enable assessed readiness and the young person's views to inform moving on timelines rather than chronological age.

Question 2

Are there any barriers to starting the process of planning and preparing for young people leaving care at an early stage?

Please explain your answer in the open text box.

- Young people's readiness due to their own lived experiences to consider their future and what they would like. Unlike their peers who live at home, young people living in care are required to have serious conversations about their future at a time when they may be sitting exams and do not have the emotional maturity to meaningfully engage in these conversations.
- The housing crisis makes it challenging to plan for young people moving on.
- There is a lack of suitable moving on options for young people who require a specific level of support to make a successful transition out of care.
- There are significant gaps between how children and adult services respond to the needs of the young people in health, education and social work.
- Financial pressures on local authorities are significant which will impact on resources, potentially on staffing and available supports in some areas.

Accessing information, services and support

Every young person will need different support, but services should align in a way that supports their needs so that children and young people can thrive. Similar to their peers, people leaving care may have additional needs, for example, due to disabilities or complex health needs. Consideration should be given to all the support young people may need when they are moving on from care into adulthood and, where possible, more independent living.

A community is stronger when all its people feel supported and with the right scaffolding in place, young people can thrive during the transition to independent living. All young people, including those with experience of care may need additional help in the form of guidance, emotional support or practical support. Local authorities have a statutory duty to provide support to people leaving care where there is an eligible need.

Support could include signposting to financial and non-financial services that support people leaving care. It could include a wide-range of support in line with a holistic understanding of wellbeing from the [Getting it right for every child \(GIRFEC\)](#) framework. Emotional support could include counselling, peer support and continued relationships with caregivers. Practical support could include support and learning related to key life skills such as paying bills and managing finances, personal care, arranging medical appointments and basic household management skills such as cooking and laundry.

We have been told by people leaving care, and the adults in their lives, that information on what services and support are out there for young people moving on from care is not always easily accessible.

The Promise tells us that children and their carers must have access to information about their individual rights and entitlements at any point in their journey of care. It also notes that the workforce must be supported to be the trusted adults that children need to help them access their rights and entitlements, ensuring that all children can achieve their rights and live their lives to the full.

Question 3

How can we ensure young people receive the right support and guidance to build the life skills they need for adulthood before they move on from care?

Please provide suggestions in the open text box.

- Working in partnership with those providing care to young people to review the opportunities for young people to build the life skills they require for adulthood. For example, many young people of an age will have the responsibility of being home alone for a time limited period. Opportunities should be considered in all care settings so readiness is promoted in residential and family-based care provision.
- Opportunities should be promoted by the team around the young person, at My Plan Meetings and Pathway Reviews.
- Prior to a young person moving on from care, support should be provided to obtain essential documents such as: bank account, NI number, birth certificate, passport/photo ID
- Opportunities to build confidence by young people arranging appointments such as GP/dentist appointments, etc themselves.
- Enabling opportunities for peer support to build on support networks young people have for when they move on.
- Engagement with care experienced young people to learn what was beneficial and what would have made a difference.
- In West Lothian, the independence checklist has been used to support young people and their care giver consider practical knowledge and experience they will need prior to moving on from care.

The trauma of the separation of parent(s) and their child can be profound and lifelong. The Promise tells us that families who have had a child removed should not be abandoned. These families must continue to be provided with therapeutic support, advocacy and engagement in line with principles of intensive family support. For some young people leaving care, returning home to live with their birth family may be the best option for them. However, we must support families to ensure it is safe and in the best interest of the young person to return home.

Question 4

What services and support should be considered and provided to a care leaver who returns home to live with their birth family?

Please explain your answer in the open text box.

- Aftercare support should be in place for the young person
- Education, training or employment and support to access/overcome barriers to engage
- Health services including mental health support if required
- Support to maintain the connections (where appropriate) to those that previously cared for them
- A phased approach to the transition home which could include a period of shared care, particularly when a young person has been away from birth family for a lengthy period.
- Information on future accommodation and support options as appropriate and support to consider these at the right time.
- Support for birth family: signposting to services that provide financial support for example in relation to benefits and housing in recognition that caring for the care leaver will likely have implications for birth parents. Emotional support for the birth family in adjusting to the change of circumstances.

Question 5

Can you provide examples of good practice where services have worked together in a holistic way to support birth families and young people moving on from care when the young person returns to live with their birth family?

Please provide any examples and share your views in the open text box.

A young person who was cared for in secure care in their early teenage years transitioned to an out of authority residential care setting and was able to return to their birth family just prior to their 16th birthday.

This transition worked well because it was not rushed, the key adults in the support network for the young person and family remained the same and there was scaffolding placed around the family. Due to the timely transition, it was possible to ensure that mental health services were transferred to the young person's local area so they were in place for returning home. In addition, careful consideration and planning was given to the young person's education, employment and training for when they returned home. Applications were made to appropriate colleges in order to ensure the young person had every opportunity to succeed.

Question 6

How do we ensure that young people with care experience, and those who provide them with care, can easily access information about entitlements and support?

Please provide any examples of good practice you are aware of in the open text box.

- Regular, easy to access information for care experienced young people and their care givers. For example, in West Lothian, the Family Based Care Service produces a monthly newsletter that is sent to all fostering households providing up to date information and research on key areas in relation to fostering.
- Good links between multi-agency partners and early discussion with care experienced young people in education in relation to their entitlements and future options to support planning.
- Bitesize training sessions and information events for foster carers, kinship carers and adoptive families, to ensure all relevant entitlements and training is regularly shared and updated.
- Informal events for carers, for example in West Lothian there are regular coffee mornings which assist in building support networks.
- Regular review of care plans for young people via My Plan Meetings, chaired by independent reviewing officers who ensure awareness of entitlements and opportunities for support and promote these with young people, those caring and other important people in a young person's life.
- Timely referral to the Social Policy Throughcare and Aftercare Service to ensure early assessment and planning for care leavers, aligned to need.

Continuing Care

Continuing Care effectively offers eligible young persons the entitlement to remain in their care setting up to their twenty-first birthday where they cease to be looked after by a local authority. People leaving care may also be offered Aftercare until their 26th birthday, and potentially beyond, if they are found to have eligible needs.

During 2022-23, 911 young people aged 16 years or over ceased to be looked after and were eligible for Continuing Care. Of these, 29% (261) entered Continuing Care.

The Promise is clear that young people should not have their care brought to an end when they do not want to leave and are not ready to. It says care settings should be supported and resourced to keep places open for young people in line with legislation.

The CELCIS report, [Continuing Care: An exploration of implementation](#) highlighted barriers to the implementation of Continuing Care across Scotland, with practitioners agreeing upon the importance of ensuring that Continuing Care is the default provision for young people who are looked after.

The CELCIS report is clear on the financial and resource challenges we are facing and the impact this can have on services. We cannot shy away from this financial fact, but we can make sure that what is out there for young people is clearly signposted and supported for access. We can also work to ensure that the agreed best practice models are followed, in a way that works for young people, practitioners and the adults who support them.

Question 7

Are there any changes you would like to see as part of the eligibility criteria for Continuing Care?

Please provide details of your suggestions in the open text box.

Further clarity regarding eligibility for continuing care for those young people who do not have the capacity to make decision for themselves but will be required to have care and support provided to them throughout their adulthood.

The implications of any changes to Continuing Care criteria will require to be fully funded on an ongoing basis.

Question 8

What additional support do you think is required for families, professionals and practitioners who are responsible for providing Continuing Care arrangements?

Please explain your answer in the open text box.

- Training in relation to legislation, entitlements, roles and responsibilities
- Early planning to identify the needs of young people entitled to Continuing Care ensuring robust assessment and views of children and their care giving families are considered.
- Policy and guidance in relation to Continuing Care that is accessible and understood by young people, families, professionals and practitioners.

Question 9

How do we ensure that young people, and their views, are heard during discussions on Continuing Care which impact them? Please explain your answer in the open text box.

In West Lothian, from the age of 14, the entitlement to Continuing Care forms part of the My Plan (LAC review) agenda and care plan and the views of young people are actively sought during this process. The young person's allocated social worker, who undertakes the pathway assessment explores Continuing Care with the young person. Those caring for young people are also supported and encouraged by social work to discuss Continuing Care with young people and gain their views.

Communication in relation to Continuing Care should be in an accessible format, for example using Plain English and easy read.

Young people should have choice in how their views are represented, including being able to easily access an independent advocate, have another trusted adult representing their views or provide views in writing.

In West Lothian, if the young person decides to opt into Continuing Care, a Continuing Care My Plan Meeting is held. The young person is encouraged to contribute to this and share their views in the way that is best for them and young people are provided with written outcomes of meetings. Translation services are used in meetings as required.

Aftercare

People leaving care are entitled to [Aftercare](#), which is the advice, guidance and assistance provided under section 29 of the 1995 Act. Any young person who ceases to be looked after on or after their sixteenth birthday and is less than twenty-six years of age is eligible (between sixteen and nineteen) or potentially eligible (between nineteen and twenty-six) for Aftercare.

If a young person over the age of nineteen is applying for support and is deemed to have eligible needs which cannot otherwise be met, the local authority is under a duty to provide the young person with such advice, guidance and assistance as it considers necessary for the purposes of meeting those needs (potentially up to their twenty-sixth birthday).

Aftercare support will vary based on an assessment of each young person's needs and care arrangements, for example; where they have lived in residential/foster care; if they are an asylum seeker; or if they have a disability. When a need is identified, the local authority must develop and record a pathway plan which clearly identifies how this need will be met.

The Promise states that all decisions must be made in the best interests of the child or young person and not on the strict application of age criteria. Aftercare must take a person-centred approach, with thoughtful planning so that there are no cliff edges to care and support.

Question 10

How can we make sure young people can access the range of support they need when they leave care through the provision of Aftercare?

Please explain your answer in the open text box.

- Ongoing pathway planning for young people.
- Ensure young people are provided with information prior to leaving care, so they are aware of entitlements and the possible supports should they require it.
- If supports are easily accessible, this will enable young people to access them, for example West Lothian has an Aftercare duty worker who is contactable daily for those young people with care experienced who are no longer allocated to a social policy social worker or support worker. Young people can therefore access information, guidance and advice on the same day it is sought.
- Accessible information in different formats, including digital
- Opportunities and visibility of available supports for care experienced young people so these are accessible, particularly when not in receipt of formal supports.

Question 11

Are there any changes you would like to see as part of the eligibility criteria for Aftercare?

Please provide details of your suggestions in the open text box.

Additional discretion would be beneficial for some young people who have been care experienced for a lengthy period and have left care prior to but near to their 16th birthday.

Question 12

What do you think the challenges would be in changing the eligibility criteria for Aftercare?

Please explain your answer in the open text box.

Changes will place additional financial pressures on Local Authorities if they are not fully funded on an ongoing basis.

Lifelong Care

Continuing Care ends when the young person reaches their twenty-first birthday. The young person is then entitled to apply for Aftercare, until their twenty-sixth birthday. Young people have voiced concerns that at the age of 26 years and beyond they may still require access to services and continued support as a result of being care experienced.

The Promise says that older people with care experience must have a right to access services for as long as they are required. We recognise that the impact of care experience can be lifelong and that Scotland must care for and nurture our young people.

Question 13

What do you think would be the best way to provide long term support and services to adults with care experience?

Please explain your answer in the open text box.

Clear transitions policies are essential, that are understood by Children and Adult Services to ensure care experienced young people can access supports into adulthood.

A collaborative approach to embedding The Promise within local authorities ensures that all service areas consider the needs of care experienced children, young people and adults and align services and practice to offer the best supports.

In West Lothian, the Promise Informed Network (PIP Network) is well established. The PIP Network places responsibilities on all service areas to work collaboratively and develop implementation plans locally, ensuring West Lothian Council is cognisant of the calls to action set out within the independent care review and is aligning policy and service delivery to meet the needs of care experienced children, young people, adults and their families.

Question 14

What do you think the challenges would be in providing support and services to adults with care experience?

Please explain your answer in the open text box.

Care experienced adults often have fewer social networks, face economic challenges and have trauma related to their life experiences. Services must be developed in a way that removes barriers, and supports optimum engagement of care experienced adults. For example, in West Lothian health services are reviewing the opportunities they offer to care experienced young people and adults to fully engage in health appointments and they are considering more creative ways to ensure care experienced people are not discharged from essential health services, rather barriers are removed and creative forms of engagement considered to support care experienced people.

Collaboration and removal of barriers is essential to provide the right supports and services to adults with care experience.

Support for specific groups of people leaving care

Support for young people leaving secure care

Young people in secure care with additional support needs require access to support and services which allow them to achieve the best possible health outcomes.

Young people leaving secure care require support to ensure the transition out of such a controlled environment happens with understanding, planning and care. Depriving the liberty of a young person is a significant decision, and where this happens, support should be provided to ensure the young person has what they need to go on to live a fulfilling life in the community at the end of their stay in secure accommodation.

The Promise recommends that any young person who is 'looked after' and is in secure care and turns 18, must retain social work support upon leaving secure care.

Question 15

What improvements do you think could be made to the support given to those leaving secure accommodation? Please explain your answer in the open text box

Appropriate step-down/intermediate residential and other care options are required for young people exiting secure care for successful transitions.

Continuity of supports for mental health and wellbeing.

Supports to continue learning in the most appropriate setting.

Continued access to advocacy.

Question 16

How do we ensure all young people in Scotland get equal access to the support services they need during the transition from and after leaving secure accommodation?

Please provide examples or suggestions in the open text box.

Consistency is required regardless of location on access to the most appropriate accommodation and supports for moving on, aligned to need. Supports need to be available not only in the short-term but for young people to transition to independence in their community. Adequate funding is required to enable this.

Continuity of supports for mental health and wellbeing on leaving secure care.

Support for young people leaving young offenders' institutions and prisons

When people leave prison, they often face obstacles, making it hard for them to adjust to this next stage in their lives. The Scottish Government has committed to ensuring that young people under the age of 18 are no longer placed in young offenders institutions and we are prioritising the

commencement of the relevant provisions of the Children's Care and Justice (Scotland) Act 2024 to achieve this. Despite this positive step, it remains critical that those young adults with care experience who are in a young offender's institution or prison, have the right bridges in place, such as stable relationships and person-centred support when they leave.

Question 17

What improvements could be made to the support given to people with care experience at the transition point from leaving young offenders institutions or prison?

Please explain your answer in the open text box.

West Lothian has embedded the WSA (Whole System Approach) with the key elements of Transitions and Re-Integration for all young people. At the point of remand, young people are highlighted to Youth Justice where there is liaison with Institutions regarding care, risk, need and background assessments. This allows for appropriate information sharing, planning and supports to be in place post-release.

Key aspects for development as an integral part of transitions includes appropriate housing and supported accommodations that allows all young people to create a positive foundation post-release. Multi-agency supports are key (including health, education/employment and specialist services/third sector/mentoring, substance misuse services) to ensure a strong and robust network of key planning to reduce the propensity for offending overall.

Question 18

How do we ensure all young people get access to the same support services when they are leaving young offenders' institutions or prison, regardless of where they are located in Scotland?

Please explain your answer in the open text box.

Consistency and continuity are a key element regardless of location. This requires appropriate funding, structured and consistent tailored resources to allow young people to receive the appropriate supports and intervention from a national perspective across key partner agencies.

A consistent partnership understanding and framework might also enhance this aim of a consistent and sustained approach.

Support for unaccompanied asylum-seeking young people leaving care

Unaccompanied asylum-seeking children arriving in Scotland are also Scotland's children for the time they are in our care. We must look after them in the same way we would want others to care for our own children. Many young unaccompanied asylum seekers come into care at a later stage than many Scottish-born children and young people with care experience, which leaves less time to prepare for the transition to adulthood. We also understand that young unaccompanied asylum seeking people

in this situation may have reduced social networks due to their circumstances. They may also have additional mental and physical health needs related to adverse events they have experienced prior to their arrival.

Question 19

Can you share details of any services that are already working well to support unaccompanied asylum-seeking young people transitioning out of care? Please explain your answer in the open text box.

The approach to supporting unaccompanied asylum-seeking young people in West Lothian is incorporated into a workstream, "Providing effective Throughcare and Aftercare Services" that reports to the Corporate Parenting Strategic group. This enables oversight of the work by corporate parenting partners.

West Lothian Council hosts a 6-monthly professional networking meeting to share information relating to demographic data, practice updates, local supports and updates from national bodies such as the Scottish Refugee Council.

Due to age and presenting needs of unaccompanied asylum-seeking young people arriving to West Lothian, they are generally supported by the Children's Services Throughcare Team in Social Policy.

West Lothian Council partners with third sector agencies to tailor support focusing on community orientation, sharing information about Scottish societal structures and culture, and introducing/encouraging community connections through sports, faith and other local groups. The experience in West Lothian has been that a higher frequency and intensity of support is beneficial when young people arrive, which can be reduced as many young people already have independent living skills.

Unaccompanied asylum-seeking young people will likely have experienced trauma either in their country of origin or during their journey to Scotland. The service is working on supporting young people making connections to mental health supports.

Question 20

What supports and/or improvements do you think could be implemented to ensure we meet the particular needs of unaccompanied asylum seeking young people transitioning out of care in Scotland?

Please explain your answer in the open text box.

Unaccompanied Asylum-Seeking young people often express dissatisfaction in relation to lack of structure and opportunities to occupy their time. Greater access to ESOL training, college courses tailored to accessing future education/employment, volunteering, or unpaid work opportunities which are accessible during the asylum waiting period would be welcome.

Accessible trauma responsive mental health support is required.

A National training program to support front social work line workers understand the asylum process would be of benefit.

Support for disabled young people leaving care

The Scottish Government is committed to improving the experiences of disabled young people making the transition into adulthood and aims to publish Scotland's first National Transitions to Adulthood Strategy for disabled young people by the end of this year.

Some care-experienced young people making the transition to adulthood will also be disabled. The needs and requirements of disabled young people moving on from care into adult life should be planned and considered carefully to ensure the young person has what they need to have a positive and supported experience. Additional consideration may need to be given to issues such as guardianship, accommodation, social care and health care needs.

Question 21

Can you tell us about any specific services or supports that already work well for disabled young people or people with complex health needs leaving care?

Please provide details in the open text box.

West Lothian Council has a dedicated Child Disability Service team; a social work service for children affected by disability and their families in West Lothian.

For care experienced disabled young people, the Child Disability Service work closely with Adult Social Work colleagues during their transition between the services, to ensure they receive consistent support. Adult Social Work have two dedicated transitions workers with the aim of working closely with the Child Disability Service during this transition period. Any package of support is clearly communicated with Adult Services and will continue until an agreed date of transition between the services.

The Child Disability Service ensures that any young person leaving care, or their carers have information on the Aftercare service within Social Policy.

The Child Disability Service has good working relationships with partner agencies, including Education and Health to ensure information is shared and any young person leaving care is well supported by everyone involved.

The Child Disability Service recognise that some young people will require a high level of support in to adulthood and regularly have consultations with the Adults with Incapacity team to consider if a Guardianship Order may be in that young person's best interest.

The Child Disability Service supports disabled young people leaving care who may be eligible for additional financial support, such as the Transitions Fund through the Independent Living Fund.

Question 22

What improvements do you think could be made to ensure disabled young people leaving care have the support they need when they make the transition into adulthood?

Please explain your answer in the open text box.

For disabled young people in care, resources in Scotland are very limited, meaning they are required to live many miles from their own communities and family. Resources near to West Lothian that can meet the complex needs of young people would be beneficial. This would support sustaining positive links with family and have an impact on future support networks when young people leave care.

Equally, there are very limited accommodation options for disabled young people leaving care. An increase in supported accommodation and facilities able to offer complex care would allow young people to receive the support they require within their local communities.

For disabled young people living in care, they are supported by other agencies within the area they live. This means that when they leave care they are likely to lose their whole professional team. It would be beneficial if the local professional team to where young people will be living when they leave care becomes involved earlier to better support this transition.

Support for people leaving care who are parents

All new parents and families, regardless of their circumstances, need support to care for and nurture their children.

We have been told that parents with care experience often face stigma at the early stages of becoming a parent. The Independent Care Review heard reports of structural discrimination within the forms that need to be completed and some people reported facing inappropriate questioning from GPs, Midwives, Health Visitors and other healthcare professionals. This type of experience can compound some of the challenges people might face as a consequence of being care experienced.

Question 23

What improvements can you suggest in the support provided to young people with care experience as they prepare to give birth or become parents?

Please explain your answer in the open text box.

- Adaptable and flexible pre-birth support during pregnancy
- Signposting to parenting groups and information being easily accessible
- Priority access given for care-experienced parents to services such as financial support, mental and physical health services, housing support
- Building on informal supports for care experienced parents, for example incorporating the approach of lifelong links within supports and learning from the Family Group Decision Making approach
- Consistency of professional relationships whenever possible
- Additional financial support to access childcare, reflecting likelihood of less access to appropriate natural support networks

Question 24

How can the workforce be better supported to help care experienced people as they become parents?

Please explain your answer in the open text box.

- Trauma Informed and Responsive Approach to supporting care experienced people – this will prevent assumptions and judgements being made about a care experienced young person's abilities as parents.
- A focus on developing positive working relationships with parents where there is trust and transparency and time is given to explain different processes.
- Awareness of the impact financial difficulties can have on all parents but particularly care experienced parents.

Question 25

How can children's and adults' services better work together to provide whole family support for parents who are care experienced?

Please explain your answer in the open text box.

- Promote effective communication and information sharing where appropriate across services working with adults and children within the family.
- A single care/support plan in place for a family which builds on the strengths of families and prioritises the needs identified through assessments.

Forms of support for care leavers moving into adulthood

Peer support and maintaining lifelong links

Children told the Independent Care Review of their need for safe, loving and respectful relationships. The report noted that these relationships can only exist when carers are permitted to form meaningful connections based on instinct and judgement and those in care are supported to form lifelong links with their carer, when appropriate. The review goes on to stress that these relationships are about developing and nurturing relationships as opposed to professionalising the process.

Programmes such as [Lifelong Links](#), where a trained coordinator works with children and young people to find and safely connect with relatives and others who care about them shows it leads to a stronger sense of identity for children and young people, more stability in their living arrangements, better mental health, and more positive relationships they can rely on.

Peer support works alongside the care provided by a corporate parent to offer a wider range of scaffolding options. Young people speak about the importance of peer support. Peer support can offer a community and sense of belonging as a young person or caregiver. This type of support could be particularly helpful in supporting people leaving care and their caregivers during transition stages.

Question 26

In what ways would you like to see peer support used by people leaving care and/or caregivers during a young person's transition from care into adulthood?

Please explain your answer in the open text box.

Peer Support should be embedded throughout care planning for care experienced children and young people, creating early support networks that young people can engage in. This can promote long-term connections, opportunities to share experiences and support systems.

Peer Support should not just be considered at points of transition or leaving care, but should be integral to My Plan Reviews and a care experienced child or young person's life and journey.

Question 27

Do you know of any examples where peer support networks have had a positive impact on the experience of leaving care, either for care leavers or those who supported them?

Please explain your answer in the open text box.

Within West Lothian Council Residential Houses there is a weekly young person's group which is facilitated by professionals and led by young people. Young people who have moved on and have left care continue to attend this group; they are able to engage in peer support as well as with the adults who cared for them. Young people are able to celebrate their successes and continue to maintain relationships which have been important to them.

Question 28

How can we better enable young people and the supportive adults in their lives to maintain healthy relationships once the young person has moved on from care?

Please provide any suggestions or examples you may have.

Life long links and peer support networks should be considered as an early priority for any care experienced child or young person. Assessments should also focus on the important people in any young person's life, with care planning ensuring consideration is given to meaningful ways to maintain and support key relationships.

Out-of-hours services providing support and advice

Support in the transition to adulthood is needed for all young people, but particular attention must be given for a young person who is transitioning from care and into adulthood. We understand during this period there may be an increased need for advice and support as the young person navigates independence. Most services are not available every day or at all times of the day, which can mean young people and the adults who support them do not necessarily have access to support at the point of need.

Question 29

What types of support and advice do you think should be available to care leavers as part of an out-of-hours service?

Please explain your answer in the open text box.

Supports in relation to social and emotional needs as often care experienced young people feel isolated when they leave care and lack the informal support networks that their peers leaving home have in place. This isolation can have a detrimental impact on their mental health or at times can lead to them making poor decisions in the community.

Supports in relation to living independently such as financial, housing and energy. Out of Hours social work services are often contacted by young people who have transitioned from care into their own tenancy and they struggle when they have an issue with their gas/electric and often feel overwhelmed in managing this.

Health and wellbeing

Children and young people who are care experienced can face adverse health outcomes such as the risk of higher mortality, hospitalisations related to mental health, chronic conditions and injuries. Evidence has shown that when young people move on from care to adult life, their health and wellbeing needs can increase; and the transition from child to adult services may present additional challenges at a time when a young person is already experiencing many changes as they move towards independence.

People who are care experienced may need help from a wide range of services to support both their physical health and mental wellbeing. It is essential that services are readily available and accessible, as well as being tailored to the needs a young person leaving care and moving towards adulthood and more independent living.

During the transition phase, people leaving care may need to contact a variety of services to support their physical and mental health and wellbeing, and it is crucial that appropriate health services are readily available and accessible to support individuals during the transition to adulthood.

The Promise tells us there must be criteria free, community based access to therapies that do not stigmatise, but help and support children and young adults to work through difficulties they are facing. There must be greater availability of family therapy, for all families (kinship, foster, adoptive, family of origin) so that accessing support is not stigmatised, but seen as something that a range of families may require throughout life.

Access to timely, appropriate therapies must be available to, but not limited to, those who have experience of care. Many care experienced children and young adults told the Independent Care Review that they were unable to access mental health support at the point it was needed. They were often required to be 'stable' before receiving a service, with long waiting times and limited services not providing what they needed.

Question 30

What improvements do you think could be made to ensure care leavers have access to services which support their physical health, and mental health and wellbeing?

Please explain your answer in the open text box.

West Lothian's Aftercare Nurse has been a positive support to young people. A focus of this work is to reconnect young people with health services and there is a good take up rate for this support.

Feedback suggests that there are a variety of different services which Care Experienced Young People may access however it is reported that the barriers of long waiting times and the lack of resources to scaffold and support care experienced children and young people to attend services is a common theme.

Young people are often discharged if they do not attend initial appointments and require to be re-referred and may encounter further delays in accessing services. There are often changes in staff and children/young people value the consistency which a support worker may bring in enabling and empowering them to attend health services.

In summary, resources to support attendance to appointments is essential and currently not also able to be maintained. Consideration of care experienced status when there is nonattendance at appointments should prevent discharge and need for re-referral.

Question 31

What improvements do you think could be made to ensure a smooth transition is made between children and adult physical health services, mental health services and wellbeing services?

Please explain your answer in the open text box.

Assessment for transition should be an ongoing process during the Young Person's care journey. Review of health needs and requirement of services may be assessed using GIRFEC practice model and local transition policies. It is important that care experienced children and young people feel very much part of their transition and are involved and informed of what changes will happen particularly when moving to work with different professionals.

It is imperative that health information is discussed at specific points including GIRFEC planning meetings where children and young people can convey their thoughts and views on any services and supports that will be helpful when moving on for care. In West Lothian, there are specific Specialist Throughcare and Aftercare Nursing services which can provide supports and coordination of health services for children and young people moving on from care. Specialist Throughcare and Aftercare Nursing is not available in all NHS Scotland health boards.

Complexities can arise if leaving care is either returning to their own area or moving away from home which results in crossing health board areas. On occasion, there is a lack of information or handover of care leading to some challenges in assessment for supports at transition.

In addition, different specialist health departments have different policies for example, age criteria in relation to transitions and transfer of care to adult services.

Housing

As young people transition into adult life, they must receive support across a range of areas including housing. Research consistently highlights that care leavers are more likely than other young people to become homeless or experience housing instability.

Support for care leavers to access appropriate housing should be inclusive, accessible and bespoke to a person's individual circumstances, especially where they have additional support needs or a disability.

Question 32

Please tell us about any good practice you are aware of that supports young people leaving care to find a home that meets their needs.

Please explain your answer in the open text box.

Early planning with young people, providing information on accommodation options offering different levels of support and the opportunity to visit accommodation options has been beneficial.

The approach in West Lothian is for care leavers to be considered for moving on accommodation and additional supports via one referral route, with representation on the group from social policy, housing and third sector. Young people are identified prior to requiring accommodation so any move is planned.

A young person was recently provided discretionary financial support to access a private tenancy out with West Lothian, closer to his university and place of employment.

Question 33

What do you think are the main barriers in securing appropriate housing for a young person with care experience?

Please explain your answer in the open text box.

- The nation-wide housing shortage.
- Lack of suitable housing in the areas of choice for care leavers due to supply crisis
- Demand for supported accommodation options
- Expensive deposits required for private rental housing.
- Lack of student accommodation locally for those individuals accessing college education as opposed to university education.
- Increase in numbers requiring moving on accommodation, in part attributed to an increase in responsibility for unaccompanied asylum-seeking children and young people.

Question 34

How can we ensure there is sufficient support, planning and preparation provided to care leavers moving into their own accommodation for the first time?

Please explain your answer in the open text box.

Robust multi-agency planning through My Plan Meetings and pathway assessments.

Support for carers to ensure all involved have the skills and knowledge to provide the support for young people.

West Lothian corporate parents work collectively to support young people prior to making a transition and in developing support plans.

Question 35

What forms of support do you think would help someone leaving care and entering their first tenancy to stay in that property for as long as they want to?

Please explain your answer in the open text box.

The availability of the tenancy long term, for example the option of temporary tenancies to be converted into permanent tenancies.

Robust move on plans shared with the landlord/local area offices (if appropriate) and identification of key housing officer that the young person can build a trusting relationship with.

Providing financial support, education and advice, e.g. on budgeting; practical advice and support on how to maintain a tenancy, affordability of tenancies, emotional support including with sustaining and managing connections/relationships.

Question 36

How can we ensure the views and needs of people leaving care are taken into account when decisions are made about where they should live when they leave care?

Through the My Plan process, young people are actively involved in discussions about planning for leaving care, including where they might live. Social workers engage with young people on this and support those caring for them to have these discussions.

Young people have access to independent advocacy, which is encouraged. There is also choice in ensuring the opportunity to express views through social work, carers, another trusted adult or in written form.

Ongoing assessment is required by those involved, taking account of the young person's views, to ensure young person's needs are identified and the supports required to meet these.

Young people should have access to the information on options for where they might live, so they can provide informed views.

Ensure young persons have full details on realistic housing options from housing providers to meet their expectations.

Further and Higher Education

Care-experienced young people and adults studying below HNC level are entitled to a [College bursary](#) of up to £9000 each year. For care-experienced adults entering Higher education, the Student Awards Agency Scotland [Care Experience Student Bursary](#) of £9000 each year is available to care experienced people with no age restriction. In addition, a [Summer Accommodation Grant](#) of up to £1,330 is available to support care-experienced students with their accommodation costs through the summer break. Some institutions may also offer discretionary support for childcare and travel costs or [rent guarantees](#) for private accommodation.

Every [University](#) in Scotland guarantees care experienced applicants who meet the minimum entry requirements a place on their chosen undergraduate course. Care experienced students in Higher Education are also eligible for a [Special Support Loan](#) of £2,400 from the 2024-25 academic year, bringing the total package of support available to £11,400 each year in Higher education.

Question 37

In what areas would you like to see improvements to the service, support and funding for students who are care experienced?

Please explain your answer and provide any suggestions in the open text box.

The financial support provided is helpful and already supports young people to engage with further education. Greater advice and supports on budgeting and managing the funding that is available to young people would be helpful to ensure that they are supported to understand how best to budget effectively.

Priority access to University courses (where minimum entry is met) is welcomed and is an important part of the process of ensuring our care experienced young people can access further education.

Development of formal offers of taster opportunities for further and higher education to enable young people to better understand the experience and build confidence for fuller access.

Development of a wider range of opportunities for further learning for those young people for whom traditional offers are not appropriate.

Priority of trusted adult relationship to provide intensive support to access the range of options available.

It is important we support young people in any way we can to help them stay in education and complete their course of study, if that is their preference.

Question 38

How can we better support care experienced students to complete their studies?

Please explain your answer and provide any examples of good practice in the open text box.

Wrap-around / mentor support for care experienced learners attending further and higher education courses could seek to support them to persist with their course of study when they experience challenges and they are tempted to withdraw from their course. The same principle of the importance of significant relationships continues at this stage of learning as having an identified adult who is there to support is key.

Consideration of how trusted adults from school stage can be supported to facilitate a transition to a new trusted adult at a time that works for the young person, and not the organisation.

In the absence of specific mentors for care experienced young people, training for all tutors in higher learning organisations about the issues faced by care experienced young people would be an important element of the support process. Engagement with the national trauma training programme would be positive but deeper learning on the impact of trauma could be accessed for those with specific remits of support.

Clear communication for care experienced learners about where they can access support once attending further and higher education institutions.

Learning institutions to be aware that there may be Care Experienced learners who are reluctant to identify as such and to have clear access to supports if encouraged to share.

Consider how support can be provided over summer months in order to continue to have an opportunity to access support over these lengthy periods of time.

Employment

We know all young people have different goals when entering adulthood and considering their route into work. This can include employment, self-employment, apprenticeships, training or other education

Question 39

What would help young people with care experience find secure and fulfilling work, develop their skills or build their confidence?

Please provide examples in the open text box.

Highly supported work placements are key to supporting young people into the world of work. The Career Ready programme which runs in this local authority is a good example of how we are working with employers and departments within the council to provide supported work experience for all learners but with specific places ringfenced for care experienced young people.

For those learners who are not yet ready for applying for college or for work placements, providing additional courses post-school which are designed to develop confidence and skills for work is another key way of supporting our care experienced learners.

Building in opportunities in school / with carers to plan ahead for work experience and the world of work and focus on this as part of post-school planning. Support for practicalities including what to wear, how to get there etc. could be linked to a mentoring role.

Starting opportunities for developing peer skills and confidence much earlier in their learning journey eg. in primary schools to strengthen these skills earlier.

Promoting the "Family Firm" approach across local authorities and with large employers.

Question 40

Can you share any examples of good practice, in the private and public sector, where young people leaving care have been supported into employment or training, or have been supported to build their confidence?

The Career Ready programme

Mentoring programmes

West Lothian Trust Project (West Lothian College)

Dedicated Careers advisor support for most vulnerable Care Experienced young people.

Care Experienced Job Club (joint work with social work and careers service – Edinburgh)

Salveson Mindroom – Care Experienced young people specific project

Question 41

How do you think employers can be better supported or encouraged to recruit, train, support and retain young people who are care experienced?

Please explain your answer in the open text

To support a greater number of employers across Scotland to have access to trauma-informed training.

Awareness raising with employers in the first instance to understand the many skills and character strengths our care experienced young people bring to the work place.

Reaching out to employers with specific requests to support care experienced learners.

Training for employers in understanding the impact of trauma and what this looks like in the work place would assist with providing work experiences that meet the profile of our young people.

A National incentive / recognition scheme that could assist organisations to attain the status of being a care experienced employer; and government incentives to businesses to support and retain care experienced young people to match funding for further education grants.

Consider establishing employer forums to support opportunities for care experienced young people.

Maximise opportunities in the apprenticeship framework approach to enhance opportunities that are of benefit to both employers and young people.

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

CONTRIBUTIONS POLICY UPDATE 2024/2025 FOR ADULT NON-RESIDENTIAL SOCIAL CARE

REPORT BY HEAD OF SOCIAL POLICY

A. PURPOSE OF REPORT

The purpose of this report is to advise the Council Executive of the annual review of the Contributions Policy for adult non-residential social care, and the proposed changes to the policy.

B. RECOMMENDATION

It is recommended that the Council Executive:

1. Note the content of the report
2. Agrees the proposed changes to the draft contributions policy, included in Appendix 1.

C. SUMMARY OF IMPLICATIONS

I	Council Values	Caring & Compassionate Open, Honest & Accountable Collaborative, Inclusive & Adaptive
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Relevant legislation includes: Social Work (Scotland) Act 1968 Community Care and Health (Scotland) Act 2002 Mental Health (Care and Treatment) (Scotland) Act 2003 Social Care (Self-directed Support) (Scotland) Act 2013 The National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2018 COSLA National Strategy and Guidance – Charges applying to Social Care Support for People at Home 2024/25 IJB Strategic Plan 2023-2028 Delivery of adult and older people social work and social care services and associated decisions is delegated to West Lothian Integration Joint Board under the Public Bodies (Joint Working) (Scotland) Act 2014
III	Implications for Scheme of Delegations to Officers	None
IV	Impact on performance and performance Indicators	None
V	Relevance to Single Outcome Agreement	People most at risk are protected and supported to achieve improved life chances Older people are able to live independently in the community

with an improved quality of life
We live longer, healthier lives and have reduced health inequalities.

VI	Resources - (Financial, Staffing and Property)	No additional cost – within existing resources The revenue budget for 2024/25, agreed by the council on 22nd February 2024, included a net income budget of £1,439,000.
VII	Consideration at PDSP	A report detailing the proposed changes to the existing Policy was considered by Social Work and Health PDSP on 05/09/24 and feedback is noted at section 2.5 of the report
VIII	Other consultations	Financial Management Unit, Social Policy and the Anti-Poverty Service

D. TERMS OF REPORT

1 BACKGROUND

- 1.1 The West Lothian Integration Joint Board (IJB) is responsible for the strategic planning and delivery of adult and older people social work and social care services, to which this policy relates.
- 1.2 The West Lothian Contributions Policy for Non-Residential Social Care came into effect on 1 October 2018 for existing users and 1 April 2019 for new service users. The policy is reviewed and updated annually in line with CoSLA National Strategy and Guidance – Charges applying to Non-residential Social Care Services for 2024/2025 charges.
- 1.3 The Contributions Policy has been reviewed in consultation with the Contributions Working Group. The group consists of officers from Social Policy, the Financial Management Unit and the Anti-Poverty Service.
- 1.4 The contributions policy applies to care plans regardless of the Self-Directed Support (SDS) option or service chosen to meet assessed eligible needs and outcomes. Personal care services remain free for all adults and older people.
- 1.5 Anyone who receives a chargeable service will be financially assessed to determine how much they can afford to pay towards the cost of those services they receive. The care and support provided will be based on assessed eligible need and a contribution towards the cost of care based on an assessment of the individual's ability to pay that contribution.
- 1.6 All individuals who undertake a financial assessment will be offered a full personal income check to fully assess their individual circumstances and/or opportunities for income maximisation. In addition, financial advice is available for carers and/or other members of the household.
- 1.7 Social Policy appointed a dedicated Business Support Officer to assist individuals in the community to set up their payment requirements. This officer is responsible for supporting service users through financial assessments, managing appeals, and setting up payment plans. This ensures that individuals receive the necessary support to manage their financial obligations effectively.
- 1.8 In September 2023, Social Policy implemented a revised training programme to support application of the non-residential care contributions policy. This training, now part of a rolling programme, delivered in collaboration with the Anti-Poverty Service, ensures consistent application of the policy.

2 POLICY CHANGES

- 2.1 Excluding the annual allowance uplifts, COSLA confirmed there are no major or legislative changes to the COSLA National Strategy and Guidance which would impact on the West Lothian Contributions Policy.
- 2.2 All income and personal allowance amounts have been updated to reflect the CoSLA National Strategy and Guidance: Charges applying to Social Care Support for people at home 2024/25. This change is updated annually.
- 2.3 Section 8.2: The current charge for the Telecare service for 2024/245 has been changed to £4.30. per week from £3.34 per week. This increase was agreed within the Revenue Budget 2024/25 to 2027/28, at the meeting of West Lothain Council on 22 February 2024.
- 2.4 Appendix 3: The non-residential social care examples have been updated with the 2024/25 allowances.
- 2.5 The draft policy was presented to members of the Social Work and Health PDSP on 05/09/24 who agreed the recommendations and requested no amendments to the updated policy document. Additional information was provided to members regarding complaints and the timescales for a review of contribution once requested by an individual in receipt of a chargeable service.

E. CONCLUSION

The revised Policy on Contributions for Non-Residential Social Care Services has been updated in collaboration with internal partners. There have been no legislative or major changes made to the policy and the policy has been updated to reflect the 2024/2025 CoSLA social care charging amounts.

F. BACKGROUND REFERENCES

CoSLA National Strategy and Guidance: Charges Applying to Social Care Support for people at home 2024/25

Appendices:	Appendix 1 – Updated Contributions Policy for Non-Residential Social Care
Contact Person:	Robin Allen, Senior Manager, Older People Services Telephone: 01506 281851 Email: robin.allen@westlothian.gov.uk
	Jo MacPherson Head of Social Policy
Date of Meeting:	01 October 2024

Data Label: PUBLIC

APPENDIX 1

West Lothian Council

ADULT SOCIAL CARE

**POLICY ON CONTRIBUTIONS FOR
NON-RESIDENTIAL SOCIAL CARE SERVICES
2024-2025**

Approved:

Next Review date: March 2025

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1. INTRODUCTION

- 1.1 West Lothian Council supports individuals to live at home independently, safely and for as long as possible. To help us continue providing social care to as wide a range of individuals as possible everyone who undertakes an outcome based assessment of needs will be financially assessed to determine whether they should make a financial contribution towards the cost of their assessed non- residential care and support services. Contributions towards the cost of an individual's eligible non-residential care and support will be an important part of the council's income and will help to maintain and develop social care services.
- 1.2 A contribution towards the cost of an eligible care and support plan may apply if someone receives services from the council now or in the future. A contribution will apply whether the service is provided by the council or purchased /arranged from an external provider.
- 1.3 Local Authorities are permitted to charge for non-residential services which are provided or arranged under the Social Work (Scotland) Act 1968 and the Mental Health (Care and Treatment) (Scotland) Act 2003. These charges must be reasonable, having regard to the care and support being provided and a person's ability to meet any costs. Any charge for services should not exceed the cost of providing the service.
- 1.4 A financial assessment will be undertaken for an individual where they are assessed as requiring eligible care and support services, which there could be a contribution due for.
- 1.5 The contributions policy explains how the council will work out how much a service user should pay towards the cost of their assessed eligible care and support services. The policy approved by the council on 11 September 2018 is effective from 1 October 2018 for new service users and 1 April 2019 for existing service users.
- 1.6 The policy complies with social care legislation, Scottish Government guidance and reflects COSLA's National Strategy and Guidance for Charges Applying to Non- Residential Social Care Services 2021/22 (renamed as 'Charges applying to Social Care Support for people at home) which provides a framework for councils to demonstrate that in developing their charging policies, they have followed best practice.
- 1.7 The policy is based on:
- Fairness and equality
 - Consistent decision making
 - Transparency of cost of contribution
 - COSLA National Guidance and relevant social work legislation
- 1.8 The council will adhere to the following principles that an individual will be:
- Entitled to be assessed for eligible care and support needs and services provided on that basis;
 - Asked to contribute towards the cost of their eligible care and support where it is practicable for them to pay;
 - Required to contribute no more than the cost of providing their eligible care and support;
 - Provided with a financial assessment before any determination is made about the level of contribution they should make to their eligible care and support services;
 - Provided with a personal income check to provide them with information, advice and support to maximise and manage their income;
 - Treated in a transparent, fair and equitable manner;
 - Provided with information and assistance when they need it; and
 - Able to complain or request a review of any decision which is made about them, their care or financial contribution.

- 1.9 Figures in this policy are correct for the financial year 1 April 2024 to 31 March 2025. As reference to COSLA guidance is made throughout this policy and this guidance is subject to annual updates, reference should be made to the latest COSLA guidance for up to date personal allowance thresholds. <http://www.cosla.gov.uk/social-care-charging-information>

2. PROVISION OF SOCIAL CARE AND SUPPORT

- 2.1 The self-directed support approach means that personal plans are developed with individuals based on their identified outcomes. The 'All About Me' assessment process generates an indicative budget and the individual is then presented with four options in order to choose how this indicative budget will be spent in order to meet their outcomes. The care and support contribution will be linked to an individual's personal finances and their ability to pay rather than the type(s) of services chosen to meet their needs.
- 2.2 A financial assessment will be carried out to determine the overall contribution due by an individual.
- 2.3 A financial contribution is not required for the following social care and support services
- Criminal Justice social work services
 - Provision of information and advice
 - Needs assessment
 - Case management following a needs assessment
 - Adaptations for disabled persons in owner occupier or privately rented housing, which attract a mandatory grant (in line with the council's Scheme of Assistance) as they are being funded by the council through a grant process to meet the cost of that work.
 - Provision of nursing and personal care (see section 3 and Appendix 1)

2.4 Leaving Hospital

Where an individual has been an NHS in-patient for more than 24 hours or had surgery as an NHS day patient:

- A financial contribution is not required for new, intermediate or additional home care services for 42 days on discharge from hospital including reablement services, minor adaptations or equipment provided to facilitate discharge pending further assessment at home
- Services in place pre-admission and which continue after discharge will continue to be chargeable.
- Relief from charging for hospital discharge does not apply to discharges following admission on a regular or frequent basis as part of on-going care e.g. admission for respite care, on-going episodic treatment

NB Based on Scottish Executive Circular No. CCD 2/2001 "Free Home Care for Older People Leaving Hospital"

- 2.5 Individuals residing in Residential, Assisted Living or Housing with Care may be assessed for additional social care needs, in terms of the council's Eligibility for Non-Residential Adult Social Care Policy. If this identifies a need for additional care and support they may be subject to a financial assessment and contribution. Other care and support provided and charged independently through Housing Support Charges or Telecare charges do not fall within the terms of this policy.

2.6 Transition from child to adult services

Children and young people are not charged for any social care up to the point they transition from children's social work services to adult social work services. The contributions policy will apply at the time an adult social work assessment is undertaken.

For children and young people who have been looked after and specifically for young people receiving continuing care, the transition to adult services can be for an extended period of time and therefore the application of the contributions policy will be in accordance with the transition plan specific to each young person.

3. WHO IS EXEMPT FROM MAKING FINANCIAL CONTRIBUTIONS?

3.1 Individuals are exempt from making a financial contribution who are:

- terminally ill (in receipt of a Benefits Assessment for Special Rules in Scotland (BASRiS) form or regarded as having a terminal illness for the purpose of determining entitlement to disability assistance)
- receiving personal or nursing care only as defined by the Community Care and Health (Scotland) Act 2002 and amendment number 2 in 2018. (see Appendix 1)
- subject to a Compulsory Treatment Order under the Mental Health (Care and Treatment) (Scotland) Act 2003
- subject to a Compulsion order under the Criminal Procedure (Scotland) Act 2003
- receiving care and support as an unpaid Carer under the Carers (Waiving of Charges for Support) (Scotland) regulations 2014

4. THE FINANCIAL ASSESSMENT PROCESS

- 4.1 Anyone who receives a "chargeable service" will be assessed to determine how much they can afford to pay towards the cost of those services they receive; this is called a financial assessment. The care and support provided will always be based on assessed eligible need and a contribution towards the cost of care and support based on the practicality of an individual's ability to pay that contribution. Appendix 1 contains some examples of chargeable services.
- 4.2 A financial assessment will be carried out along with a social care assessment. Where care and support needs have been identified eligible services will be delivered to meet those needs from an agreed commencement date on the care and support plan. Any contribution which is determined as being due will be backdated to the commencement of any care or support services being provided.
- 4.3 The council will ensure, as part of the financial assessment process, that an individual is receiving maximum entitlement to any benefits / income. If the financial assessment process is refused an individual may be liable for the full cost of their care and support, less any free personal care element.
- 4.4 An individual's ability to contribute toward the cost of their care will be based on their available weekly income, and capital held. An officer from the council may be required to visit an individual at home to undertake a financial assessment. The officer is required to have proof of all income and capital held, therefore any Pension or Benefit statements, and bank or savings books relating to financial affairs should be made available for inspection.

4.5 Total Assessed Income

An individual's ability to contribute to the cost of eligible care and support will take account of following income, based on a weekly amount:

- Net earnings

- Benefits / Tax Credits
- Pension Income
- Other income, including income from a non-independent living at home
- Capital income

4.6 Partner's Income

Where someone is part of a couple, this being their spouse or civil partner, only their income and capital, along with 50% of any jointly awarded/held income and capital will be taken into account when calculating their contribution. This ensures that partners are left with their own income and capital.

Jointly held capital is split equally between the couple unless he/she can demonstrate that they have no legal entitlement to the capital. Capital income (see paragraph 4.8) will be calculated on the basis of the apportioned share of capital.

4.7 Disregarded Income

Certain types of income will not be taken into account in the financial assessment process. This is known as disregarded income. These include the following:

- Disability Living Allowance (DLA) Mobility Component
- Personal Independence Payment (Mobility Component)
- Adult Disability Payment (ADP) (Mobility Component)
- Enhanced rate of (PIP) Personal Independence Payment (Daily Living Component) when the person is not receiving night time services. Therefore, only including the standard rate as income
- Enhanced rate of (ADP) Adult Disability Payment (Daily Living Component) when the person is not receiving night time services. Therefore, only including the standard rate as income
- The higher rate element of Disability Living Allowance (Care Component) when the person is not receiving night time services. Therefore, only including the middle rate as income
- The enhanced rate of Attendance Allowance when the person is not receiving night time services. Therefore, only including the lower rate as income
- £20 of net earned income
- Independent Living Fund payments
- All benefits paid for or on behalf of dependent children including Child Benefit
- Child Tax Credits
- War Disablement Pension and compensation payments made through the Armed Forces Compensation Scheme
- Compensation Payments. West Lothian Council will disregard the range of compensation payments outlined in and in line with the COSLA guidance including the consideration of payments held in Trust. This will include interest on compensation payments.

4.8 Capital

Capital such as savings, bonds, stocks and shares, ISAs etc. will be considered as a source of income.

The approach set out below disregards income received against capital held up to a level of £6,000 for individuals below state pension qualifying age; or £10,000 for individuals of state pension qualifying age or above. For any capital held above those levels a weekly income is assumed and this is added as income in the financial assessment; as per the rates set out in the table below:

	Disregard Below	Capital	Weekly Income	Capital
Below State Pension Qualifying Age	£6,000		£1 per £250, or part thereof	
State Pension Qualifying Age or Above	£10,000		£1 per £500, or part thereof	

The value of an owner occupier's home is not counted as capital.

4.9 Applicable Housing Costs

The assessable income calculation will be net of applicable housing and council tax costs. Housing costs include: rent and mortgage payments, buildings insurance premiums for owner occupiers and costs for Council Tax and Water and Sewerage will also be deducted. If an individual is part of a couple this will be a 50% deduction.

For non-dependents living at home an allowance for rent paid to family / parents will be disregarded in line with DWP guidance on non-dependent deductions.

4.10 Personal Allowance

For users of non-residential services the policy reflects the COSLA Guidance, which suggests a level of weekly income below which someone cannot be asked to pay care and support charges. These are known as personal allowances (or minimum income thresholds) and are set at the following levels for 2024/25:

Single person under pension qualifying age	£167
Couple under pension qualifying age	£254
Single person over pension qualifying age	£273
Couple over pension qualifying age	£417

The basis of the personal allowance is linked to rates set by the DWP for income support personal allowances, disability premiums and pension credit. In order to provide more help to those on low incomes and to recognise that not all of someone's income above these rates should be taken in contributions, a buffer of 25% is included in the personal allowance threshold levels set out above.

5. HOW WILL CONTRIBUTIONS BE CALCULATED?

- 5.1 To determine the amount someone can afford to contribute towards their eligible care and support, the following will be completed:

Total Assessed Income (A)
Less Applicable Housing Costs (B)
Less Disregarded Income (C)
Less Personal Allowance (D)
Equals Excess Income (E)
Apply WLC Taper of 65% if (E) > Nil

Equals Maximum Weekly Contribution

- 5.2 If the assessable weekly income is calculated at less than the personal allowance figure, an individual will not be charged for their care and support service.
- 5.3 A decision to apply taper rates to contributions or charges is at the discretion of individual local authorities. The council has decided that the maximum weekly contribution that someone will be required to contribute to their eligible care and support costs is 65% of any excess income. This is in addition to the 25% buffer rate included in the personal

allowance and other income and expenditure disregards.

- 5.4 Individuals will be required to contribute the maximum weekly contribution that has been assessed, or the actual cost of their care and support plan, whichever is the lesser amount.
- 5.5 Individuals with an assessed contribution of less than £1 per week will not be asked to contribute.
- 5.6 Appendix 3 provides some examples of how a contribution will be calculated.

6. DISABILITY RELATED EXPENDITURE (DRE)

- 6.1 DRE is the additional expense that a person incurs, because they are disabled or have health problems. DRE will vary for each individual and what may or may not be included in a financial assessment will depend on the disability and individual's needs.
- 6.2 The council will consider whether to disregard more of a person's income or capital, over and above any existing disregards, to take account of any additional disability related expenditure as part of their financial assessment process or on a case by case basis by request. Where an individual is in receipt of a Disability Related Benefit then a contribution calculation to disregard any excessive DRE can be requested or taken into account. DRE does not include general items or services required for daily living by anyone; items or services met by a grant or other funding source; the difference between the actual cost and a lower cost alternative where it is considered reasonable to have the lower cost alternative.
- 6.3 Should someone have additional disability related expenditure, which they feel is not taken account of in the additional 65% income taper applied to all financial assessments, they should provide details of that expenditure so it is considered in a financial assessment. If a contribution will cause undue financial hardship an individual may request a review of their contribution in line with the process detailed in Paragraph 11 providing evidence of all additional disability related expenditure. The council may refer individuals to the West Lothian Advice Shop for a Personal Income Check before they consider a review.

7. PERSONAL INCOME CHECK

- 7.1 To fully assess an individual's circumstances, it is important that help, support and advice are provided at the right time. To support an individual's needs a full holistic personal income check will be offered encompassing advice and support in Income Maximisation, Debt, Money Management, and Energy & Housing options.
- 7.2 All individuals who undertake a financial assessment will be given the opportunity to undertake a full personal income check. Individuals can opt out of this.
- 7.3 The service is provided by West Lothian Advice Shop, who will carry out an impartial, confidential and a holistic income check. Carers and/or other members of the household can also have a personal income check completed.

8. OTHER CHARGES

- 8.1 The contribution which is to be made towards care and support will be based on assessed eligible care needs regardless of what Self Directed Support option is chosen or whether care is provided by the council or another provider.
- 8.2 Access to the Home Safety Service ("Telecare") will not be part of an individuals assessed needs if this has been chosen as a service. The current charge for the Telecare service

for 2024/25 is £4.30 per week. This will remain as a separate chargeable service.

9. DIRECT PAYMENTS

- 9.1 Self-Directed Support allows everyone with a care and support package to manage their own care and provides them with opportunity to exercise choice and control on how those needs are met. Where a person has been assessed as being able to contribute towards their care and support, and chooses a direct payment (Self-Directed Support option 1), their assessed contribution will be deducted prior to the provision of the monthly direct payment i.e. the direct payment will be paid 'net'. The supported person is therefore expected to pay their contribution into their nominated direct payment bank account to ensure their care service invoices or payroll costs can be paid in full each invoicing period.
- 9.2 When a direct payment is the only Self-directed Support funding option received, the payment will be paid net of any assessed financial contribution unless a request is made for the payment to be paid gross. If the Direct Payment is received alongside other SDS funding options, the contribution charges will be invoiced, and the Direct Payment will be paid gross.
- 9.3 The council will give any request to pay a direct payment gross its full consideration. The council will consider the reasons and circumstances behind any request before making a decision. It will inform the person in writing of their decision.

10. PAYMENT OF CONTRIBUTIONS

- 10.1 Individuals will be invoiced on completion of the financial assessment for their annual contribution from the date their eligible care and support services commence to end of the financial year, and thereafter will be billed annually in advance.
- 10.2 A direct debit will be set up to collect the contribution in instalments on a monthly basis. If individuals are unable to use the Direct Debit Scheme then the council will discuss alternative methods of collection with them.
- 10.3 Failure to make payment of any contribution may result in the council taking appropriate recovery action in line its Service Accounts invoicing and collection process and Corporate Debt policy.

Planned and unplanned breaks

- 10.4 It is the responsibility of individuals to advise the council in advance of any planned circumstances which will impact on the need for service delivery. A representative such as guardian, family member or care provider may advise the council of any known absences – adhoc, planned or unplanned - so that appropriate steps can be taken to pause or cancel any care provision. The council may require to confirm with the individual details of any absence before being able to cancel any care provision.

Notice of planned and unplanned breaks can be provided by the individual or their representative to an allocated worker, by email (adultsocialcare@westlothian.gov.uk) or telephone (01506 284848).

Planned breaks including scheduled admission to hospital

An adjustment can be made to the individual's contribution for going on holiday or being admitted to hospital for a scheduled operation subject to advance notice of at least four weeks. The section on hospital discharge (section 2.4) should be read in conjunction with this.

Unplanned and emergency breaks in care provision

An adjustment to a contribution can be made for unplanned or emergency admission to hospital on the advice of an individual or their representative. The nature of unplanned or emergency admission means that no advance notice is expected to be given, and any adjustment to a contribution will be backdated to the date of admission and adjusted for the remainder of the invoice period. The section on hospital discharge (section 2.4) should be read in conjunction with this.

Ad hoc absences, including being ill (at home) or absent for appointments are not eligible for adjustments to an individual's contribution. This is because the care provision will already have been scheduled and paid for. When a period of being ill at home becomes extensive an adjustment can be considered on a case by case basis, if requested. This will normally be undertaken in conjunction with a re- assessment of care needs to identify if a change to a care plan is required.

11. ENQUIRIES, REVIEWS, COMPLAINTS

- 11.1 West Lothian Council seeks to resolve customer dissatisfaction as close as possible to the point of service delivery. The first point of contact should be the assessor who has undertaken the needs assessment.
- 11.2 If there are concerns the financial contribution has been miscalculated or income, capital or disregards used in the calculation are incorrect the Financial Assessment Team can be asked to review their decision. Reconsideration of the financial assessment is the first step in the review process.
- 11.3 If an individual feels their financial contribution will cause undue financial hardship they can request a social work review to determine if further disregards should be applied, or a reduction of the contribution or waiver of it should be applied.
- 11.4 If the individual has a complaint about the service they receive, they are entitled to make a complaint at any time. The West Lothian Council Complaints Processes will apply.
- 11.5 The provision of care and support will continue during the period of any review or complaint.
- 11.6 Details of the review and complaints processes are available on request and on the Council's website.

12 RELATED LEGISLATION AND WEST LOTHIAN COUNCIL POLICIES

This policy complies with the following core legislation which continues to be the legal basis for assessment in West Lothian Council:

- The Social Work (Scotland) Act 1968
- Chronically Sick and Disabled Persons Act 1970
- The NHS and Community Care Act 1990
- Children (Scotland) Act 1995
- The Human Rights Act 1998
- Data Protection Act 1998
- Adults with Incapacity (Scotland) Act 2000
- The Regulation of Care (Scotland) Act 2001
- Community Health and Care (Scotland) Act 2002
- Mental Health (Care and Treatment) (Scotland) Act 2003
- The Adult Support and Protection (Scotland) Act 2007
- Social Care (Self-directed Support)(Scotland) Act 2013
- Children and Young People (Scotland) Act 2014

- The Carer's (Scotland) Act 2016
- West Lothian Council Policy on the application of hourly rates for the purchase of registered agency services under Self-directed Support Option 2 ('SDS Option 2 Policy')
- West Lothian Council Policy on Self-directed Support ('SDS Policy')
- West Lothian Council Eligibility Criteria for Carer Support ('Carer's eligibility')
- West Lothian Council Policy on Assessment and the Application of Eligibility Criteria for Non-Residential Care ("Eligibility Policy")

13 UPDATES

This policy will be reviewed annually. Up to date information will be published on the council's website www.westlothian.gov.uk Paper copies are available on request.

14. APPENDICES

Appendix 1

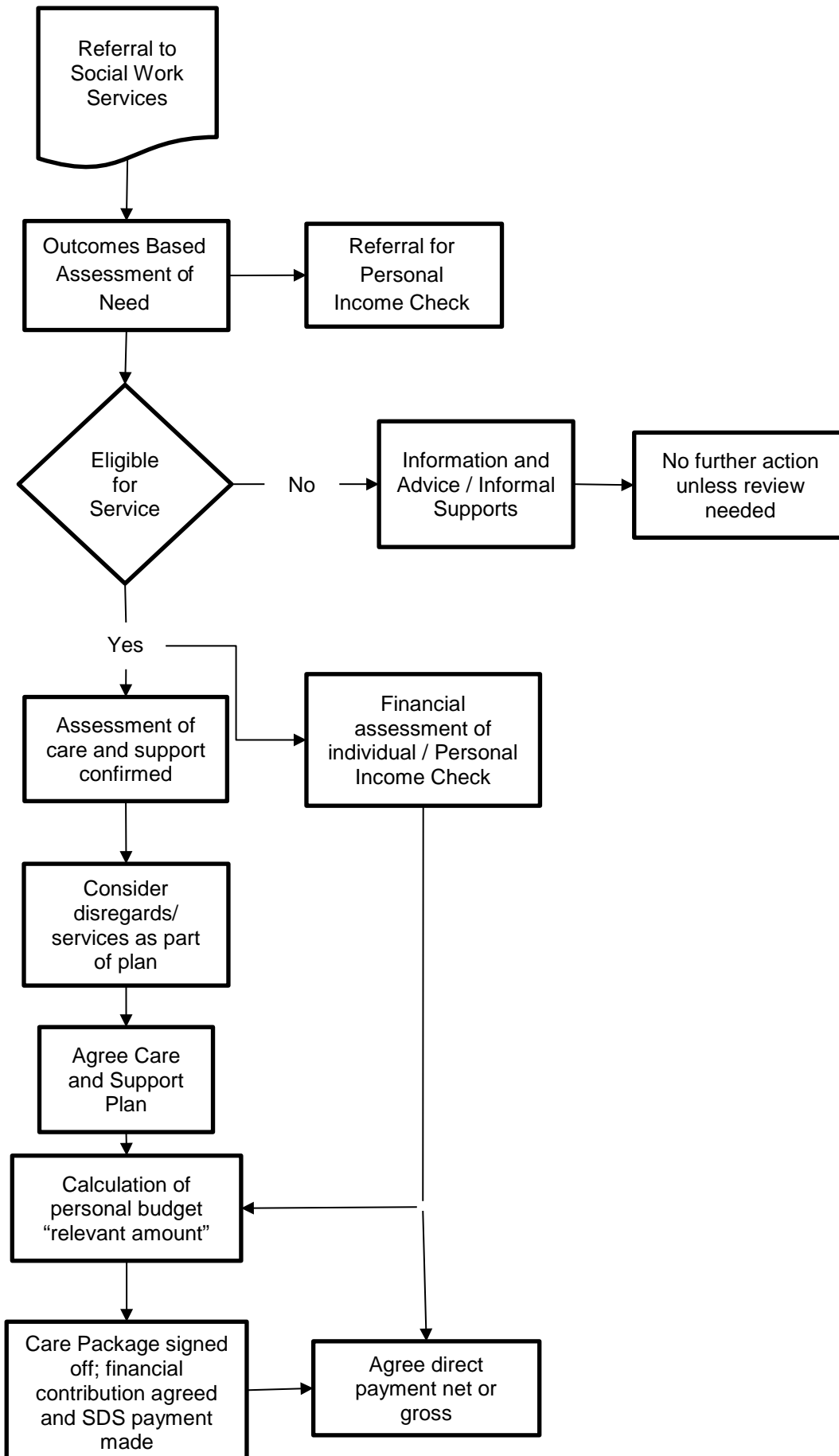
Definition of personal care

- Personal Hygiene- Bathing, Showering, hair washing, shaving etc.
- Personal Assistance – Dressing, surgical appliances, prosthesis etc.
- Contenance Management, Toileting, skin care, bed changing etc.
- Simple Medical Treatments – Assistance with medication, including eye/ear drops, application of creams, simple dressings etc.
- Food and Diet – Food and drink provision, feeding, assistance with special diets, assistance to manage different meals services etc.
- Moving and handling – Assistance to get up/go to bed, Transfers, including the use of hoists.

Examples of Non-residential care services

- Day support, including day care
- Care at Home – supported accommodation, supported living, housing support services
- Lunch Clubs
- Wardens in Sheltered Housing
- Laundry Services
- Aids and Adaptations
- Transport
- After Care services for people with a mental illness
- Care and support services for those who have, or have had a mental illness, (in or not in hospital)

Assessment of Needs and Financial Assessment Process



Appendix 3

Non-Residential Social Care Examples

Client A: This client is a single person under pension age living with parents. They have been assessed as requiring 1 hour of non-personal care per week, costing £25.00 per week.

Total Assessed Income	£
Employment and Support Allowance (Income Related) - including disability premiums	£159.05
PIP Daily Living Standard Rate	£72.65
Capital	£0.00
Total Assessed Income (A)	£231.70
Applicable Housing Costs (B)	
Assumed Housing Costs for a Non-Dependent Adult	£21.11
Disregarded Income (C)	
N/A	
Personal Allowance (D)	
Single Person Allowance – under pension age	£167.00
Total Housing Costs, Disregards and Personal Allowances	£188.11
Excess Income (E)	£43.59
Maximum Weekly Contribution (65% of excess income)	£28.33
Actual Weekly Contribution	£25.00

In this example, because the client's applicable housing costs, disregarded income and personal allowance is lower than their total assessed income, they have been assessed as having excess income of £43.59 per week. As West Lothian Council apply an additional taper of 65%, their maximum weekly contribution will reduce to £28.33 per week.

The client's maximum weekly contribution is higher than the weekly cost of their care and support package which is £25.00 per week, and they have therefore been assessed as requiring to pay the total cost of £25.00 per week for their non-personal care.

Contd/.

Appendix 3 continued

Client B: This client is a single person under pension age. They receive 27 hours of non-personal care a week, at a cost of £585.50 per week.

Total Assessed Income	£
Employment and Support Allowance (Income Related) – including enhanced disability, severe disability and support component	£240.55
PIP Mobility Enhanced Rate	£75.75
PIP Daily Living Enhanced Rate	£108.55
Capital	£0.00
Total Assessed Income (A)	£424.85
Applicable Housing Costs (B)	
Council Tax (inc Water and Sewerage)	£6.00
Rent (net of Housing Benefit)	£0.00
Disregarded Income (C)	
PIP Mobility Enhanced Rate	£75.75
PIP Daily Living Enhanced Rate – only the difference between the enhanced rate and standard rate is taken into account)	£35.90
Personal Allowance (D)	
Single Person Allowance – under pension age	£167.00
Total Housing Costs, Disregards and Personal Allowances	£284.65
Excess Income (E)	£140.20
Maximum Weekly Contribution (65% of excess income)	£91.13
Actual Weekly Contribution	£91.13

In this example, because the client's applicable housing costs, disregarded income and personal allowance is lower than their total assessed income, they have been assessed as having excess income of £140.20 per week. As West Lothian Council apply an additional taper of 65%, their maximum weekly contribution will reduce to £91.13 per week.

The client's maximum weekly contribution is lower than the weekly cost of their care and support package which is £585.50 per week, and they have therefore been assessed as requiring to contribute £91.13 per week towards the cost of their non-personal care.

Contd/.

Appendix 3 continued

Client C: This client is part of a couple under pension age with a partner receiving Carers Allowance, they have jointly held capital totaling £12700.00 and own their home. WLC will assume income solely received by the person receiving care and only 50% of any income or capital jointly received or held by the couple. The client receives 1 hour of non-personal care a week, at a cost of £17.50 per week.

Total Assessed Income	£
Employment and Support Allowance (Income Related) - including disability premiums and less tariff income from joint held capital.	£229.40
PIP Mobility Enhanced Rate	£75.75
PIP Daily Living Enhanced Rate	£108.55
Capital (£1 for every £250 over £6000 based on 50% of jointly held capital)	£2.00
Total Assessed Income (A)	£415.70
Applicable Housing Costs (B)	
Council Tax (inc Water and Sewerage) – 50%	£3.00
Standard Allowance for Buildings Insurance Premium – 50%	£1.42
Disregarded Income (C)	
PIP Mobility Enhanced Rate	£75.75
PIP Daily Living Enhanced Rate – only the difference between the enhanced rate and standard rate is taken into account)	£35.90
Personal Allowance (D)	
Couple Personal Allowance – under pension age	£254.00
Total Housing Costs, Disregards and Personal Allowances	£370.07
Excess Income (E)	£45.63
Maximum Weekly Contribution (65% of excess income)	£29.66
Actual Weekly Contribution	£17.50

In this example, because the client's applicable housing costs, disregarded income and personal allowance is lower than their total assessed income, they have been assessed as having excess income of £45.63 per week. As West Lothian Council apply an additional taper of 65%, their maximum weekly contribution will reduce to £29.66 per week.

As the client's maximum weekly contribution of £29.66 is greater than the weekly cost of their care and support package, £17.50 per week, they are required to pay the lesser of the two calculations towards the cost of their non-personal care, £17.50.

Contd/.

Appendix 3 continued

Client D: This client is a single person of state pension qualifying age. They receive 2 hours of non- personal care a week at a cost of £40.20 a week

Total Assessed Income	£
War Disablement Pension	£88.70
State Pension	£221.20
DLA Mobility low rate	£28.70
DLA Care middle rate	£72.65
Private Pension	£45.00
Capital	£0.00
Total Assessed Income (A)	£456.25
Applicable Housing Costs (B)	
Council Tax (inc Water and Sewerage)	£6.00
Rent (net of Housing Benefit)	£7.50
Disregarded Income (C)	
DLA Mobility low rate	£28.70
War Disablement Pension	£88.70
Personal Allowance (D)	
Single Person Allowance – state pension age	£273.00
Total Housing Costs, Disregards and Personal Allowances	£403.90
Excess Income (E)	£52.35
Maximum Weekly Contribution (65% of excess income)	£34.03
Actual Weekly Contribution	£34.03

In this example, because the client's applicable housing costs, disregarded income and personal allowance is lower than their total assessed income, they have been assessed as having excess income of £52.35 per week. As West Lothian Council apply an additional taper of 65%, their maximum weekly contribution will reduce to £34.03 per week.

As a result of the client's maximum weekly contribution of £34.03, being less than the actual cost of care, £40.20, they are required to pay the lesser of the two calculations, £34.03

Contd/.

Appendix 3 continued

Client E: This client is part of a couple and is over pension age. WLC will assume income solely received by the person receiving care and only 50% of any income or capital jointly received or held by the couple. In this example, the couple do not receive any joint income or hold any capital over £10,000. The client currently receives 12 hours of non-personal care a week at a cost of £241.20 per week.

Total Assessed Income	£
State Pension	£145.50
DLA mobility high rate	£75.75
DLA Care middle rate	£72.65
Partner's Income	£0.00
Capital (jointly held)	£0.00
Total Assessed Income (A)	£293.90
Applicable Housing Costs (B)	
Council Tax (inc Water and Sewerage)	£3.00
Rent (net of Housing Benefit)	£12.50
Disregarded Income (C)	
DLA mobility high rate	£75.75
Personal Allowance (D)	
Couple Personal Allowance – state pension qualifying age	£417.00
Total Housing Costs, Disregards and Personal Allowances	£508.25
Excess Income (E)	£0.00
Maximum Weekly Contribution (65% of excess income)	£0.00
Actual Weekly Contribution	£0.00

In this example, because the client's applicable housing costs, disregarded income and personal allowance is higher than their total assessed weekly income, it has been assessed that they do not have any excess income to contribute towards their non-personal care package.

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

**WEST LOTHIAN COUNCIL CONSULTATION RESPONSE: SCOTTISH GOVERNMENT
PROPOSED CHANGES TO ADULTS WITH INCAPACITY ACT**

REPORT BY DEPUTE CHIEF EXECUTIVE

A. PURPOSE OF REPORT

This report informs Council Executive of the proposed changes to the [Adults with Incapacity \(Scotland\) Act 2000](#) (AWI Act) and seeks approval to submit the draft response on behalf of West Lothian Council.

B. RECOMMENDATION

It is recommended that the Executive:

1. Note that Scottish Government is consulting on proposed changes to the [Adults with Incapacity \(Scotland\) Act 2000](#) (AWI Act) by 17 October 2024;
2. Note that this is the first step in a wider programme of work to reform mental health and incapacity law in Scotland over the next ten years, following the recommendations of the Scottish Mental Health Law Review;
3. Note the proposed response and agree for it to be submitted on behalf of the Council by the deadline of 17 October.

C. SUMMARY OF IMPLICATIONS

I Council Values	Caring and Compassionate Open, Honest and Accountable Collaborative, Inclusive and Adaptive
II Policy and Legal (including Strategic Environmental Assessment, Health or Risk Assessment, Equality or Risk)	Adults with Incapacity (Scotland) Act 2000 (AWI Act) The United Nations Convention on the Rights of Persons with Disability (UNCRPD) European Convention on Human Rights – Article 5 Mental Health and Capacity Reform delivery plan, Scottish Government (June 2024) An Integrated Impact Assessment (IIA) is not required for this report.
III Implications for Scheme of Delegations to Officers	N/A

IV	Impact on performance and performance Indicators	N/A
V	Relevance to Local Outcomes Improvement Plan	We live longer, healthier lives & have reduced health inequalities
VI	Resources - (Financial, Staffing and Property)	This report does not have any direct implications for resources, finance or staffing, though resource implications are noted in the response where appropriate for individual proposals.
VII	Consideration at PDSP	Due to the timescales, the report was not considered at PDSP, but was instead circulated to members of the Social Work and Health PDSP for comment in advance of Council Executive. No comments were received from the Panel.
VIII	Other consultations	Mental Health Officer service West Lothian HSCP managers and teams West Lothian Council Legal Services Social Work and Health PDSP (via email)

D. TERMS OF REPORT

1 Background

- 1.1 Scottish Government is seeking views on proposed changes to the [Adults with Incapacity \(Scotland\) Act 2000](#) (AWI Act) by 17 October 2024.
- 1.2 Since the introduction of the Adults with Incapacity (Scotland) Act 2000 (AWI Act,) there have been significant changes both in legislation and case law and the proposed changes build on earlier AWI Act consultations, takes into account the United Nations Convention on the Rights of Persons with Disability, and recognises European and Supreme Court deprivation of liberty rulings in the Bournemouth and Cheshire West cases.
- 1.3 This is the first step in a wider programme of work to reform mental health and incapacity law in Scotland over the next ten years, following the recommendations of the Scottish Mental Health Law Review.
- 1.4 To consider the impact of these changes on the AWI Act along with the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adult Support and Protection (Scotland) Act 2007, the Scottish Government commissioned an independent review, chaired by Lord Scott. The Scottish Mental Health Law Review (SMHLR) published its final report in September 2022.
- 1.5 Consultation on change to the AWI Act is an action in the Scottish Government's Mental Health and Capacity Reform delivery plan published in June 2024.
- 1.6 This consultation is the outcome of informal discussions with a wide range of stakeholders and service users. It also considers the recommendations the Mental Health and Capacity Reform delivery plan made for early changes to the AWI Act.

- 1.7 Through mental health and capacity reform, Scottish Government seek to improve support to further embed a human rights based approach within services and wider systems of support.
- 1.8 Work is being taken forward around the National Care Service Bill to enhance independent advocacy as a means of empowering people to have their voices heard and realise their rights, and emerging policies such as Getting it Right for Everyone, and the work following the consultation on the proposed Human Rights Bill will strengthen person centred and rights based practice.
- 1.9 Scottish Government ultimately intend to put in place a comprehensive supported decision making regime that will be required to underpin proposed changes in AWI law.

2 Suggestions for Change

- 2.1 The consultation is seeking views on suggestions for change to the AWI Act that aim to:
- Improve access to justice for adults affected by the AWI Act
 - Shift the focus of the AWI Act to one that truly centres on the adult
 - Enable adults to access rights more easily
 - Ensure adults are supported to make and act upon their own decisions for as long as possible
 - When an adult cannot make their own decisions despite support, ensure that their will and preferences are followed unless doing so would be to the overall detriment of the adult.
 - set out proposals for reform concerning authority for research.
- 2.2 The consultation broadly follows the order of the AWI Act.
- Part 1 - Principles of the legislation – changes to reflect the need to ensure that the wishes and feelings of the adult are front and centre at all times, changes in terminology etc.
 - Part 2 - Powers of attorney – summary of changes previously consulted on that we are taking forward, other issues
 - Part 3 – access to funds – changes to make it more accessible
 - Part 4 - management of residents' finances - removal of sections
 - Part 5 – changes to section 47 certificates and associated matters
 - Part 6 – changes to guardianship, interim guardianship and intervention orders.
 - Part 7 – deprivation of liberty proposals, stand-alone right of appeal, limitation of liability, appointment of safeguarders.
 - Part 8 – Authority for Research

The full set of consultation questions and the draft response is attached to this report as Appendix 1 and implications for both West Lothian Council are noted where appropriate.

E. CONCLUSION

Scottish Government is seeking views on proposed changes to the [Adults with Incapacity \(Scotland\) Act 2000](#) (AWI Act).

A draft response has been prepared in consultation with the Mental Health Officer service and key managers and staff in the health and social care partnership.

This report seeks approval to submit the draft response on behalf of the Council before the deadline of 17 October 2024.

F. BACKGROUND REFERENCES

[Adults with Incapacity Amendment Act: consultation - gov.scot \(www.gov.scot\)](#)

Appendices/Attachments:	Appendix 1 – Draft Consultation Response
Contact Person:	Mike Reid – General Manager, Mental Health and Addictions Services, Mike.Reid@nhs.scot Alison White, Depute Chief Executive
Date of meeting:	1 October 2024

ADULTS WITH INCAPACITY (AWI) BILL: Consultation



Respondent Information and Answer Return Form

Some sections of this consultation may be more relevant to particular individuals than others. Therefore, you may wish to only answer the questions or sections you find most relevant.

Please note the 'About You' section **must** be completed and returned with your responses. Questions marked with * must be answered and we cannot accept your response if these are not correctly completed.

Please send this completed form to us by email or by post using the following details:

Our email address is: **awireform.queries@gov.scot**

Our postal address is: Mental Health and Incapacity Law Unit,
3ER | St. Andrew's House | Regent Road | Edinburgh | EH1 3DG

The closing date of the consultation is 23:59 on 17 October 2024

You can submit any written form of response this way too, so long as you have provided answers to the 'About You' section of this form, and in particular whether you would like your response to be published, and follow the flow of the questions, answering the questions as they are asked.

You are welcome to submit a response in an audio clip, video, or BSL video file – please email these to **awireform.queries@gov.scot**. You must again include answers to the 'About You' questions on pages 1-4, which can be accepted verbally. You are asked for a phone number and email so we may contact you if anything is missing and so that your responses can be accepted.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

About You

- Are you responding as an individual or an organisation?* (*required*)
 - Individual
 - Organisation

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- What is your name?

- What is your organisation?

If responding on behalf of an organisation, please enter the organisation's name here. If you are responding as an individual you can leave this blank.

- Phone number

Please provide a number we can contact you on in case any of your responses are unclear.

- Address

- Postcode* (*required*)

Please provide so we can ensure we have a good representation across Scotland. Organisations should add an office postcode where possible.

- Email Address* (*required*)

If you would like to be contacted again in future about this consultation please enter your email address here. You will also need to give permission to be contacted in the separate question asking this. Your email address will never be published.

- If you are responding as an organisation, please tell us which of the following categories best describes you (select all that apply)* (*required*):

Private sector organisation

Public sector organisation

Third sector organisation

Other (please say)

Not applicable - responding as an individual (see next question)

- Which ethnic group best describes you?

White Scottish

Other Scottish

White British

Other British

Irish

Gypsy / Traveller

Polish

Other white ethnic group

Mixed or multiple ethnic group

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- Pakistani, Pakistani Scottish or Pakistani British
- Indian, Indian Scottish or Indian British
- Bangladeshi, Bangladeshi Scottish or Bangladeshi British
- Chinese, Chinese Scottish or Chinese British
- Other Asian, Asian Scottish or Asian British
- African, African Scottish or African British
- Caribbean, Caribbean Scottish or Caribbean British
- Black, Black Scottish or Black British
- Other Caribbean or Black
- Arab, Arab Scottish or Arab British
- Other ethnic group
- Prefer not to say
- Not Applicable – responding as an organisation

We're collecting information on ethnicity to see the number of responses we get from each population group. This is with a view to seeing whether we need to engage further with these areas. This is just for internal use and we won't be publishing this information.

- What was your age last birthday?
 - 0 - 15
 - 16 - 24
 - 25 - 34
 - 35 - 44
 - 45 - 54
 - 55 - 64
 - 65 - 74
 - 75 - 84
 - 85 +
 - Not Applicable – responding as an organisation

We're collecting information on age to see the number of responses we get from each age group. This is with a view to seeing whether we need to engage further with these areas. This is just for internal use and we won't be publishing this information.

- Which local authority area you live in (or operate in if an organisation)?

<input type="checkbox"/> Aberdeen City	<input type="checkbox"/> Inverclyde
<input type="checkbox"/> Aberdeenshire	<input type="checkbox"/> Midlothian
<input type="checkbox"/> Angus	<input type="checkbox"/> Moray
<input type="checkbox"/> Argyll & Bute	<input type="checkbox"/> North Ayrshire
<input type="checkbox"/> City of Edinburgh	<input type="checkbox"/> North Lanarkshire
<input type="checkbox"/> Clackmannanshire	<input type="checkbox"/> Orkney
<input type="checkbox"/> Dumfries & Galloway	<input type="checkbox"/> Perth & Kinross
<input type="checkbox"/> Dundee City	<input type="checkbox"/> Renfrewshire
<input type="checkbox"/> East Ayrshire	<input type="checkbox"/> Scottish Borders
<input type="checkbox"/> East Dunbartonshire	<input type="checkbox"/> Shetland Islands

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- | | |
|--|--|
| <input type="checkbox"/> East Lothian | <input type="checkbox"/> South Ayrshire |
| <input type="checkbox"/> East Renfrewshire | <input type="checkbox"/> South Lanarkshire |
| <input type="checkbox"/> Falkirk | <input type="checkbox"/> Stirling |
| <input type="checkbox"/> Fife | <input type="checkbox"/> West Dunbartonshire |
| <input type="checkbox"/> Glasgow City | <input checked="" type="checkbox"/> West Lothian |
| <input type="checkbox"/> Highland | <input type="checkbox"/> Western Isles (Eilean Siar) |

We're collecting information on local authority areas as we want to see whether responses came from all across Scotland. It is useful to know the area which relates to the feedback you are giving so we can see whether there are differences in each locality. This information is for internal use only and will not be published

- Which of these Options best describes how you think of yourself?

<input type="checkbox"/> Heterosexual/Straight	<input type="checkbox"/> Gay/Lesbian
<input type="checkbox"/> Bisexual	<input type="checkbox"/> Other
<input type="checkbox"/> Prefer not to say	
<input checked="" type="checkbox"/> Not Applicable – responding as an organisation	

We're collecting information on sexual orientation to see the number of responses we get from each group. This is with a view to seeing whether we need to engage further with these areas. This is just for internal use and we won't be publishing this information.

- Which gender identity best describes you? Please only answer this question if you are aged 16 years or older.

<input type="checkbox"/> Male	<input type="checkbox"/> Female
<input type="checkbox"/> Non-binary	<input type="checkbox"/> Other
<input type="checkbox"/> Prefer not to say	
<input checked="" type="checkbox"/> Not Applicable – responding as an organisation	

The following 2 questions MUST be answered so we can accept your responses.

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:* (*required*)

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

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- Publish response with name
- Publish response only (without name)
- Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?* (*required*)

- Yes
- No

Consultation Questions

The questions in this document refer to information contained in our main consultation document [here](#)

You need only answer the sections most relevant to you and all answers in the Bill proposal sections should be provided voluntarily. The questions are mostly consistent throughout the sections and space is provided for your response – if you need more space, additional pages can be added.

INTRODUCTION

This consultation is asking for your thoughts on proposals for reform to the Adults with Incapacity (Scotland) Act 2000. (The AWI Act).

This builds on earlier work, but recognises that this is the first step in a wider programme of work to reform mental health and incapacity law in Scotland over the next ten years, following the recommendations of the Scottish Mental Health Law Review.

The consultation is seeking views on suggestions for change to the AWI Act that aim to

- Improve access to justice for adults affected by the AWI Act
- Shift the focus of the AWI Act to one that truly centres on the adult
- Enable adults to access rights more easily
- Ensure adults are supported to make and act upon their own decisions for as long as possible
- When an adult cannot make their own decisions despite support, ensure that their will and preferences are followed unless doing so would be to the overall detriment of the adult.

In addition part 8 of the consultation, which can be considered in isolation, sets out proposals for reform to section 51 of the AWI Act and associated regulations, concerning authority for research.

The consultation focuses on changes to the law. But for changes to the law to be truly effective, a change in practice and in particular the need to embed supported decision making across the health and social care sector needs to be acknowledged.

A key part of Mental health and capacity reform is improving support to further embed a human rights based approach within services and wider systems of

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support. The Initial Delivery plan for the Mental Health and Capacity Reform Programme was published on 4th June. This outlines the early work being taken forward which will review and assess current approaches to supported decision making being taken forward across government, including work being taken forward around the National Care Service Bill to enhance independent advocacy as a means of empowering people to have their voices heard and realise their rights.

Alongside this, emerging policies such as Getting it Right for Everyone, and the work following the consultation on the proposed Human Rights Bill will strengthen person centred and rights based practice.

We will be assessing the progress of this work and over the coming months will be considering what else needs to be done to put in place a comprehensive supported decision making regime that will be required to underpin proposed changes in AWI law.

Mental Disorder

Another early priority for work following the response to the Scottish Mental Health Law Review (SMHLR) is consideration of the term 'mental disorder'. This is the term used in both the AWI Act and the Mental Health (Care and Treatment) (Scotland) Act 2003 (the 2003 Act), to describe a person who could come within the remit of these Acts. It is considered by many to be outdated and offensive. Work has begun with partners alongside the consultation on a proposed Learning Disabilities, Autism and Neurodivergence Bill, to look at options for change. This topic is not part of this consultation but any recommendations for change emerging from the ongoing work will be considered in due course.

Contents

The consultation broadly follows the order of the AWI Act. Part 7 includes consideration of deprivation of liberty of an adult lacking in capacity.

1. Part 1 - Principles of the legislation – changes to reflect the need to ensure that the wishes and feelings of the adult are front and centre at all times, changes in terminology ... (and other areas of Part 1 we are consulting on)
2. Part 2 - Powers of attorney – summary of changes previously consulted on that we are taking forward, other issues

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3. Part 3 – access to funds – changes to make it more accessible
4. Part 4 - management of residents' finances - removal of sections
5. Part 5 – changes to s 47 certificates and associated matters
6. Part 6 – changes to guardianship, interim guardianship and intervention orders.
7. Part 7 – deprivation of liberty proposals, stand-alone right of appeal, limitation of liability, appointment of safeguarders.
8. Part 8 – Authority for Research

Part One

The AWI Act is governed by principles set out in section 1 of the Act. Anyone taking action under the AWI Act has a legal duty to follow the principles.

The principles can be summarised as follows

- No one should intervene under the AWI Act unless they are satisfied that the action will benefit the adult. They should also be satisfied that this benefit cannot reasonably be achieved without the
- Any action taken should be the minimum necessary to achieve that purpose.
- Anyone determining whether to intervene, and what intervention to make, should take account of the past and present wishes and feelings of the adult.
- The views of certain significant others in the adult's life need to be taken into account
- Any guardian, attorney or manager of an establishment should encourage the adult to exercise whatever skills they have and to develop new skills, as far as this is reasonable and practicable.

These principles all have parity. No single principle is more important than another and together they should ensure that all actions taken under the AWI Act stem from the needs of the adult. Everyone acting under the AWI Act must be able to justify their actions in accordance with the principles of the Act.

However the requirements of article 12 of the United Nations Convention on the Rights of Persons with Disability (UNCPRD) mean that respect for the full range of the rights, will and preferences of everyone should lie at the heart of legal regimes. To move towards this, we think the principles of the AWI Act should be amended to give greater priority to the will and preferences of the adult. We think that to ensure priority is given to an adult's will and preferences, before any steps are taken to intervene in an adult's life, all practicable steps should be taken to ascertain their will and preferences, and, thereafter, any intervention under the AWI Act must be in accordance with the adult's rights, will and preferences.

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The exception to this would be if it can be shown that not to follow an adult's will and preferences would be a proportional and necessary means of effectively protecting the full range of the person's rights, freedoms and interests, then steps can be taken.

There will also be circumstances where it is simply not possible to give effect to a person's will and preferences, such as for example an adult wishing to live with their sibling, but the sibling's accommodation is not viable or safe for the adult to live there. In such cases, the expectation would be for time to be spent with the adult to devise an acceptable alternative.

Support for decision making

We also think that there needs to be a greater emphasis on support given to an adult to enable them to make their own decisions, before any steps are taken to intervene in the adult's life.

A priority of the Scottish Government Mental Health and Capacity Reform Programme is to help people voice their opinions through supported decision-making practices. The programme is committed to reviewing existing practices, working with partners to assess effective Supported Decision Making practices. From this baseline decisions will be made on the necessary next steps.

We consider that this shift in approach needs to be fully embedded in the AWI Act. We have been looking at other jurisdictions for examples of good practice.

The Mental Capacity Act (Northern Ireland) 2016 has been praised for its approach. It provides in its principles that:

'the person is not to be treated as unable to make a decision for himself or herself about the matter unless all practicable help and support to enable the person to make decision about the matter have been given without success.'¹

We think that a similar condition should be applied to actions under the AWI Act to ensure that interventions only take place when options for supported decision making have been exhausted.

¹ Section 1 (4) of the Mental Capacity Act (Northern Ireland) 2016.)

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We suggest that the principles should be amended to provide that prior to any intervention in the affairs of an adult, all practicable help and support to enable the adult to make their own decisions about matters should have been given and shown to have been given without success.

These principles should have priority over all other principles of the AWI Act to ensure that supporting the adult to make decisions, and ascertaining the will and preference of the adult and following those is the priority in considering any intervention in an adult's life. And that not respecting the will and preference is only possible in specified circumstances.

These changes should ensure that the wishes and feelings of the adult, now referred to as will and preferences, are always front and centre of actions under the AWI Act.

How can we ensure the principles are followed?

The principles will only have effect if they are followed by everyone who uses the AWI Act.

At present, training for practitioners points out the need to follow the principles, as does the codes of practice². Sheriffs are expected to consider how the principles have been followed when considering what decisions should be made in respect of the adult. The Office of the Public Guardian (OPG) will ask financial guardians if they have been following the principles and practitioners are expected to reflect in their reports how the principles have been adhered to.

Going forward, with the proposed change in the principles, the requirement to provide support for the adult to make their own decisions before considering an intervention, and the requirement to ascertain and follow an adult's will and preferences will mean that there will be an obligation on anyone seeking an intervention under the AWI Act to show how they have adhered to these, as well as the existing principles.

We intend for this to be set out in training. In addition, reports that may require to be prepared for interventions such as guardianship, will require to set out the steps the writer of the report has taken to ensure the principles have been followed. More detail on this is provided in later chapters in this consultation.

² <https://www.gov.scot/publications/adults-incapacity-scotland-act-2000-code-practice-local-authorities-exercising-functions-under-2000>

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It may be considered however that more steps are needed to ensure the principles are followed, and we would be grateful for views as to what additional steps could be put in place to make certain the principles of the AWI Act are followed by any person acting under legislation in accordance with section 1 of the AWI Act.

Questions

1. Do you agree that the principles of the AWI Act should be updated to require all practicable steps to be taken to ascertain the will and preferences of the adult before any action is taken under the AWI Act?

- Yes
 No

Please give the reason(s) for your answer

This proposed change will give priority to the adult's will and preferences and that is welcomed. However, unless there is clear and workable guidance there will likely be differences in interpretation as to what 'all practicable steps' actually means which will impact on the operation of the Act.

2. Do you agree that in the AWI Act we should talk about finding out what that adult's will and preferences are instead of their wishes and feelings?

- Yes
 No

Please give the reason(s) for your answer

Although this may appear to be a relatively minor change of terminology, we agree that this change will add more weight to the will and preferences of an adult being central when making decisions in relation to interventions under AWI.

3. Do you agree that any intervention under the AWI Act should be in accordance with the adult's rights, will and preferences unless not to do so would be impossible in reality?

- Yes

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No

Whilst we agree that the adult's rights, will and preferences should be central to any decisions related to interventions required under the AWI Act it is important to acknowledge that for some adult's with significant cognitive impairment their will and preferences may be variable, difficult to ascertain and impacted by their condition. There needs to be a balance between the will and preference being adhered to and this adherence potentially placing the adult at significant risk. It will be necessary to find a way to make appropriate judgments in the person's best interests

Please give the reason(s) for your answer

4. Do you agree that the principles should be amended to provide that all support to enable a person to make their own decisions should be given, and shown to have been unsuccessful, before interventions can be made under the AWI Act?

Yes
 No

Please give the reason(s) for your answer

Yes, it is important to provide support to the adult to enable them to make their own decisions. There may be potential resource implications associated with this, such as increased demand on independent advocacy services. It is important to recognise that without consideration of the resource implications of supporting individuals to make their own decisions this change in principle risks being tokenistic.

5. Do you agree that these principles should have precedence over the rest of the principles in the AWI Act?

Yes
 No

Please give the reason(s) for your answer

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By giving this principle precedence it provides emphasis to the importance of the will and preferences of the individual being at the centre of the decision-making process related to interventions under AWI. However, there is a risk that by giving this principle precedence that it minimises the importance of adhering to the other principles of the Act.

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6. Do you have any suggestions for additional steps that could be put in place to ensure the principles of the AWI Act are followed in relation to any intervention under the Act?

- Yes
 No

Please give the reason(s) for your answer

In the Mental Health (Care & Treatment) (Scotland) Act 2003 there is a duty in relation to information being provided to service users in relation to the availability of independent advocacy services. Were a similar duty extended to the AWI Act this may reinforce the emphasis on the will and preference of individuals being central to any decisions being made under the Act. Statutory guidance could provide additional weight to the importance of ascertaining the adult's will and preferences.

Proposed Terminology changes

Throughout the AWI Act distinction is made between an adult's property and financial affairs and an adult's personal welfare (including healthcare matters). However, the way this distinction is made is different for powers of attorney and guardianship orders.

Under Part 2 of the AWI Act, a power of attorney that relates only to financial matters is known as a "continuing attorney". This causes confusion and requires repeated explanation to members of the public.

Under Part 6 of the AWI Act a guardianship order can be granted for the protection of the property, financial affairs or personal welfare of the adult.

We consider that there should be easily understood descriptors of the role an attorney or guardian holds. We think these should be the same for both roles.

We recommend changing the term 'continuing attorney' to 'financial attorney'.

A guardian should continue to be known as a guardian with financial, property and / or welfare powers depending on the authority granted to them by the sheriff.

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Question

7. Do you agree with the change of name for attorneys with financial authority only?

Yes

No

Please give the reason(s) for your answer

Yes, the terminology currently related to 'Continuing Attorneys' is confusing to many adults, carers and professionals. The authority granted to 'Financial Attorney' will be clearer at the outset from this change of title.

Sheriff's power of directions

Section 3(3) of the AWI Act currently provides for the sheriff, on application by any person claiming an interest in the property, financial affairs or personal welfare of an adult to give directions to any person exercising functions conferred by the AWI Act or functions of a like nature conferred by the law of any country.

This is an incredibly useful power, but we consider it needs expanding in two ways.

First we think that the sheriff should be able to give directions to people formerly exercising functions, so that a former attorney or guardian for example could be ordered to provide information. This will ensure greater transparency between individuals currently and formerly exercising functions under the AWI Act and will provide further protection for the adult.

Second, we think that the power under section 3(3) should be extended to a discretionary power to give directions to anyone where that is appropriate for the proper operation of provisions of the AWI Act.

This would provide a route for attorneys and guardians to, for example, request the sheriff to direct a pension provider to transfer payments into an appropriate account. The inability to do something like this at present can cause a great deal of distress for persons acting under the AWI Act and can often mean the adult is not receiving the funds they should.

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Question

8. Do you agree with our proposals to extend the power of direction of the sheriff?

- Yes
- No

Please give the reason(s) for your answer

We agree with the proposal to extend the power of direction of the sheriff.

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Authority of the Public Guardian

Section 6(2)(c) of the AWI Act gives the OPG the authority to receive and investigate any complaints regarding the exercise of functions relating to the property or financial affairs of an adult made in relation to continuing (financial) attorneys, intromissions with funds, guardians or persons authorised under intervention orders.

However, the OPG is not allowed to investigate any matters or concerns in relation to a deceased adult. The AWI Act currently only provides official status for the OPG to ensure the estate of an adult with incapacity is protected for the benefit of the adult. The OPG has said that a discretionary power to continue investigations after the adult has died would be very useful. This would minimise the risk of misappropriation of funds in an adult's estate. There is also the consideration of other adults who may be at risk if the OPG is not permitted to continue an investigation after the death of the adult.

We agree with the views of the OPG and propose that section 6(2)(c) be amended to enable an investigation carried out by the OPG, if appropriate, to be continued after the death of the adult, so long as the investigation has started before the adult died.

Question

9. Do you agree with our proposal to amend the powers of investigation of the OPG to enable, where appropriate, an investigation to be continued after the death of the adult?

- Yes
 No

Please give the reason(s) for your answer

We agree with this proposal and the rationale for extending this power of investigation would hopefully minimise the risk of misappropriation of funds in an adult's estate as noted in the Consultation.

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Investigations into cases under the AWI Act

Presently OPG investigate financial concerns where the adult lacks capacity. This can be where the adult is subject to provisions of the AWI Act, such as where a continuing (financial) power of attorney, a guardianship or intervention order with property and/or financial powers, or authorisation to access funds under Part 3 are in place. OPG can also investigate where the adult lacks capacity and there are no provisions under the AWI Act in place.

The local authority has a duty to investigate cases under the AWI Act if there is a risk to the personal welfare of an adult. The local authority also has a duty in the AWI Act to consult the OPG and the Mental Welfare Commission (MWC) on cases where there appears to be a common interest.

The local authority also has a duty to make inquiries under the Adult Support and Protection (Scotland) Act 2007 (ASP Act). This is if it knows or believes that the person is an adult at risk, and that it might need to intervene in order to protect the person's well-being, property or financial affairs. An adult at risk in this case can include an adult lacking capacity as well as an adult with capacity but who is otherwise vulnerable as described in section 3 of the ASP Act.

The recent SMHLR set out a recommendation on improving the investigation framework within the AWI Act. It stated that at present there was no clear investigation structure with local authorities carrying out social work functions, Police, the MWC and OPG who are all working independently. It recommended that a comprehensive investigatory framework should be developed with OPG, local authorities, the MWC and Police Scotland and full and equal participation with persons with lived experience including unpaid carers.

We agree with the SMHLR and are proposing that we split the investigatory responsibilities between the OPG and local authority. OPG would retain the investigatory function for the areas it actively supervises and where the adult already lacks capacity. This will cover financial guardianship orders, financial intervention orders and ATF (Part 3).

The local authority as part of its adult support and protection functions would take responsibility for cases where there is a power of attorney in place or where the adult lacks capacity and there is no order in place under the AWI Act. These are the cases where incapacity has to be determined and there is most chance of duplication of effort between OPG and local authorities.

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The investigatory powers would be clearer because we are proposing that OPG investigate financial guardianships, ATF and financial intervention orders. We anticipate that OPG will require to make an adult support and protection referral to the local authority under section 5 of the ASP Act (noting that the OPG have duties of cooperation under section 5) confirming that it is taking forward a property and finance investigation under guardianships, ATF and intervention orders so that the local authority can check the welfare aspects in relation to the adult concerned. Please see flow chart in consultation document for the proposed structure.

The reason for the proposed structural changes is to provide greater clarity for those reporting concerns so they are clear on the most appropriate agency to contact in the first instance. There would be clearly defined responsibilities and there is the opportunity to reduce duplication of effort and for the respective agencies to develop their expertise.

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Question

10. Do you agree that the investigatory responsibility between OPG and local authority should be split in the manner outlined above?

- Yes
 No

Please give reason(s) for your answer.

There may be implications of this for local authorities as this will impact on social work practice teams who will likely be expected to undertake these investigations. The proposal shifts two types of investigation currently undertaken by the OPG to local authorities:-

1. any circumstances where the property or financial affairs of an incapacitated adult seems to be at risk (apart from financial guardianship orders, financial intervention orders and access to funds)
2. Continuing POAs (where the adult lacks capacity).

Whilst the clarification of roles in terms of investigatory processes is well received given the overlap and confusion in this regard presently we are unsure of the potential resource implications in undertaking these additional investigations for the local authority at a time when services are under significant pressure.

It makes good sense in terms of the efficiency relating to public funds for this role to continue to be centralised within the OPG rather than split between 32 local authorities. This would potentially create a dilution in experience as it is cascaded throughout the local authorities.

Further, access to funds is specifically noted. It may well cause confusion if the investigation powers are arbitrarily split as there appears to be an overlapping as a person's financial circumstances can be at risk whilst also access to funds applications have been made in the past. It is not clear how the division would work in practice.

Instead it would be appropriate for agencies to work together to ensure that each agency is not working in their own silos, and ensure that any intelligence is actioned appropriately in their spheres of responsibility.

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11. Will these changes provide greater clarity on the investigatory functions of OPG and local authority?

- Yes
 No

Please give the reason(s) for your answer

We do not agree that the proposed changes provide greater clarity in relation to investigatory functions and refer to comments made in response to question 10 above.

12. Will this new structure improve the reporting of concerns?

- Yes
 No

Please give the reason(s) for your answer

Improvements in joint working and communication between the OPG and local authorities would be sufficient to ensure safeguarding of all areas of an adult's life.

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Part 2 - Power of attorney

Training for attorneys

Powers of attorney are powerful, and useful instruments that allow a granter to retain control over aspects of their lives, in circumstances where they might not otherwise be able to make decisions or take actions. This ensures that the granter has the opportunity to make provision for a future where they may no longer have the mental capacity to understand what is happening to them. If they have fluctuating capacity a power of attorney allows them to still make autonomous decisions about the things they care about.

We want to ensure that attorneys are aware of the obligations under the AWI Act and understand the requirements in fulfilling the role. We propose introducing mandatory training for attorneys so that they understand the requirements of the role and where they can get support in carrying out the role. This is in line with recommendation 13.4 of the SMHLR.

We are envisaging a short, web-based presentation easily accessible to attorneys, with clear information on the role of an attorney and where additional help can be found. In checking the attorney's willingness to act as such, the OPG will check if the prospective attorney has seen this presentation prior to agreeing to take on the role, and if not, will require the attorney to do so prior to registering a power of attorney.

Enhancing the Safeguards around power of attorney

The Office of the Public Guardian (OPG) has a range of functions under the AWI Act. It is responsible for registering powers of attorney and maintaining a Public register of all continuing and welfare continuing and welfare power of attorneys. It also supervises the actions of those appointed in terms of the AWI Act to manage the property and financial affairs of adults who lack the capacity to carry out these functions for themselves and provide advice and support.

We propose giving OPG additional powers to increase the safeguards when registering a power of attorney. We propose that there should be provision for the OPG to refuse to register a power of attorney if there is a dispute about capacity. OPG should be able to call for additional capacity reports if there is a reasonable cause. This would allow OPG to pause registration and resolve the issue of capacity/incapacity administratively. If OPG refuse to register the

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power of attorney, then either party will be able to seek directions from the Sheriff themselves for the matter to be determined by the court.

The same should apply to registration of a revocation notice under section 22A. Revocation means that the granter of the power of attorney can cancel the power of attorney if certain conditions are met and the OPG has to update the register with that information. This shows if power of attorney is active or not.

Section 22A of the AWI Act sets out the process of revocation of a continuing or welfare power of attorney. This needs to be in writing and must include evidence that the granter was not acting under undue influence and understood the purpose and effect of power of attorney. We propose that the same changes should apply to a revocation notice as above.

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Increasing accessibility of powers of attorney.

We know from the SMHLR that widening accessibility of power of attorney is important to increase the uptake of power of attorney documents. We propose to increase the class of persons that are allowed to certify a granter's capacity in a power of attorney document.

It is proposed that the class of persons that can certify a granter's capacity in a power of attorney is extended. First, we propose that clinical psychologists are considered for this purpose. Clinical Psychologists are mental health professionals who have extensive training in the field of mental disorders and have the knowledge and expertise to undertake this role.

Second, we have considered the approach in England and Wales where Chartered Legal Executives (CLE's) carry out many of the same functions as solicitors. They can also facilitate the creation of an original power of attorney, but were not able to certify capacity. It's important to note that the certification process is different in England and Wales to Scotland. Scottish certification requirements are substantially tighter than those in England and Wales

Accredited paralegals in Scotland carry out many of the same functions as solicitors. We suggest that the training they undergo would give them the skills to certify a granter's capacity for powers of attorney as they work closely under the supervision of a Scottish solicitor, either in private practice or in-house.

We therefore propose widening the class of persons who can certify that a granter has capacity in a power of attorney to include a paralegal as well as psychologist. These proposals are aimed at increasing the channels through which consumers can obtain a power of attorney and promote consumer choice. This aligns with our policy of increasing access to justice.

Questions

13. Do you agree with the proposals for training for attorneys?
- Yes
- No

Please give the reason(s) for your answer

We agree that training for attorneys is a welcome proposal as we can find attorneys appointed have little knowledge of the responsibilities they have agreed to undertake and need a level of guidance and assistance to exercise their legal authority.

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14. Do you agree that OPG should be given power to call for capacity evidence and defer registration of a power of attorney where there is dispute about the possible competency of a power of attorney document?

- Yes
- No

Please give the reason(s) for your answer

We agree that this is a welcome additional safeguard in relation to power of attorney.

15. Do you agree that OPG should be able to request further information on capacity evidence to satisfy themselves that the revocation process has been properly met?

- Yes
- No

Please give the reason(s) for your answer

We agree that this is a welcome additional safeguard in relation to power of attorney.

16. Do you agree that OPG should be given the power to determine whether they need to supervise an attorney, give directions or suspend an attorney on cause shown after an investigation rather than needing a court order?

- Yes
- No

Please give the reason(s) for your answer

We agreed that this proposal potentially provides a more dynamic response to issues raised in relation to the conduct of an attorney and agree that the right of appeal to the Sheriff in relation to any decision made by the OPG provides oversight of disputed decisions.

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17. Should we extend the class of persons that can certify a granter's capacity in a power of attorney?

- Yes
 No

Please give the reason(s) for your answer

We agree that the proposals in principle that clinical psychologists and paralegals could certify a granter's capacity in granting a power of attorney although we are uncertain if this will increase the accessibility of powers of attorney. A psychologist will potentially be accessed via referral as a secondary health service with long waiting lists for their services and a paralegal via a solicitor's practice which would be the traditional route for power of attorney to be sought.

18. Do you agree that paralegal should be able to certify a granter's capacity in a power of attorney?

- Yes
 No

Please give the reason(s) for your answer

See comments in response to question 17.

19. Do you agree that a clinical psychologist should be able to certify a granter's capacity in a power of attorney?

- Yes
 No

Please give the reason(s) for your answer

See comments in response to question 17.

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20. Which other professionals can certify a granter's capacity in a power of attorney?

Please give the reason(s) for your answer

There would be benefit to looking at other professionals who could certify a granter's capacity particularly those who work in primary care settings and/or have contact with adults as part of an early intervention service. For example, Advanced Nurse Practitioners in GP practices may be suitable candidates. Consideration may also be given to social workers/allied health professionals being able to undertake a prescribed short course that could be developed that would allow them to become 'approved certifiers' in relation to POA.

21. Do you agree that attorneys, interveners and withdrawers (under Part 3) should have to comply with an order or demand made by OPG in relation to property and financial affairs in the same way as guardians?

- Yes
 No

Please give the reason(s) for your answer

Yes.

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Broadening powers of Public Guardian to order compliance with demands in relation to property and financial affairs of the adult.

At present section 64(7) of the AWI Act states:

“(7)The guardian shall comply with any order or demand made by the Public Guardian in relation to the property or financial affairs of the adult in so far as so complying would be within the scope of his authority; and where the guardian fails to do so the sheriff may, on the application of the Public Guardian, make an order to the like effect as the order or demand made by the Public Guardian, and the sheriff’s decision shall be final.”

We think that rather than restrict the Public Guardian’s powers in this area to guardians, they should be extended to attorneys under a power of attorney, interveners and withdrawers (under Part 3). This will assist the Public Guardian in her supervisory duties in respect of these areas and provide greater safeguards for the adult.

We also think the Public Guardian should have wider powers to suspend powers granted to a proxy under section 12 of the AWI Act whilst they undertake an investigation. Section 12 already allows the Public Guardian, MWC or local authority to take such steps, including an application to the sheriff, which seem necessary to safeguard the property, financial affairs or personal welfare of the adult. The power to suspend powers would be an additional safeguarding option, where even though the investigation is still on-going the Public Guardian is satisfied in the interim that the proxy should not be able to intrude with the estate.

For instance, at the moment the Public Guardian can freeze bank accounts and benefits/pension payments in, but that may still leave other powers the proxy can utilise, for example taking out finance, signing legal agreements and cashing in policies. It is likely that the power would not be used often and practically could only be used if the adult was not living in the community and care or emergency costs were covered by the local authority. This would be appealable to the sheriff.

We are also interested in your views on whether the power to suspend powers should also be available to the local authority and the MWC as part of their investigations.

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Questions

22. Do you agree that the Public Guardian should have broader powers to suspend powers granted to a proxy under the AWI Act whilst they undertake an investigation into property and financial affairs?

- Yes
 No

Please give the reason(s) for your answer

Yes, this would appear to be an additional safeguard for adult's with incapacity whilst an investigation is yet to be concluded.

23. Do you agree that the MWC and local authority should have broader powers to suspend powers granted to a proxy under the AWI Act whilst they undertake an investigation into welfare affairs?

- Yes
 No

Please give the reason(s) for your answer

There may be an issue with the local authority having an authority to suspend powers granted to a proxy given that there may be a dispute between the local authority and a proxy as to the care needs and care plan for an incapable adult. Where there is dispute it should not be assumed that the local authority is always correct and it may be that there would be a conflict of interest in the local authority having an ability to suspend powers whilst an investigation is undertaken due to a perceived lack of independence in this regard.
 It may be more appropriate that the Mental Welfare Commission, who are independent, would be more appropriate to act in this capacity.

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Part 3**Access to Funds (ATF)****Introduction**

The Access to Funds (ATF) scheme is a simple way of managing an adult's financial affairs and is far less onerous than guardianship. The present scheme is not widely used and is overly bureaucratic. We think there remains a need for an effective scheme and are putting forward proposals for change to the ATF scheme.

How the scheme works at present:

An application is made by the applicant to the OPG to transfer a set amount of funds from the adult's current account to a new 'designated' account. It is the 'designated' account that the withdrawer can use to remove funds to spend on or on behalf of the adult.

A medical certificate and a statement from a person who has known the applicant for at least a year is part of the application and currently a fee of £97 is required. Once authorised the withdrawer has access to the funds in the designated account. The withdrawer uses these funds for direct debits and day to day expenditure of the adult, such as care home fees. This has to be estimated for the month and the amounts required are laid out in the application form.

There are large numbers of rejections by OPG for incorrect documents. OPG intimates the application on persons listed in the Act. If anyone objects to an OPG decision to grant or refuse the application, they can make representations to OPG. An application can be remitted to the Sheriff at the instance of POG, the applicant or any interested party.

OPG produces a certificate that the withdrawer can present to financial institutions with the exact amounts to be withdrawn. Any changes to this require another application. OPG monitors withdrawers, meaning that a random selection of cases is taken from time to time for checking.

Powers available under The ATF Scheme at presentAuthority to provide information about funds.

This application is for a certificate authorising any fundholder to provide the person with such information as the person may reasonably require in order to make a further ATF application.

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Authority to open account in adult's name

This application can be made at the same time as the application to access funds and is to open an account where there is not already one suitable for an ATF application. This would be used in cases where it is known the adult has funds or payments that could be accessed via this scheme if such an account was opened.

Authority to intromit with funds

As it stands this requires specific amounts of money (as detailed in the application form) to be transferred from the adult's current account to a new 'designated' account. From this withdrawals can be made for the specific amounts and purposes detailed in the application. The withdrawer can also continue and set up standing orders and direct debits from the adult's current account to pay the adults living expenses. The idea is that this transfer from current account to designated account provides some safeguard for the adult's finances.

Suggestions for change

We are suggesting that, rather than monitor withdrawers under the scheme, the Public Guardian should actively supervise withdrawers. This will mean taking an annual view of the actions of every withdrawer with respect to the adult's finances. We think this would look similar to the accounting requirements for guardianships³, albeit with a lighter touch.

The Public Guardian will have discretion as to the frequency and form of the accounts. The ATF scheme should remain as at present with no remuneration or reimbursement of outlays for a withdrawer.

Our proposal is for the scheme to grant proforma powers at the outset for the same functions it already does, without the necessity for additional applications to OPG for additional authority or to change amounts. Safeguarding will be provided by a requirement to estimate the amounts required for each purpose at the outset. This will then be checked by OPG on an annual basis to see that the withdrawer has acted appropriately. This will provide a deterrent and will allow OPG to make enquiries if anything untoward is found.

In order to make the scheme more usable and flexible our proposal is to remove the requirement for the certificate to reflect the exact finances to be

³ Schedule 2, sections 7 and 8

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accessed by the withdrawer. These will be to pay for care home fees, holidays, clothing, and other related goods and services for the adult⁴. An estimate of these amounts can be provided to OPG at the time of application, for supervisory purposes, however they will not be reflected in the withdrawal certificate.

At present for instance, if the care home fees went up from £500 to £600 an application for variation of the amount would be required. Under our proposal the withdrawer can amend this amount for withdrawal, or any other amount that corresponds with the powers they have, without a variation application. There will be no specific limits on the amount any sum can be increased. Any transactions will have to be explained when accounting is provided to OPG.

We think access should be provided directly to the adult's current account, the risks associated with which can be offset by Public Guardian supervision. This makes for a clearer, less complicated scheme.

Varying pre-existing arrangements on the adult's account

The AWI Act states⁵ that the withdrawal certificate may (amongst other powers⁶) "authorise the continuance or making of arrangements for the regular or occasional payment of funds from the adult's current account for specified purposes (for example: by standing order or direct debit)"

We think this is too restrictive. In order to make any adjustments to any existing arrangements that have been set up on the adult's current account (for instance a standing order or direct debit), the withdrawer would need to apply for a full variation order⁷.

The wording is limiting and additionally, needs to grant the withdrawer, via the withdrawal certificate, power to vary any prearrangements on the adults account.

What we think the withdrawal certificate should allow

Therefore we think the withdrawal certificate should allow:

- Authority to open or close an account in the adult's name

⁴ S.24A(2)

⁵ s.26A(1)(b)

⁶ in s.26A(1)

⁷ under section 26F

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- Transfer of funds between the adult’s accounts
- The continuance, variance or making of arrangements for the regular or occasional payment of funds from the adult’s current account for specified purposes (for example by standing order or direct debit)
- The termination of regular or occasional payment of funds from the adult’s current account for specified purposes (for example by standing order or direct debit)
- The withdrawal of funds from the current account for specified purposes
- Administration and disbursement of funds for Self-Directed Support

Questions:

24. Do you agree that the powers and specific amounts should be decoupled?

- Yes
- No

Please give the reason(s) for your answer

Yes, this would allow much needed flexibility in relation to the operation of Access to Funds.

25. Do you agree that the withdrawal certificate should contain standard, proforma powers for the withdrawer to use?

- Yes
- No

Please give the reason(s) for your answer

Yes.

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26. Do you agree that access should be given to the adult's current account, rather than setting up a 'designated account'?

- Yes
 No

Please give the reason(s) for your answer

Yes, this will remove a layer of complexity that accompanies the Access to Funds scheme presently and make this a more workable option in terms of the safeguarding finances.

Applications where there is a guardian, continuing attorney or intervener with powers relating to the funds in question

The AWI Act states⁸ that an application cannot be made in the case of an adult in relation to whom there is a guardian, continuing attorney or intervener with powers relating to the funds in question.

There are cases where an application for ATF may be necessary where there is an intervener or guardian in place in relation to the same funds. For instance interveners may have a power to transfer funds (perhaps from the sale of a house or other asset) into an account that in accordance with the least restrictive intervention principle⁹ ought thereafter to be administered under Part 3 of the AWI Act. In order to have a seamless transition, it may be preferable for the application to access funds to be made whilst the intervention order is still operative. The intervention order will fall once the powers in it have been used.

There is also the possibility that a guardianship order is granted but the estate has reduced so that it would be more appropriate to be managed by ATF. That would require an ATF application whilst there was a guardianship order in place in order to ensure there was no gap in protection. Transition from guardianship order to ATF is already provided for in the AWI Act¹⁰. However the AWI Act itself states that an application for ATF cannot take place whilst a guardianship order for the same funds is in place, rendering the transition provisions inoperable.

We think that the provisions preventing ATF applications when there are attorneys with powers over the same funds should remain in place.

⁸ s.24B(2)

⁹ s.1(3)

¹⁰ S.31E

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Question:

27. Do you agree that in certain circumstances, applications where there is a guardian, or intervener with powers relating to the funds in question should be allowed?

- Yes
 No

Please give the reason(s) for your answer

Yes, we agreed that this should be permitted in some circumstances.

Application when there is already authorisation to intromit with the same funds

The AWI Act states¹¹ that an application cannot be made to intromit with an adult's funds if a person is already authorised to intromit with the funds of the adult to whom the application relates.

We think the wording "already authorised to intromit" is confusing and rather than refer to applications under this section, could refer to authorisations under other provisions as well, such as DWP appointments. We intend to clarify that a bar to applying under this section only applies if someone already is authorised only under Part 3 of the AWI Act to intromit with the same funds.

Question:

28. Do you agree that we should clarify that a bar to applying under this section only applies if someone is already authorised under Part 3 of the Act to intromit with the same funds?

- Yes
 No

Please give the reason(s) for your answer

Yes, we agree that this should be clarified.

¹¹ S.25(5)

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Account held by fundholder in adult's sole name

The AWI Act states¹² that an application must specify an account held by a fundholder in the adult's sole name which the applicant wishes to use for the purpose of intromitting with the adult's funds.

We have heard that this may limit organisational use of the scheme. There may be occasions where an organisation, for ease of administration, would want to use a single client or corporate account to hold the funds of a number of people. Although these funds wouldn't be in an account in the sole name of the adult, they would be clearly identified as the adult's funds and belonging to the adult.

Question:

29. Does having an account in the adult's sole name limit organisational use of the scheme?

- Yes
 No

Please give the reason(s) for your answer

Whilst we undertake Access to Funds scheme applications presently as an organisation the setting up of an account in the adult's sole name adds a level of complexity to the scheme which is felt unnecessary. The ability to use a single/corporate account would be beneficial and would have no impact on the safety or ability to audit the adult's funds.

Transition to ATF from intervention order

The AWI Act refers¹³ to transitions to the ATF scheme from guardianships. Currently there is not an equivalent transition available from intervention orders. Instead, people are encouraged to apply for a guardianship order as it involves less paperwork. However this might not be the least restrictive method according with the principles of the AWI Act.

As it stands a transition to ATF from guardianship requires an application, but it doesn't need a counter signatory and the Public Guardian may disapply the

¹² S.26(1)(b)

¹³ S.31E

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requirement for medical certificate. We propose that the same applies to intervention orders. For instance, in accordance with the least restrictive principle, there could be an intervention order to sell a house, but then authority under the ATF scheme to deal with the proceeds.

Question:

30. Should we add the same transition provisions to intervention orders as there are for guardianships?

- Yes
 No

Please give the reason(s) for your answer

Yes, we agree with this proposal.

Sheriffs to be able to approve ATF if previously a guardianship order has been applied for and ATF is deemed a lesser intervention.

When a guardianship order is applied for through the court, the court rules provide that the application is served on a number of different persons, including the Public Guardian, in order that they can comment on the application or attend a hearing.

The Public Guardian provides comments regularly to the sheriff court on cases. There are often cases where the Public Guardian comments that a financial guardianship is not required and authority via the ATF scheme would be a lesser, more appropriate intervention. Often guardianship orders are granted in these cases.

We think one of the reasons is that if the financial guardianship application was refused, then the applicant would have to begin making an ATF scheme application from the beginning, denying the adult the protection and access to their finances that a financial guardianship could provide at that point.

We think, only in these specific cases, a sheriff should be able to grant authority via the ATF scheme, rather than a financial guardianship order. That would prevent the hiatus in applications creating a lack of protection and access to their finances for the adult. Our proposal, where the powers given in the withdrawal certificate are not bound to specific amounts, would make this possible.

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Question:

31. Do you agree that sheriffs, under certain circumstances, should be able to grant powers to access funds under our new proposal?

- Yes
 No

Please give the reason(s) for your answer

Yes, we agree that this proposal would potentially present a more flexible range of options available to the Court when considering the least restrictive available option to safeguard the finances of adults with incapacity.

Inclusion of authorised establishments in the ATF scheme

The AWI Act allows ‘a body’ to apply for ATF. For example, local authorities can apply. However, it excludes authorised establishments within the meaning of section 35(2) from applying. Authorised establishments under section.35(2) are:

- A health service hospital
- An independent hospital or private psychiatric hospital
- A state hospital
- A care home service
- A limited registration service

This is because they are specifically catered for by Part 4 of the AWI Act dealing with management of residents’ finances. Part 4 is very little used, as described later and we are proposing that it is removed. On that basis we think that authorised establishments should be allowed to apply under the ATF scheme, along with other organisations.

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Question:

32. Do you agree that authorised establishments should be able to apply under the ATF scheme?

- Yes
 No

Please give the reason(s) for your answer

Given the proposal in relation to Part 4 (Management of Residents' Finances) we are supported of broadening the Access to Funds scheme to authorised establishments.

Intimation of application

As stated previously, the Scottish Law Commission envisaged ATF as being an application where an individual could obtain authority from the Public Guardian to withdraw the adult's money for the adult's benefit.

To reflect this intimation on interested parties is carried out by staff of the OPG. The most recent OPG statistics show that more than twice the number of applications are received from local authorities, or other organisations rather than individuals.

We are therefore suggesting, to share the administrative responsibility for this, that where the applicant is an organisation, they should provide intimation of the application to interested parties. Where the applicant is a lay person, OPG staff will provide intimation of the application as they do at present. This will reflect practice in the sheriff courts¹⁴.

¹⁴ Statutory Instrument 1999 No. 929 (S. 65), rule 3.16.4(2)

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Question:

33. Do you agree we should split intimation of the application between organisations and lay people (OPG)?

- Yes
 No

Please give the reason(s) for your answer

This proposal may present an increased administrative burden on local authority legal services who would likely assume responsibility for making intimation under this proposal. Although West Lothian Council make relatively few Access to Funds applications each year (on average 5-6 per year) this will present additional workload.

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Part 4**Management of Residents' Finances**

Part 4 of the AWI Act concerns adults who reside in authorised establishments who lack the capacity to manage their financial affairs. Authorised establishments are defined in the AWI Act as health service hospitals, independent hospitals or private psychiatric hospitals, the state hospital, care home services and limited registration services. Part 4 provides a mechanism for managers of those establishments to manage finances to a limited extent on the adult's behalf.

We propose removing Part 4 from the AWI act due to its low uptake, complexity and the existence of alternative mechanisms such as Access to Funds, Guardianships and intervention orders. This change would simplify decision-making, reduce administrative burdens and provide more accessible support for individuals with incapacity.

Questions

34. Do you support the proposal to remove Part 4 from the AWI Act?
- Yes
- No

Please give the reason(s) for your answer

Yes, Part 4 appears to serve little practical purpose at this time.

35. Do you think alternative mechanisms like the ATF scheme, guardianships and intervention orders adequately address the financial needs of adults with incapacity living in residential care settings and hospitals?
- Yes
- No

Please give the reason(s) for your answer

Yes, the alternative proposals which we support in relation to the ATF scheme alongside guardianship and intervention orders provide a suite of options which would address the financial needs of adults with incapacity living in residential settings and hospitals.

Part 5

Authority to medically treat adults with incapacity

Adapted section 47 certificate authorising removal of adult to hospital for the treatment of a physical illness or diagnostic tests where they are unable to consent to admission.

Part 5 of the AWI Act gives authority to treat a person who is incapable of consenting to medical treatment to safeguard or promote their physical or mental health.

Section 47 of the AWI Act allows the medical practitioner (or other specified healthcare professional) who is primarily responsible for the adult's treatment to complete a certificate certifying that in their opinion the adult is incapable of making a decision on the medical treatment in question.

The Commission's report in 2014 on Adults with Incapacity had noted that there were concerns whether there was sufficient authority to transport persons to hospital where they lack capacity to agree to that action (paragraph 4.9). However, they concluded that conveying a person to hospital could normally be justified under the common law principle of necessity in an emergency and may otherwise be authorised by the fact that a certificate under section 47 gives "authority to do what is reasonable in the circumstances, in relation to the medical treatment in question, to safeguard or promote the physical or mental health of the adult". This could include taking someone to hospital to receive treatment. But conveying someone to hospital for non-urgent care would require an existing s.47 certificate to be in place.

We therefore propose to introduce a new adapted section 47 certificate that would expressly allow a person to be conveyed to hospital and ensure that this process is authorised in law.

An enhanced section 47 certificate to prevent a person being treated for a physical condition from leaving hospital, whether temporarily or permanently.

Currently Scots law provides no specific process to authorise measures to prevent a person being treated in hospital for a physical condition from leaving. This gap was identified in the Commission's report on Adults with Incapacity in 2014

We agree with SMHLR that there is a significant gap in the law that needs to be remedied given the lack of a specific process to authorise measures to

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prevent a person being treated for a physical condition from leaving hospital, whether temporarily or permanently.

We are proposing that an additional process is required to enable authorisation of any necessary measures to prevent an adult with incapacity from going out of a hospital unaccompanied and that this process should be connected to the process of authorising medical treatment.

Clarifying the provision of palliative care under Part 5 of the AWI Act where a welfare proxy disagrees with proposed treatment.

There can be circumstances where the giving of medication for the purpose of alleviating serious suffering on the part of the patient could also prevent serious deterioration in their medical condition. However, alleviation of serious suffering is not itself stated in the legislation or code of practice as a purpose for which treatment could be given while section 50 dispute resolution procedures are ongoing.

The Scottish Government believe that in a section 50 dispute resolution, the treating doctor should be able to give medical treatment that is necessary to alleviate serious suffering on the part of the patient (so long as there is no interdict in force). There is no mention of alleviation of serious suffering in the AWI Act Code of Practice for medical practitioners.

These changes would provide clarity for medical practitioners and relatives and medical staff when there is a dispute resolution situation, and they are providing treatment to the patient nearing the end of their life. This would require statutory changes to section 50(7) to reflect new policy intent rather than amending the code of practice for medical practitioners and make the AWI Act clearer on this matter

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Questions

36. Do you agree that the existing section 47 certificate should be adapted to allow for the removal of an adult to hospital for the treatment of a physical illness or diagnostic test where they appear to be unable to consent to admission?

- Yes
 No

Unable to answer.

Please give the reason(s) for your answer

Whilst we understand the need to consider an adapted section 47 certificate authorising removal of adult to hospital for the treatment of a physical illness or diagnostic tests where they are unable to consent to admission we feel that this needs to be considered carefully.

At the present time an analogous provision under the 2003 Act has legal safeguards in place, for example the consent of a Mental Health Officer being sought to an Emergency Detention Certificate.

An enhanced s47 certificate allowing for conveyance to hospital without any checks and balances is potentially open to interpretation by GPs, community nurses or paramedics with no checks or balances noted in the proposal.

There is also over-lap in relation to certain physical health conditions and mental health conditions where, for example, infection may impact on an adult's mental state causing confusion. There is a risk that with the proposed enhanced s47 certificate granting a similar legal authority to a detention certificate under the 2003 Act that this will be utilised due to expediency and convenience as a substitute to an appropriate consideration of use of the 2003 Act.

37. Do you consider anyone other than GPs, community nurses and paramedics being able to authorise a person to be conveyed to hospital? If so, who?

- Yes
 No

Please give the reason(s) for your answer

Please see comments made in relation to question 36.

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38. Do you agree that if the adult contests their stay after arriving in hospital that they should be assisted to appeal this?

- Yes
 No

Please give the reason(s) for your answer

Notwithstanding comments made in response to question 36 it is agreed that were the enhanced s47 certificate proposal in place there should be assistance available to appeal.

39. Who could be responsible for assisting the adult in appealing this in hospital?

Please give the reason(s) for your answer

It may be that there is a mandatory requirement for an adult admitted under an enhanced s47 certificate arrangement that they are referred to independent advocacy services.
However, where an appeals process relies on an adult with incapacity having the ability to instruct an advocate or solicitor to exercise their right of appeal this would almost certainly disadvantage an adult with a significant level of cognitive impairment who was not able to offer such an instruction.

APPENDIX 1

An enhanced section 47 certificate to prevent a person being treated for a physical condition from leaving hospital, whether temporarily or permanently – Page 47

40. Do you agree that the lead medical practitioner responsible for authorising the section 47 certificate can also then authorise measures to prevent the adult from leaving the hospital?

- Yes
 No

Please give the reason(s) for your answer

A S47 certificate which authorises measures to prevent an adult from leaving hospital is akin to a detention certificate. Were a lead medical practitioner solely responsible for authorising such a certificate without any checks and balances this is concerning.

As per the response to question 36 there is also overlap in relation to certain physical health conditions and mental health conditions where, for example, infection may impact on an adult's mental state causing confusion. There is a risk that with the proposed enhanced s47 certificate granting a similar legal authority to a detention certificate under the 2003 Act that this will be utilised due to expediency and convenience as a substitute to an appropriate consideration of use of the 2003 Act.

41. Do you think the certificate should provide for an end date which allows an adult to leave the hospital after treatment for a physical illness has ended?

- Yes
 No

Unable to answer.

Please give the reason(s) for your answer

Notwithstanding comments made in response to question 40, it may be very difficult to give an end date on a certificate which allows an adult to leave hospital after treatment for physical illness has ended at the time of granting of the certificate given that response to treatment for similar conditions may vary between adults. It is difficult to answer this question without understanding the checks and balances that might be required to constrain use of this measure

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42. Do you think that there should be a second medical practitioner (i.e. one that has not certified the section 47 certificate treatment) authorising the measures to prevent an adult from leaving the hospital?
- Yes
- No

Unable to answer.

Please give the reason(s) for your answer

Notwithstanding comments made in relation to question 40, we believe that were there to be a requirement for a second medical practitioner to authorise the prevention of an adult from leaving hospital, there would still require to be meaningful checks and balances in place in relation to any second medical practitioners authorising those measures

43. If yes, should they only be involved if relevant others such as family, guardian or attorney dispute the placement in hospital?
- Yes
- No

Please give the reason(s) for your answer

Notwithstanding comments made in relation to question 40 about our concerns in relation to this proposal, we believe that there requires to be checks and balances in relation to every enhanced section 47 certificate irrespective of where there is dispute from family, guardian or attorney.

44. Do you agree that there should be a review process after 28 days to ensure that the patient still needs to be made subject to the restriction measures under the new provisions?
- Yes
- No

Please give the reason(s) for your answer

Notwithstanding comments made in relation to question 40 about our concerns in relation to this proposal we agree that there is a review process is necessary. We believe that meaningful checks and balances require to be in place in relation to this proposal.

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45. Do you agree that the lead clinician can only authorise renewal after review up to maximum of 3 months before Sheriff Court needs to be involved in review of the detention?

- Yes
 No

Unable to answer.

Please give the reason(s) for your answer

Notwithstanding comments made in relation to question 40 about our concerns in relation to this proposal we are concerned that there is a suggestion that a single medical practitioner as lead clinician could prevent an adult from leaving hospital for up to 3 months. There is a risk that with the proposed enhanced s47 certificate granting a similar legal authority to a detention certificate under the 2003 Act that this will be utilised due to expediency and convenience as a substitute to an appropriate consideration of use of the 2003 Act.

46. What sort of support should be provided to enable the adult to appeal treatment and restriction measures?

Please give the reason(s) for your answer

As per our response to question 39 it may be that there is a mandatory requirement for an adult prevented from leaving hospital under an enhanced s47 certificate arrangement that they are referred to independent advocacy services.
 However, where an appeals process relies an adult with incapacity having the ability to instruct an advocate or solicitor to exercise their right of appeal this would almost certainly disadvantage an adult with a significant level of cognitive impairment who was not able to offer such an instruction.

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Clarifying the provision of palliative care under Part 5 of the AWI Act where a welfare proxy disagrees with proposed treatment – Page 50

47. Do you agree that section 50(7) should be amended to allow treatment to alleviate serious suffering on the part of the patient?

Yes

No

Please give the reason(s) for your answer

Yes, this appears to be reasonable given that medical treatment cannot be given presently where the dispute resolution is ongoing.

48. Would this provide clarity in the legislation for medical practitioners?

Yes

No

Please give the reason(s) for your answer

If properly constructed such an amendment would increase clarity

APPENDIX 1

Part 6**Guardianships****Our proposals****Medical reports**

The present need to obtain two reports from a GP and a psychiatrist for a guardianship order can result in delays in the application. Incapacity reports are not included in the GP contract and GPs are not obliged to carry them out. Where they do so they are entitled to charge for their services. GPs are not experts in incapacity assessments, so may not feel confident, or may refuse because of the volume of their existing work.

There are fewer psychiatrists, but they are experts at assessing incapacity where it results from mental disorder. It is generally part of their contract to complete incapacity reports. Even so, ideally the person completing the report should know the adult and psychiatrists may refuse if they are not familiar with the adult.

Given this difficulty we are considering reducing the number of medical reports required from two to one for guardianship applications, including interim applications. On balance we think that, in considering who should complete a single report where incapacity is by reason of mental disorder, the wider option of either a GP or a psychiatrist would be preferable. This pragmatically recognises the difficulty in getting these reports and also that one of the professionals may not be comfortable in providing a report for a particular patient. Where incapacity is by reason of inability to communicate because of physical disability we suggest that the single report should come from a GP. The vast majority of cases of incapacity under the AWI Act relate to mental disorder.

In reducing the requirement to one report, we are very conscious that this report needs to meet the needs of the case and provide sufficient information to enable the sheriff to make a decision. Clear guidance will set out what is required of the report, including the need to adhere to the principles of the AWI Act. If the sheriff is not happy with a report, there will be the option to request an additional report but we would hope, with appropriate guidance, a single report will provide adequate information in the majority of cases.

We are also proposing that clinical psychologists may be added as a third category of professional who can complete incapacity assessments for guardianship cases where incapacity is by reason of mental disorder. We think, given that the requirement is to assess incapacity, rather than

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diagnosing the mental disorder causing the incapacity, the skills and knowledge of a clinical psychologist would be of the appropriate level to assess incapacity by reason of mental disorder for the purposes of a guardianship order

Question:

49. Do you think the requirement for medical reports for guardianship order should change to a single medical report?

- Yes
 No

Please give the reason(s) for your answer

Whilst we acknowledge the difficulties in obtaining two medical reports at times in relation to applications for Guardianship the proposed change to require only a single medical report presents some concerns. There a small number of cases that we are aware of where there is a difference of opinion between two medical practitioners in relation to their views on an adult's capacity and this provides an additional safeguard to the adult in the current Guardianship process. To reduce the requirement to one medical report will remove this safeguard.

50. Do you agree with our suggestion that clinical psychologists should be added to the category of professional who can provide these reports (where the incapacity arises by reason of mental disorder)?

- Yes
 No

Please give the reason(s) for your answer

We feel that clinical psychologists should be added to the category of professionals able to provide these reports. Clinical psychologists often provide the most comprehensive and nuanced assessments of capacity presently which inform the capacity assessments of psychiatrists that are then sought.

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Mental Health Officer Reports

We know that delays in the obtaining of a guardianship result from an accumulation of delays in a number of different areas. One of the areas that has been brought up in the past is the Mental Health Officer report.

The requirements of the Mental Health Officer report for a guardianship application are in regulations¹⁵. The Mental Health Officer has to consider each principle of the AWI Act which includes taking account the views of the nearest relative and any person who may have an interest in the adult. We have been told that there can be delays where the Mental Health Officer tries to track down the opinions of every possible relative. We are considering whether the Mental Health Officer form for guardianship applications could be improved to make it more concise, whilst retaining the requisite information and would appreciate your views on this.

Question:

51. Do you think the Mental Health Officer form for guardianships can be improved, to make it more concise whilst retaining the same information?

Yes

No

Please give the reason(s) for your answer

The current AWI(2) form completed by Mental Health Officers is repetitive and does not necessary lend itself to full description of the adult's circumstances due to the format. A more concise report which retained the same information would be welcomed.

¹⁵ See Schedule 2 of SSI 2002/96.

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Person with sufficient knowledge reports for guardianship relating to property and financial affairs

This report has a wide qualification criteria for who can complete the report. Any person who has sufficient knowledge to complete the report¹⁶ can do so, although they have to explain why.

The format of this report is the same as the mental health officer report, so we are considering whether the same information can be provided in a more concise manner.

In addition, we have been told that the 'person with sufficient knowledge' report often is seen of little value. This is both because of the lack of detail but also because of the qualifications of the person completing the report. It may be a social worker, or it could be a friend or family member of the adult. We are interested in your views on whether this needs to change.

The second part of the report relates to the proposed guardian's suitability. OPG have in recent times introduced a guardian's declaration form¹⁷ informally into proceedings.

This was introduced following the experience of OPG of the performance and preparedness of guardians once they had been appointed. Often OPG have found that appointed guardians had little or no knowledge of the reporting duties they were required to undertake as supervised by OPG.

Both the OPG form and the 'person with sufficient knowledge' form cover the proposed guardian's suitability. The OPG form requires a lot more detailed financial information than the second part of the 'person with sufficient knowledge' form. We think this information is more appropriately collected by OPG, who then provide a copy of the report to the court, with their own comments on the guardian's suitability attached. This allows the sheriff to consider suitability and the OPG comments before appointment.

We therefore propose that the second part of the 'person with sufficient knowledge' report is no longer required. Instead we propose that in the same way an applicant has to give notice to the chief social work officer of their intention to make an application for guardianship with welfare powers¹⁸ notice should be given to the Public Guardian for an application including financial powers. Following this the applicant will be required to complete and send

¹⁶ [Form AWI 8 \(schedule 8\): report to accompany application for guardianship relating to property and financial affairs](#)

¹⁷ [Guardian Declaration](#)

¹⁸ S.57(4)

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the guardian declaration form to OPG. OPG will then submit this to court along with any comments on the suitability of both the guardian and the application.

Questions:

52. Do you think the 'person with sufficient knowledge' form can be improved, making it more concise whilst retaining the same information?

- Yes
 No

Unable to answer.

Please give the reason(s) for your answer

We don't feel able to comment on this given that we do not complete person with sufficient knowledge reports as a local authority / HSCP

53. Should the person with sufficient interest continue to be the person who prepares the report for financial and property guardianship?

- Yes
 No

Unable to answer.

Please give the reason(s) for your answer

Please see response to question 52.

54. Do you agree with our proposal to replace the second part of the 'person with sufficient knowledge' report with a statutory requirement to complete the OPG guardian declaration form?

- Yes
 No

Please give the reason(s) for your answer

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Please see response to question 52.

Sheriff discretion to consider MHO reports out-with 30 days limit

At present the sheriff has discretion to consider an application if the medical reports are out with the 30-day limit. This is only if the sheriff is satisfied there has been no change in circumstance since the examination and assessment was carried out¹⁹.

We think the same discretion should be afforded to the sheriff in the case of mental health officer reports. Presently we know of occasions when a report is just over the 30-day limit, with no change of circumstance. But the rigidity of the legislation requires a whole new report to be compiled, with the accompanying delay.

Question:

55. Should sheriffs be afforded the same discretion with mental health officer report timings as they are with medical reports?

- Yes
 No

Please give the reason(s) for your answer

We completely agree that this proposal would bring discretion for MHO reports in line with existing discretion for medical reports. We believe this will alleviate some pressure in relation to MHO services requiring to undertake repeat visits to adults due to lack of coordination the required medical reports.

¹⁹ S.57(3B)

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Amendment of interim guardianship order for urgent cases

Welfare guardianship orders invariably involve social care powers and are therefore ongoing, rather than time limited or one-off powers. This makes them more suitable to guardianship orders. That meant that a separate, bespoke, short term placement type of order would always have to be followed up by a guardianship order, bringing potential for a gap in the orders, or a situation where the bespoke order might take longer than the guardianship order (on appeal for instance). Therefore, it makes more sense to focus attention on using the interim guardianship system.

At the moment a full guardianship order application is required in order for interim powers to be asked for. We propose that the AWI Act be amended so that an interim guardianship can be applied for separately and used swiftly where an urgent order is required, for instance where there is a need to move someone due to an imminent risk to their welfare.

An application for interim guardianship may be made to the sheriff court. It will require an abbreviated MHO report, that will report only on the appropriateness of interim powers. This report will however still require to demonstrate the principles have been adhered to – in line with Part one proposals. A single medical report will be required. Given the abbreviated nature of the report, we suggest that rather than a requirement to prepare this report within 21 days the requirement should be that it is prepared within seven days of notice being given to the local authority by the applicant. If a full guardianship order is considered necessary, the full report can be submitted to court in the usual timescale, with a hearing be scheduled on receipt of the full report.

We propose there should be a timescale of 5 calendar days, once the application is received by the court, for the sheriff to make a decision on the interim powers. We do not propose any change to length of time the interim powers can be sought for. At present interim powers can be sought for 3 months beginning with the date of appointment, with flexibility allowed to the sheriff to appoint for a longer period not exceeding 6 months. We recommend these timings remain.

Questions:

56. Do you agree that the best approach to cater for urgent situations is to amend the existing interim guardianship orders?

- Yes
 No

Please give the reason(s) for your answer

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We agree that amending existing interim guardianship order processes are a positive proposal. However, there are some practical issues with these proposals which will potentially impact on the rights of adults which should be balanced against the need for urgency. Notice of hearings to adults and ability to arrange representation are likely to be impacted. Considerations of expediency in addressing interim applications must be balanced with the need to protect the rights of adults with incapacity, such as securing representation.

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57. Do you agree that an abbreviated mental health officer report together with a single medical report should suffice for a guardianship order to be accepted by the court in the first instance?

- Yes
 No

Please give the reason(s) for your answer

An abbreviated mental health officer report and single medical report would provide benefit in terms of expediting the process related to applications for interim orders. However, it is important that the MHO report continues to demonstrate the principles of the act and the suitability of the proposed Guardian is thoroughly assessed. We note the proposed timescales associated with the MHO report being addressed within 7 days-notice of the application being received. Whilst we appreciate the intent in relation to this timescale there needs to be an appreciation that the Mental Health Officer needs to be afforded sufficient time to undertake their assessment as in some particularly complex cases the 7-day timescale for completion of reports will not be sufficient to undertake necessary enquiries.

58. Do you agree that there should be a short statutory timescale for the court to consider urgent interim applications of this sort?

- Yes
 No

Please give the reason(s) for your answer

We agree that there can be delay in obtaining a date for a Court hearing in relation to any application for Guardianship whether this is on an interim basis or otherwise. We welcome a shorter statutory timescale for the Court to consider interim applications but this will potentially impact on the rights of the adult in terms of representation at hearings should they oppose the interim application.

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Variation of guardianship order to add financial or welfare powers

There may be situations where a guardian has been appointed with only financial powers and circumstances change so that welfare powers need to be added or vice versa.

At present the AWI Act requires that in both the above cases, a whole new application is required. That means a new summary application, two new medical reports and either a mental health officer report or a 'person with sufficient knowledge' report. This, as we know, will be very time consuming. Very often it will be well established that the adult lacks capacity by reason of the existing guardianship order, meaning that two new medical reports may not be necessary.

We think a more efficient way would be to require only the additional mental health officer report, or 'person with sufficient knowledge' report together with the OPG guardian declaration form, to be required. The sheriff can ask for more medical reports if required, but they should not be mandatory.

Question:

59. Do you agree that further medical reports are not required when varying a guardianship to add either welfare or financial powers?
Please give the reason(s) for your answer

There are benefits to a medical report being available when an application to vary a guardianship order is made, particularly when an existing order has been in place for a number of years and the adult's condition may have improved and they may have developed skills. The ability of the sheriff to request such reports should be sufficient in these situations.

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Length of Guardianship orders

At present, an initial guardianship order can be made for 3 years, which can be increased to 5 years on renewal. However, the Sheriff has discretion to appoint a guardian for 'such other period, including an indefinite period as, on cause shown, he may determine.'²⁰

ECHR case law makes clear that there is a need for regular review of any restriction of a person's liberty and whilst guardianships do not necessarily restrict a person's liberty in all cases, they do by their very nature significantly impact on the adult who is subject to the guardianship.

Financial guardianships are subject to scrutiny by the OPG and welfare guardianships should be regularly reviewed by the local authority as set out in regulations.²¹ So time limited guardianships should be subject to regular review by the Sheriff Court and either the OPG or local authorities, or both, depending on the type of guardianship.

Indefinite guardianships should be subject to regular review by OPG and/or local authorities, again depending on the type of guardianship. The MWC has stated that in certain specific cases, such as an elderly person with advanced dementia, indefinite orders are appropriate but such cases are limited. In the majority of cases, periodical judicial scrutiny of orders should be the norm, as it removes the onus from the adult or another party to challenge the order if circumstances change. It should be noted however that the frequency of indefinite guardianship orders has reduced substantially in recent years, from 32% of orders in 2013-14 to 3.8% in 2022-23.²²

However, despite these safeguards, the review of guardianship orders has been criticised in a number of cases, in particular *Aberdeenshire Council v SF*²³.

This case concerned a guardianship order in respect of an adult living in support accommodation in England but habitually resident in Scotland. The placement constituted a DOL which was ostensibly authorised by the guardianship order. The case was before Poole J, to seek recognition and enforcement of the guardianship order. The Court was required to conduct a limited review of the case.

Due to lack of evidence that the adult in question had been given an opportunity to give views to the court, and the wide powers given the

²⁰ AWI Act s58(4)

²¹ SSI 2002/95 Adults with Incapacity (supervision of welfare guardians etc by local authorities)(Scotland) Regulations

²² [Adults with Incapacity Act monitoring report 2022-23](#)

²³ *Aberdeenshire Council v SF* (No 2) [2024] EWCOP 10

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guardian, namely that the order was proposed to be indefinite and was made for 7 years, the court did not recognise and enforce the particular guardianship order in this case order as it stated to do so would be contrary to a mandatory provision of the law of England and Wales as it would breach article 5(4) of ECHR and therefore the Human Rights Act 1998. In his conclusion Poole J stated:

“

Natural justice required that in a case where SF’s liberty was being put into the hands of others for a period of seven years, she should have had an opportunity to be heard and/or an opportunity to be represented. SF’s access to the court should not have been dependent on her taking the initiative. Effective access should have been secured for her. As it is, there were no measures taken to ensure that her Art 5(1) rights were upheld”

It is of concern that in this case the principles of the AWI Act do not appear to have been followed. We would suggest that the changes proposed to the principles of the Act, set out in part one of this consultation should eliminate the possibility of the adult not being given an opportunity in the future to express their views to the court. However, this does not address the question of the length of the guardianship order.

In this case an adult was placed under a guardianship order for 7 years, in circumstances that are quite different to those considered acceptable for indefinite guardianships by the MWC, such as elderly adults with advanced dementia. In light of this we wonder whether therefore we need to revisit the approach to length of guardianships generally.

In the next part of this consultation chapter we set out our approach to DOL and suggest time limits for guardianships which authorise deprivation of an adult’s liberty.

But we would also be grateful for views on whether we need to change the current approach to length of guardianship orders more generally, and in particular if there is a need to remove discretion from the sheriff to grant an indefinite guardianship order.

In doing so, we need to consider the application of the AWI Act principles, namely whether in every case there will be a benefit to the adult in requiring them to go through the renewal procedure. And if we do continue with the sheriff’s discretion to grant an indefinite guardianship, what safeguards would need to be put in place to ensure regular reviews take place and account can be taken of changes in circumstances.

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Questions

60. Does the current approach to length of guardianship orders provide sufficient safeguards for the adult?

- Yes
 No

61. Do changes require to be made to ensure an appropriate level of scrutiny for each guardianship order?

- Yes
 No

62. Is there a need to remove discretion from the sheriff to grant indefinite guardianships?

- Yes
 No

Please give the reason(s) for your answer

There is variation at present between sheriffs in relation to the duration of orders being granted for adults in similar circumstances which raises the question of how the duration of each order is determined. There may be benefit from consideration of the duration of orders being granted recommended in a revised code of practice.

63. If you consider changes are necessary, what do you suggest they would be?

Please give the reason(s) for your answer

We would welcome clearer guidance being available to Courts in relation to the duration of orders being granted.

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Adding additional exclusions to AWI Act

The AWI Act presently states that there are some things that a guardian or an attorney may not do. They are very limited lists of powers and are identical for guardians and attorneys. There is no equivalent list for interveners.

At the moment the following powers are excluded from guardians and attorneys in the AWI Act:²⁴

- Place the adult in a hospital for the treatment of mental disorder against their will;
- Consent on behalf of the adult to any form of treatment in relation to which the authority conferred by section 47(2) does not apply by virtue of regulations made under section 48(2);
- Make, on behalf of the adult, a request under section 4(1) of the Anatomy Act 1984 (c. 14);
- Give, on behalf of the adult, an authorisation under, or by virtue of, section 6(1), 16F(1)(a), 17, 29(1) or 42(1) of the Human Tissue(Scotland) Act 2006 (asp 4);
- Withdraw an authorisation, on behalf of the adult, by virtue of section 6A(1) of that Act;
- Make, on behalf of the adult, an opt-out declaration by virtue of section 6B(1) of that Act;
- Withdraw an opt-out declaration, on behalf of the adult, by virtue of section 6C(1) of that Act; or
- Make, on behalf of the adult, a nomination under section 30(1) of that Act

Over the past 20 years in the operation of the AWI Act, it has become clear that it would be helpful to add to this list of exclusions to clarify the roles and responsibilities of guardians and attorneys.

64. We propose that the following powers should be added to the list of actions that guardians, attorneys and interveners should be expressly excluded from. Do you agree with this proposal?

1. consenting to marriage or a civil partnership

- Yes exclude
 No

²⁴ S16(6) and s.64(2)

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2. consenting to have sexual relations

- Yes exclude
 No

3. consenting to a decree of divorce

- Yes exclude
 No

4. consenting to a dissolution order being made in relation to a civil partnership

- Yes exclude
 No

5. consenting to a child being placed for adoption by an adoption agency

- Yes exclude
 No

6. consenting to the making of an adoption order

- Yes exclude
 No

7. voting at an election for any public office, or at a referendum

- Yes exclude
 No

8. making a will

- Yes exclude
 No

9. if the adult is a trustee, executor or company director, carrying discretionary functions on behalf of them

- Yes exclude
 No

10. giving evidence in the form of a sworn affidavit

- Yes exclude
 No

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65. Are there any other powers you think should be added to a list of exclusion?

Please give the reason(s) for your any of your answers to questions 64 and 65 above

No comments.

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Part 7**Approach to Deprivation of Liberty**

Court cases since the AWI Act came into force require us to consider the deprivation of liberty of adults who lack capacity, in social care settings. This was considered by the Scottish Law Commission in their 2014 report .

What do we mean by DOL?

Deprivation of liberty is about how measures are applied rather than where they are applied. The key factor is whether the person is under the continuous supervision and control of those responsible for their care and whether the person is free to leave.

We are not proposing to include a deprivation of liberty in the AWI Act. We consider that a better approach is to set out in the code of practice and guidance, what factors need to be considered in assessing whether an adult will be subject to a DOL, or restrictions on their liberty, or not. This will ensure the factors relevant to each case are properly considered. Guidance and changes to the codes of practice will be fully consulted on in due course. We propose however that the term 'deprivation of liberty 'is used in legislation as it is well understood.

We are here concentrating on DOL, but we are aware that there are views that restrictions on liberty short of depriving someone of freedom to come and go as they please from their place of residence, should also be subject to additional safeguards.

We have said in part 5 of this consultation that we will be developing a scheme in regulations, which will be consulted on in due course to address the perceived lack of safeguards around the use of force and restrictions in cases of treatment under section 47 of the AWI Act.

What are we doing about DOL safeguards?

We are proposing to follow the recommendations of the SMHLR. They recommended that where a person, is able to make an autonomous decision to express their consent to their living arrangements, even where these might amount to a DOL, this must be respected. We also felt that where a person cannot make an autonomous decision but can, with support, express a will and preference to remain in their current living arrangements, even if those arrangements would otherwise constitute a DOL there was no need for further judicial oversight.”

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We agree with this. If a person with support can clearly express a will and preference to remain in their living situation, even if that situation is a DOL, no further judicial oversight is required. But we are proposing a stand-alone right of appeal similar to that proposed by the SLC report, and this would be available to anyone in these circumstances.

Powers of Attorney

The SMHLR proposed that a power of attorney (POA) with prescribed wording, may grant advance consent for the attorney to deprive the granter of their liberty, where the deprivation is proportionate and will demonstrably lead to more respect, protection and fulfilment of the person's rights overall.

We agree with this, but the proposal needs further detail. In Part 1 of this consultation, we have set out the changes that will be taken forward in any future law amending the AWI Act. One of these changes is to require that in creating a power of attorney, the granter must set out how a determination of their incapacity should be decided.

If the power of attorney is to include advance consent to deprive the granter of their liberty, we propose that this incapacity will require to be determined by independent medical assessment.

Section 16(3) of the AWI Act set outs the terms that need to be met to ensure the validity of a welfare power of attorney. We suggest that this be amended to reflect the wording required for a power of attorney to authorise a DOL of the granter and that if the required wording is not followed, the POA cannot validly authorise a DOL.

The exact wording will be considered. We anticipate that any Bill will contain a power for Ministers to specify the wording by regulations and this will be consulted upon at a later date, but we consider that the following factors will need to be reflected in the wording

- The granter has considered the circumstances in which it might be necessary to restrict their liberty or deprive them of their liberty, in order to safeguard their health or welfare, or that of others.
- The terms of article 5 of the ECHR have been explained to the granter
- Authority is given to the attorney/s alone
- The attorney must be satisfied the action is necessary to safeguard the health or welfare of the granter
- The attorney must act in accordance with the principles of the AWI Act

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- The attorney will be subject to any directions of the court following any application under section 3 (3) of the AWI Act.

This last point is particularly important. We propose that where an adult, having previously granted advance consent for their attorney to deprive them of their liberty, later objects to the consent being acted on, and their being moved to a setting where their liberty is restricted or deprived, the attorney, or any other person with an interest in the adult's welfare must seek a determination from the Sheriff under section 3(3) as to the appropriate way to proceed.

Appeal and Review

As stated above any process to deprive an adult of their liberty must be challengeable in a practical and accessible way. So, we suggest that an appeal may be made to the sheriff court, by any person demonstrating an interest in the welfare of the adult.

The grounds for appeal should be that the placement is not necessary to safeguard the health or welfare of the granter. In keeping with the proposed amended principles of the AWI Act as set out in part 1 of this consultation, there would be a requirement on the person raising the appeal, to demonstrate what steps had been taken to ascertain the views of the adult. The sheriff would also have the option of appointing a safeguarder (the position of safeguarders and curators is set out later in this part.)

It is important that the appeal process be accessible. We would welcome views on what added steps can be taken to improve the accessibility of the appeal process.

Review of the placement

In keeping with the principles of the AWI Act it is important to ensure that an adult is subject to the least restrictive option in relation to the freedom of the adult consistent with the purpose of the intervention. So, an adult deprived of their liberty should only be subject to these restrictions for the minimum time necessary. To that end regular reviews of the placement/ restrictions will be needed. And such regular reviews are also needed to meet ECHR requirements.

We are seeking views on how regular reviews can be carried out. At present the local authority is obliged to review guardianship orders every 12

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months²⁵. There is no such requirement for powers of attorney. Whilst there is a balance to be struck between ensuring the safety and wellbeing of an adult, and recognising that, in the case of a power of attorney, actions are carried out in accordance with the adult's specific instructions, when it comes to an individual being deprived of their liberty it is essential to ensure this situation is not abused in any way.

We therefore seek views on how DOLs authorised by a power of attorney can be appropriately reviewed, in a way that is accessible to the adult.

Guardianship orders

At present guardianship seems to be accepted as a lawful procedure under ECHR to deprive a person of their liberty.²⁶ But concern has been expressed that the voice of the adult is not at the centre of the process.

Section 64 of the AWI Act sets out the functions and duties of a guardian. We think it is important to add to these functions and duties the position around DOL

Our policy proposal is that specific provision is made whereby, on cause shown, the sheriff can authorise a guardian to place an adult in a setting which may form a DOL.

The cause shown would need to meet ECHR requirements, so

- An independent medical assessment of mental disorder would be needed – the current requirements for medical reports for guardianship applications, as amended by our proposed changes would address this we think
- The placement would need to be time limited, and subject to regular reviews. This should be a combination of regular internal reviews and a time limit placed on the authorisation by the sheriff.

²⁵ The Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities) (Scotland) Regulations 2002 (as amended)

²⁶ KvArgyll and Bute Council [2021]SAC (civ) 21

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- We propose that the initial order should be for a maximum of 12 months, which may on renewal be extended to a maximum of 2 years, in keeping with the requirement for regular reviews of detention ²⁷
- The placement would need to be a proportionate response to the situation the adult is facing. i.e. that it was necessary to safeguard the welfare or health of the adult.
- The principles of the AWI Act would still need to be followed, so the will and preferences of the adult would need to be ascertained

A right of appeal will be created, in similar terms to that for placements under a power of attorney, by any person demonstrating an interest in the welfare of the adult. The grounds for appeal should be that the placement is not necessary to safeguard the health or welfare of the granter. In keeping with the proposed amended principles of the AWI Act as set out in part 1 of this consultation, there would be a requirement on the person raising the appeal, to demonstrate what steps had been taken to ascertain the views of the adult. The sheriff would also have the option of appointing a safeguarder (the position of safeguarders and curators is set out later in this part.)

And again, we would welcome views on what added steps can be taken to improve the accessibility of the appeal process.

Review of the placement

Welfare guardianship orders are subject to a requirement for an annual review by the relevant local authority. This generally consists of a visit from a social worker or mental health officer. We consider however that a placement where an adult is being deprived of their liberty requires a more regular review and are recommending that a review every six months by the local authority should be undertaken for such placements. The adult, and /or any person demonstrating an interest in the welfare of the adult, may also request a review of the placement at any time.

We would like your views on whether these proposals are sufficient or if more needs to be done to ensure such placements are appropriately reviewed and what format the review should take.

Stand-alone right of Appeal

²⁷ Stanev. V Bulgaria (App 36760/06)(2012) 55 EHRR 22

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In its 2014 report the SLC recommended a stand-alone right of appeal against any detention which could be assessed as being unlawful. We agree with this proposal.

As said earlier in this part, we consider that if a person is able with support to express their will and preferences, and agree to remain in their current living environment, even if such an environment forms a DOL, then no further judicial oversight is required. However, if this situation should change then the adult needs to have a means of addressing this.

We would hope that regular internal reviews, and dialogue with the adult, supporting them to express their will and preferences would ensure steps could be taken quickly should the adult no longer be content with their placement. However, that cannot be guaranteed, and we consider a stand-alone right of appeal against a DOL is needed for such scenarios.

As with the appeal proposed against placements under a power of attorney and a guardianship order, an appeal should be able to be raised by any person demonstrating an interest in the adult. And the appellant will have to demonstrate how the will and preference of adult has been obtained.

Role of the Mental Welfare Commission

Section 9 of the AWI Act sets out the specific functions of the Mental Welfare Commission (the MWC) in relation to any adult to whom the AWI Act applies by reason of mental disorder. That is, the MWC has no role in relation to adults whose incapacity results solely from inability to communicate.

Currently the MWC must consult the Public Guardian and any local authority on cases or matters relating to the exercise of the AWI Act where there is , or appears to be a common interest; if the MWC is not satisfied with any investigation made by a local authority , into a complaint made under section 10 of the AWI Act , or where the local authority have failed to investigate the complaint the MWC may investigate complaints relating to the personal welfare of the adult made in relation to welfare attorneys , guardians or persons authorised under intervention orders.

The SMHLR recommended that the MWC may intervene if they have concerns, in cases where an adult has with support, expressed a will and preference to remain in their current living arrangements, even if those arrangements constitute a DOL

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We agree with this but we think the role of the MWC should be extended to permit them to investigate any placement where an adult is deprived of their liberty under the AWI Act, if concerns are raised with the MWC by any person having an interest in the adult's welfare , or by the MWC themselves in the course of a visit to the adult from a Commission visitor, under section 13 of the Mental Health (Care and Treatment)(Scotland) Act 2003.

Questions

66. Do you agree with the overall approach we are proposing to address DOL?

- Yes
 No

Please give the reason(s) for your answer

We are broadly in agreement with the overall approach suggested and feel that it addresses some of the important issues that require legal clarification in relation to DOL.

67. Is there a need to consider additional safeguards for restrictions of liberty that fall short of DOL?

- Yes
 No

Please give the reason(s) for your answer

This appears to be a difficult question to answer at the present time. We would welcome review of the proposed code of practice and guidance which will detail the factors that need to be considered in assessing whether an adult will be subject to DOL or restrictions of liberty. Given the statement in the consultation that '*the distinction between a DOL and restrictions upon a person's liberty is one of degree or intensity rather than nature of substance*' this seems open to interpretation.
 We feel a robust system of safeguards is necessary for both restrictions of liberty and DOL.

Powers of attorney

68. Do you agree with the proposal to have prescribed wording to enable a power of attorney to grant advance consent to a DOL?

- Yes
 No

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Please give the reason(s) for your answer

We agree that this proposal is necessary. This is likely to have a considerable impact on a large number of extant powers of attorney which do not include this prescribed wording and this may result in legal proceedings having to be instigated where DOL is not authorised in a large number of cases.

69. What are your views on the issues we consider need to be included in the advance consent?

Please give the reason(s) for your answer

As the consultation highlights there are likely to be issues in relation to advance consent being withdrawn at a later stage and how this is addressed is of importance. We note that the proposal that where the adult later objects to this consent being acted on that a determination must be sought from the Sheriff under s3(3). In a number of cases, particularly where the adult is in hospital and objects to a previously granted advance consent, seeking direction under s3(3) is likely to impact on the length of stay in hospital.

70. What else could be done to improve the accessibility of appeals?

Please give the reason(s) for your answer

Many of the adults we encounter will experience a significant degree of cognitive impairment and will not be able to offer instruction in relation to a legal representative to appeal to the Sheriff Court but would be able to offer a view in relation to their future care arrangements and express their opposition to this. There would likely be benefit to enshrining statutory rights in relation appeals and supports available to access appeals in a similar manner to the 2003 Act.

71. What support should be given to the adult to raise an appeal?

Please give the reason(s) for your answer

Consideration should be given to the statutory right to advocacy for adults where the adult objects to advance consent previously granted. There might also be a need to consider the need for appointment of a safeguarder or curator in these circumstances on a case by case basis.

72. What other views do you have on rights of appeal?

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Please give the reason(s) for your answer

No.

73. How can DOLs authorised by a power of attorney be appropriately reviewed?

Please give the reason(s) for your answer

We envisage that in most cases where DOL is authorised there will be an existing social work 'care management' review process. Consideration in relation to DOLs authorised by a power of attorney being reviewed as part of this existing care management review process may be possible. We feel that DOL reviews for those authorised by power of attorney should not be different from those authorised under guardianship.

Guardianships

74. Do you agree with the proposal to set out the position on DOL and guardianships in the AWI Act?

- Yes
 No

Please give the reason(s) for your answer

Many of the proposals made in the consultation are clearly aimed at expediting the guardianship application process and the rationale behind this is clear and understandable and some of these proposals impact on existing legal safeguards that are present in the Act. We note the proposal that a specific provision is made where the Sheriff can authorise a guardian to place in adult in a setting which may form a DOL. We note an 'independent medical assessment' of mental disorder would be needed but given the issues in obtaining medical assessments at the present time from clinicians involved in the care of adults we would welcome clarification on how these independent medical assessments would be obtained.

75. In particular what are your views on the proposed timescales?

Please give the reason(s) for your answer

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Timescales for the initial order for a maximum of 12 months and renewal for a maximum of 2 years is likely to increase the number of applications made to the Sheriff Court. We would welcome clarification in relation to the form of reports that would be required for each application as this may have a resource implication for local authorities and health boards.

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76. What are your views on the proposed right of appeal?

Please give the reason(s) for your answer

We agree that there should be a right of appeal.

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77. What else could be done to improve the accessibility of appeals?

Please give the reason(s) for your answer

As per our response to question 71 consideration should be given to the statutory right to advocacy for adults where the adult objects to advance consent previously granted. There might also be a need to consider the need for mandatory appointed of a safeguarder or curator in these circumstances.

78. Do you agree with the proposal to have 6 monthly reviews of the placement carried out by local authorities?

- Yes
- No

Unable to answer.

Please give the reason(s) for your answer

Whilst the rationale for a 6-monthly review of DOL placements is understandable the implications for local authorities should be considered. It is unclear at the present time how many placements would be within this framework but the number is potentially significant and 6 monthly review of these placements will likely have resource implications for local authorities.

79. Is there anything else that we should consider by way of review?

Please give the reason(s) for your answer

No.

Stand-alone right of appeal

80. Do you agree with our proposal for a stand - alone right of appeal against a deprivation of liberty?

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Please give the reason(s) for your answer

We agree in principle with the proposal for a stand-alone right of appeal against deprivation of liberty and that this appeal can be raised by any person demonstrating an interest in the welfare of the adult. We would welcome clarity on the appeal process to ascertain if there are any resource implications.

Role of the MWC

81. Do you agree with our proposal to give the MWC a right to investigate DOL placements when concern is raised with them?

Please give the reason(s) for your answer

Yes, we agree that the MWC should be given a right to investigate DOL placements when a concern is raised with them. This provides an additional safeguard and oversight when concerns are identified.

Appointment of safeguarders/curators ad litem

Safeguarders are appointed by the court to represent and safeguard the best interests of adults with incapacity in legal proceedings. Their primary responsibility is to ensure that the views, wishes and welfare of the adults they represent are fully considered and represented within the legal process.

Curators ad litem are appointed by the court to provide independent representation for individuals who are unable to represent themselves effectively in legal proceedings. They serve as a vital link between the court, their clients, and relevant stakeholders such as mental health officers, facilitating communication and ensuring that decisions are made in the best interests of those they represent.

There is a gap in terms of public awareness and understanding of the roles of safeguarders and curators ad litem. This can lead to misconceptions and challenges in implementing effective measures for both roles.

We agree with the recommendations set out in the SMHLR for both safeguarders and curators ad litem. There is a need for consistency of approach and transparency of appointment to both roles, and the tasks they are expected to complete.

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There is a distinction to be drawn between the appointment of safeguarders and curators. Safeguarders for adults are only used in AWI cases in the sheriff court where as curators ad litem can be used in other proceedings.

For safeguarders, we propose granting Ministers the power to establish regulations for a scheme that includes the appointment, training and payment of safeguarders. This aims to ensure consistent quality in reporting and a better understanding of the safeguarder's role and responsibilities.

For curators, we propose mandatory training for AWI cases and a requirement to report on actions taken to determine the will and preferences of the adults they work with. This statutory duty for curators ad litem will be outlined in forthcoming regulations that will be subject to consultation.

Questions

82. Do you agree with the proposals to regulate the appointment, training and remuneration of safeguarders in AWI cases?

- Yes
 No

Please give the reason(s) for your answer

This will hopefully improve the consistency and quality of safeguarders reports and improve understanding of the role and responsibilities of the safeguarder.

83. Do you agree with the proposals for training and reporting duties for curators?

- Yes
 No

Please give the reason(s) for your answer

We welcome the proposal that curators will have a statutory duty to report actions they have taken in order to ascertain the will and preference of adults with incapacity.

84. What suggestions do you have for additional support for adults with incapacity in AWI cases to improve accessibility?

Please give the reason(s) for your answer

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The Sheriff Court process does not lend itself to service user participation at present. Consideration could be given to how the court could be better set up for service user participation taking into account needs of adults with incapacity.

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Making financial abuse of an adult lacking capacity a criminal offence

Presently the AWI Act states that it is a criminal offence for anyone with powers under the AWI Act relating to the personal welfare of an adult to ill-treat or wilfully neglect that adult²⁸.

A person guilty of this offence is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or both. On conviction on indictment a person guilty of this offence is liable to imprisonment for a term not exceeding 2 years or to a fine, or both.

We are suggesting that there is an equivalent criminal offence for financial abuse of an adult lacking capacity, with similar liability as welfare. We know that welfare and financial abuse often come hand in hand. We hear that because of a lack of a specific criminal offence under the AWI Act, there can be uncertainty over whether a criminal offence has occurred, or whether it is a civil matter.

We think financial abuse of an adult lacking capacity is a criminal matter and whilst it can be prosecuted under other criminal charges like embezzlement, fraud or theft, there is merit to having a specific criminal offence of this kind. Adults with incapacity are one of the most vulnerable sectors in our society and already have a specific welfare offence of ill-treatment and wilful neglect. As such we think they deserve the profile of having a specific offence of financial abuse.

Question:

85. Do you think there should be a specific criminal offence relating to financial abuse of an adult lacking capacity?

- Yes
 No

Please give the reason(s) for your answer

We agree that adults with incapacity are potentially vulnerable to this type of abuse and welcome the proposal for this becoming a specific offence.

²⁸ AWI Act S.83

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86. If so, should the liability be the same as for the welfare offence?

Yes

No

Please give the reason(s) for your answer

We agree that the liability should be the same as a welfare offence. However, it would need to be proven that as at a certain date that a person lacked capacity, which may be more difficult to do in retrospect.

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Safeguards whilst awaiting discharge from hospital

The proposals contained within this consultation aim to streamline and improve the AWI process, enhance the rights of incapable adults and address the challenges around deprivation of liberty for incapable adults.

We know that nearly 20% of all delayed discharges are people in hospital settings, recorded as being adults with incapacity. These can be in-patients for planned care such as a hip replacement, or as an emergency through Accident and Emergency.

Clinicians will ensure that they receive the most appropriate care to support them to become clinically fit to be discharged. If someone is deemed not to have the capacity to make decisions on their own, as to the care and support needed at this stage and in particular where they might live, provisions under the AWI Act can be used.

Some patients will have made provision for this kind of situation by granting power of attorney to a friend or relative to make decisions on their behalf. However, if no such provision is in place, or the PoA does not give authority for the set of circumstances the adult is faced with, and the adult even with support is unable to make decisions for themselves, a welfare guardianship may be required. This process can take time, as it rightly ensures that the rights of the individual are fully protected.

This accounts for nearly 400 people each week who, despite no longer needing hospital care, are currently staying in that hospital rather than in a setting that would be more appropriate. In many circumstances this is not the least restrictive option to meet their health and care needs. Within the hospital setting, people are often disconnected from their families, friends and social connections which impacts on their rights to respect for private and family life.

Of particular concern is the duration of discharge delay for those that are classified as AWI-related delays. Compared to 'standard delays,' whose average length of delay is 16 days, we know that this increases to 66 days for AWI.

Part 2 of this consultation set out proposals for change to powers of attorney, part 6 of the consultation sets out proposals for change to guardianship orders, and later in part 7 of the consultation, we have set out the suite of options proposed to address the challenges around deprivation of liberty and incapable adults.

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We are very interested to hear your views on whether there are additional steps that could be implemented to ensure those individuals, who are a delayed discharge from hospital and who are currently going through the guardianship process, could be moved out of an acute setting and into a more appropriate care setting. An example would be a care home, that better meets their needs, while ensuring their rights are safeguarded.

We are also interested in your views on using different care settings, out with the NHS, for those who no longer need acute hospital care but for whom the guardianship process has not yet concluded.

Questions

87. Do you have experience of adults lacking in capacity being supported in hospital, despite being deemed to be no longer in need of hospital care and treatment? What issues have arisen with this?

- Yes
 No

Please give the reason(s) for your answer

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We have considerable experience where delays in relation to the Guardianship process result in adults remaining in hospital far longer than necessary when they are no longer in need of hospital care and treatment. This can lead to an increase in frustration and distress for the adult due to being 'stuck' in a hospital ward inappropriately. Often medical wards are not best placed to address issues related to the significant cognitive impairment experienced by adults who lack capacity. This can result in adults being detained under the 2003 Act as their presentation become more unsettled. In hospital the availability of professional resources/supports (e.g. Speech and Language Therapist) to aid communication and make sure the adult has been given all support available to communicate their decision, will and preferences can be an issue.

There is also a concern that medical practitioners are under the misconception that 'AWI' is a local authority process that is wholly under the control of social workers and local authorities.

The use of s13za of the Social Work (Scotland) Act 1968 can present challenges particularly where there is a difference of opinion in relation to its use and there can be a view that the expediency of s13za in relation to provision of care/moving from hospital should take precedence over the will and preferences of the adult.

Prolonged delays in relation to AWI applications in can be impacted by many factors such as delays in obtaining legal aid, delays in obtaining medical reports, delays in identifying appropriate care settings can all impact on adult with incapacity's journey from hospital.

88. Do you foresee any difficulties or challenges with using care settings for those who have been determined to no longer need acute hospital care and treatment?

- Yes
 No

Please give the reason(s) for your answer

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There are particular issues from some adults in obtaining suitable care settings before discharge from hospital can be planned. This can relate to issues about the lack of provision of specialist care settings such as for those under 65 with mental health difficulties or alcohol related brain damage.

There are issues locally that due to the demand for placements being greater than the supply that service providers have been able to preferentially choose which adults they deem suitable for admission to their care setting and this has led to a small number of adults with incapacity with more challenging conditions remaining in hospital whilst a suitable placement is identified. This is perhaps reflective of wider issues in relation to the provision of social care nationally at present.

89. What safeguards should we consider to ensure that the interests and rights of the patients are protected?

Please give the reason(s) for your answer

We feel that there are groups of adults with incapacity who are particularly vulnerable, for example those with significant cognitive impairment and/or and inability to communicate and no family to advocate on their behalf or to provide guidance on their will and preferences. It may be appropriate to consider mandatory provision of services such as advocacy and/or safeguarders/curators as part of the Guardianship/DOL processes.

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90. What issues should we consider when contemplating moving patients from an NHS acute to a community-based care settings, such as a care home?

The availability of appropriate social care settings to meet the needs of service users being discharge from NHS acute settings.

Consideration of more dynamic processes in relation to AWI requires to be balanced against the rights of adults with incapacity and safeguards to uphold these rights.

Mandatory raining for medical and nursing staff to promote understanding of capacity assessments and processes related to AWI.

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Part 8**Proposals to amend the AWI Act in respect of the governance of incapacitated adults participating in research****Proposal 91: Permitting more than one ethics committee to review research proposals involving adults with incapacity**

Currently, only a single ethics committee in Scotland is legally allowed to assess such research applications that involve adults with incapacity as participants (AWI research). This committee is known as Scotland A Research Ethics Committee (Scotland A REC). If the volume of AWI research in Scotland were to increase in the coming years, this could lead to workload issues at this lone committee and lead to a bottleneck in the overall approvals process of AWI research in Scotland. Secondly, other ethics committees in the UK can offer an appeal system, whereby if researchers feel their application has been wrongly issued an unfavourable opinion by one committee, they can request a second opinion and that the application is reviewed by a different committee. This is not possible with AWI research applications in Scotland as there is only one committee capable of reviewing such studies.

This proposal asks whether legislation should be amended to permit the establishment of more than one ethics committee in Scotland that is capable of reviewing research involving adults with incapacity.

Proposals 92 & 93: Permitting adults with incapacity to be included in research studies without consent for the types of studies where consent is already not required from adults with capacity

We have heard from the Scottish research community about the difficulties associated with conducting research studies that wish to make use of patient data taken from incapacitated adults. Whilst there are pathways to allow researchers to access and use unconsented data from participants with capacity under certain circumstances, this is not the case for incapacitated participants. This is due to consent being obtained from a welfare attorney, guardian or nearest relative being a necessary requirement for incapacitated adults to participate in research under the Adults with Incapacity Act.

Ultimately, this leads to circumstances in which data collected from an adult with capacity can be included in a research study without their consent in special situations, but data collected from an adult with incapacity cannot. One of our proposals (**Proposal 92**) puts forward a high level question that

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seeks views on the general principle of allowing adults with incapacity to be included as participants without consent, for research studies in which adults with capacity are already able to be included as participants without consent.

Proposal 93 then provides one example of how this principle could be practically implemented. Instead of consent being an absolute requirement for adults with incapacity to participate in research as is outlined in the current legislation, this proposal asks whether legislation should be amended to allow Scotland A REC to determine that, just like current practices for research involving participants with capacity, there will be special circumstances in which researchers would not be required to obtain consent to include adults without capacity in their study.

If implemented, the aim of this proposal would be to allow adults with incapacity to follow the same research approval pathways that are already in place for adults with capacity. This would apply almost exclusively to studies that make use of patient data; and would not apply to interventional research that tests new forms of treatment or care.

Proposals 94 & 95: Pathways for emergency waivers of consent

Generally speaking, Clinical Trials of Investigational Medicinal Products (CTIMPs) are research studies that involve testing new drugs, or testing an existing drug for a purpose distinct from the one for which it was originally approved. CTIMP research is governed by UK-wide legislation - The Medicines for Human Use (Clinical Trials) Regulations 2004. In these Regulations, there are pathways for emergency waivers of consent that permit enrolling incapacitated adults in CTIMP research studies without seeking consent from the appropriate representative of that person. However, this is not the case for all other (non-CTIMP) studies involving adults with incapacity in Scotland, which are governed by the Adults with Incapacity Act. This makes conducting emergency non-CTIMP research in Scotland incredibly difficult, as a decision about whether a patient should be entered in a research study must be made as soon as possible, and there is often insufficient time to locate and consult an appropriate representative of a patient who has lost capacity in order to make this decision in a timely manner.

These proposals outline new provisions that could be added to Adults with Incapacity legislation which would offer some pathways for emergency waivers of consent for participation in non-CTIMP studies in Scotland.

The first proposal (**Proposal 94**) asks whether researchers should be permitted to consult with a registered medical practitioner to determine the suitability of an incapacitated individual to participate in a given study. If both

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are in agreement, the incapacitated adult could be enrolled in the research study.

The second proposal in this section (**Proposal 95**) asks whether researchers should be allowed to enrol adults with incapacity in research studies without seeking the consent of the appropriate representative of the adult in question OR the consent of a registered medical practitioner, provided that researchers adhere to protocols outlined in advance in their research application which has undergone review at the Scotland A REC.

It must be noted that both the proposals discussed here would only apply in emergency situations, where it is not practical to locate and consult with the adult's usual representative (guardian, welfare attorney, or nearest relative). In addition, for both of these proposals, at the nearest practicable time, researchers would be required to seek consent from the adult's usual representative (or, indeed, the adult themselves if they regain capacity) about the continued participation of the adult in the research study.

Proposal 96: Expanding the list of approved persons who can provide consent for adults with incapacity participating in research

Adults with Incapacity legislation only permits three types of persons to provide consent for an adult with incapacity to participate in research. Consent must be sought from the adult's guardian or welfare attorney, or, in circumstances where both of these individuals cannot be reached, the adult's nearest relative.

In circumstances where none of these individuals can be reached, there is no pathway in the legislation for incapacitated adults to participate in non-CTIMP studies. Our proposal here would aim to expand the list of approved persons who can provide consent for adults with incapacity to participate in research.

This proposal puts forward the idea of allowing researchers to nominate a professional consultee (e.g. an individual's GP or social care worker) to consult with about the suitability of involving an individual in a research project. We are not being prescriptive about the specific profession of this nominated consultee, other than the fact they must have a professional duty of care towards the adult in question. This provision would only apply if researchers have taken steps to identify and contact the adult's usual representatives (guardian, welfare attorney, or nearest relative) without success.

Unlike proposals 94 and 95, if implemented, this above proposal (proposal 6) would not be restricted to emergency or urgent situations.

Proposals 97, 98 & 99: Allowing adults with incapacity to participate in a wider range of research studies

As of now, Adults with Incapacity legislation only allows incapacitated adults to participate in research that cannot be carried out on an adult possessing capacity, and where the research in question aims to obtain knowledge about the 'causes, diagnosis, treatment or care of the adult's incapacity; or the effect of any treatment or care given during their incapacity to the adult which relates to that incapacity'.

This essentially means that adults with incapacity cannot participate in research relating to conditions they may experience that are not linked to their incapacity; or indeed research of any other nature. One major consequence of this is that it may result in the exclusion of incapacitated adults from certain research studies, which in turn may risk research outcomes not catering to the needs of these individuals.

Thus, these proposals put forward the idea of opening up research opportunities for adults with incapacity; provided the same robust safeguards and checks are in place to ensure their well-being and rights.

The first of these questions (**Proposal 97**) asks whether adults with incapacity should be able to participate in research investigating conditions that may arise as a consequence of their incapacity. For example, with individuals with dementia more prone to falling, this would make it clear that incapacitated adults with dementia can partake in hip fracture studies, which a strict reading of the current Act may preclude.

The second question (**Proposal 98**) asks whether adults with incapacity should be able to participate in research investigating conditions that they experience, but that do not relate to their incapacity. For example, adults with incapacity who have a chronic condition that occurred prior to a separate condition that caused their incapacity would now be able to participate in research that investigates either of these conditions.

The third question (**Proposal 99**) asks if adults with incapacity should be able to participate in any research; regardless of whether the research explores conditions that relate to their incapacity or any other condition they may experience.

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Questions**Permitting the establishment of more than one ethics committee that is able to review research proposals involving adults with incapacity**

91. Should the AWI Act be amended to allow the creation of more than one ethics committee capable of reviewing research proposals involving adults lacking capacity in Scotland?

- Yes
 No

Unable to answer.

Please give the reason(s) for your answer

As a local authority / HSCP we do not feel it is appropriate to comment on this question.

Permitting adults with incapacity to be included in research studies without consent for the types of studies where consent is already not required from adults with capacity

92. In research studies for which consent is not required for adults with capacity to be included as participants, should adults with incapacity also be permitted to be included as participants without an appropriate person providing consent for them?

- Yes
 No

Unable to answer.

Please give the reason(s) for your answer

As a local authority / HSCP we do not feel it is appropriate to comment on this question.

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93. Should Scotland A REC (or any other ethics committee constituted under Regulations made by the Scottish Ministers in the future) have the ability to determine that consent would not be required for adults with incapacity to be included as research participants, when reviewing studies for which consent would also not be required to include adults with capacity as research participants?

- Yes
 No

Unable to answer.

Please give the reason(s) for your answer

As a local authority / HSCP we do not feel it is appropriate to comment on this question.

Pathways for emergency waivers of consent

94. Should the AWI Act be amended to allow researchers to consult with a registered medical practitioner not associated with the study and, where both agree, to authorise the participation of adults with incapacity in research studies in emergency situations where an urgent decision is required and researchers cannot reasonably obtain consent from a guardian, welfare attorney or nearest relative in time?

- Yes
 No

Unable to answer.

Please give the reason(s) for your answer

As a local authority / HSCP we do not feel it is appropriate to comment on this question.

APPENDIX 1

95. Should the AWI Act be amended to allow researchers to enrol adults with incapacity in research studies without the consent of an appropriate representative of the adult, in emergency situations where a decision to participate in research must be made as a matter of urgency, where researchers cannot reasonably obtain consent from an appropriate representative of the adult, and where researchers act in accordance with procedures that have been approved by Scotland A REC (or any other ethics committee constituted by regulations made by the Scottish Ministers)?

- Yes
 No

Unable to answer.

Please give the reason(s) for your answer

As a local authority / HSCP we do not feel it is appropriate to comment on this question.

Expanding the list of approved persons who can provide consent for adults with incapacity participating in research

96. Should the AWI Act be amended to permit researchers to nominate a professional consultee to provide consent for adults with incapacity to participate in research, in instances where researchers cannot reasonably obtain consent from a guardian, welfare attorney or nearest relative?

- Yes
 No

Unable to answer.

Please give the reason(s) for your answer

As a local authority / HSCP we do not feel it is appropriate to comment on this question.

APPENDIX 1

Allowing adults with incapacity to participate in a wider range of research studies

97. In addition to being permitted to participate in research that investigates the cause, diagnosis, treatment or care of their incapacity, should the AWI Act be amended to allow adults lacking capacity to participate in research that investigates conditions that may arise as a consequence of their incapacity?

- Yes
 No

Unable to answer.

Please give the reason(s) for your answer

As a local authority / HSCP we do not feel it is appropriate to comment on this question.

98. In addition to being permitted to participate in research that investigates the cause, diagnosis, treatment or care of their incapacity, should the AWI Act be amended to allow adults lacking capacity to partake in research that investigates conditions they experience that do not relate to their incapacity?

- Yes
 No

Unable to answer.

Please give the reason(s) for your answer

As a local authority / HSCP we do not feel it is appropriate to comment on this question.

APPENDIX 1

99. Should the AWI Act be amended to allow adults with incapacity the opportunity to participate in any research; regardless of whether the research explores conditions that relate to their incapacity or investigates conditions that they experience themselves?

Yes

No

Unable to answer.

Please give the reason(s) for your answer

As a local authority / HSCP we do not feel it is appropriate to comment on this question.

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

WEST LOTHIAN LEISURE – FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2024

REPORT BY HEAD OF FINANCE AND PROPERTY SERVICES

A. PURPOSE OF REPORT

This report provides an update on the West Lothian Leisure (WLL) 2023/24 Audited Accounts which were approved and signed off by WLL's Board during its AGM held on 19 September 2024.

B. RECOMMENDATION

It is recommended that Council Executive notes the approved WLL 2023/24 Audited Accounts.

SUMMARY OF IMPLICATIONS

I Council Values	Being caring, compassionate, open, honest and accountable. Working collaboratively, inclusively and adaptively
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Local Government (Scotland) Act 1975, Section 90: Following the Public Pound
III Implications for Scheme of Delegations to Officers	None.
IV Impact on performance and performance Indicators	Council funding for WLL enables the provision of a range of cultural and leisure services.
V Relevance to Single Outcome Agreement	Effective prioritisation of resources will be essential to achieving the targets contained in the Single Outcome Agreement.
VI Resources - (Financial, Staffing and Property)	The council is providing WLL with core funding of £2.048 million in 2024/25.
VII Consideration at PDSP	None.
VIII Other consultations	West Lothian Leisure. Education Services.

D. TERMS OF REPORT

D.1. Introduction

This report provides an update on the finalised, and WLL Board approved, WLL Audited Accounts for 2023/24.

A timetable has been agreed with WLL to ensure current and relevant financial information is provided to the council. All financial information is regularly monitored and analysed by council officers and will continue to be reported to the West Lothian Leisure Advisory Committee, with a focus on implications for the council.

D.2. WLL 2023/24 Financial Statements Summary

WLL's Board approved its 2023/24 Audited Accounts during its AGM held on 19 September 2024. At this meeting it was reported that WLL's auditor (Azets) presented the audited accounts for the financial year 2023/24 noting that they were unqualified and that WLL continued to be a going concern. These accounts show a general reserves deficit in 2023/24 of £531,000 leaving a general reserves balance of £769,000 as at 31 March 2024.

Appended to this report are the WLL Audited Accounts for the year ended 31 March 2024 (Appendix 1) and the Audit Management Report from WLL's auditor, Azets (Appendix 2).

A summary of WLL's trading statement per its Audited Accounts and its budget for 2023/24 is set out below:

Figure 1: Trading statement for 2023/24

	2023/24 Audited Accounts £'000	2023/24 Budget £'000	Variance £'000
Income			
Membership fees and services	10,477	10,537	(60)
WLC management fee	2,025	2,167	(142)
Others	203	387	(184)
	12,705	13,091	(386)
Expenditure			
Employees	7,005	7,488	483
Property costs	2,783	3,369	586
Transport costs	69	88	19
Depreciation	350	382	32
Others	3,029	2,949	(80)
	13,236	14,276	1,040
General reserve surplus/(deficit)	(531)	(1,185)	654

General

WLL budgeted a deficit of £1.185 million for 2023/24 as a result of the trading challenges of recovering from the Covid-19 pandemic, the cost of living crisis and global economic problems as well as the ceasing of one-off Covid recovery funding in 2022/23.

During the year, WLL management undertook a strategic review to determine how to mitigate this deficit and, as a result of this, WLL ceased to operate four sites from 1 September being Xcite Linvingston, Xcite Broxburn, Xcite Armadale and Howden Park Centre (the “four sites”). This significantly reduced WLL’s trading deficit and largely explains why the actual deficit for 2023/24 of £531,000 was £654,000 lower than the budgeted deficit of £1.18 million – the positive full-year effect of ceasing to operate these four sites will continue into 2024/25.

Income

Membership fees and services income for 2023/24 was £10.48 million, £60,000 less than budget, as the reduced income from ceasing to operate the four sites was largely mitigated by strong growth at the sites remaining in operation

The variance between the budgeted and actual management fee provided by the council to WLL of £142,000 (actual £2.02 million, budget £2.17 million), largely results from a difference in the treatment of free and curricular swimming council funding in the budget and actual accounts.

Expenditure

Total employee costs in 2023/24 were £7.00 million, £483,000 less than budget, largely due to savings from ceasing to operate the four sites, restructurings and reductions in opening hours being partially offset by increased staff costs at certain sites remaining in operation so as to cope with the increased levels of business at these sites.

Property costs were £2.78 million, being £586,000 less than budget, largely due to savings, particularly in energy costs, resulting from the closure of the four sites.

As has been the case in previous years and subsequent to agreement by Council Executive, the Head of Finance and Property Services issued a letter of financial comfort to WLL in relation to its 2023/24 audit, a copy of which is set out in Appendix 3 (note: this letter is not private or confidential).

D.3. WLL Strategic Risks

WLL has identified 8 high-level risks. These include:

1. Unplanned or unexpected increase in operating costs and/or inflation.
2. Continued economic downturn and the cost-of-living crisis could threaten financial sustainability
3. Further reduction in WLL's core management fee from WLC which threatens financial sustainability.
4. Lack of access to funding resulting in inability to invest in facilities.

5. Another Covid-19 pandemic or other infectious disease could temporarily and significantly affect the ability of WLL to provide services and adversely impact its revenue – threatening financial sustainability.
6. Business Plan not delivering on business objectives/company goals.
7. Major plant failure could result in service disruption and facility(s) closure leading to loss of income.
8. Increased staff turnover or difficulties recruiting results in vacancies not being filled and potential disruption to services

WLL advises that the risk assessments associated with these risks identify existing controls and further actions to reduce the risk.

E. CONCLUSION

WLL's Board approved WLL's 2023/24 Audited Accounts during its AGM held on 19 September 2024; these accounts are unqualified. These accounts showed that WLL had a general reserves deficit of £531,000 in 2023/24 leaving a general reserves balance of £769,000 as at 31 March 2024.

F. BACKGROUND REFERENCES

1. WLL budget for 2023/24
2. WLL Strategic Risk Register
3. WLL Funding Agreement for 2024/25

Appendices/Attachments:

Appendix 1 - WLL Directors Report and Financial Statements for the year ended 31 March 2024

Appendix 2 - Audit Management Report from WLL's auditor Azets

Appendix 3 – Letter of Comfort

Contact Person: Robert Young, Senior Service Accountant
Email: Robert.Young@westlothian.gov.uk

Patrick Welsh
Interim Head of Finance and Property Services
1 October 2024

WEST LOTHIAN LEISURE

Directors' Report and Financial Statements

For the year ended 31 March 2024

Registered in Scotland: SC543017

Charity Number: SC027470

WEST LOTHIAN LEISURE

Directors' Report and Financial Statements

For the year ended 31 March 2024

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WEST LOTHIAN LEISURE

Administrative Information

For the year ended 31 March 2024

The Board Report incorporates the Trustee Report for the purposes of charity law and the Directors' Report and Strategic Report for the purposes of company law.

**Reference and administrative details
West Lothian Leisure**

Company number: SC543017

Charity number: SC027470

Secretary

Beverley Greer

Chief Executive

Ben Lamb

Key Management Personnel

Mark Chambers, Head of Corporate Services
Andrew Heron, Head of Finance
Karen Wernham, Head of Operations

Registered Office

Xcite Bathgate Sports Centre
Balbardie Park
Torphichen Road
Bathgate
West Lothian
EH48 4LA

Solicitors

Lindsays LLP
Caledonian Exchange
19a Canning Street
Edinburgh
EH3 8HE

DWF LLP
No.2 Lochrin Square
96 Fountainbridge
Edinburgh
EH3 9QA

Bankers

The Bank of Scotland plc
Almondvale South
Livingston
EH54 6SN

Barclays
Quay 2
Fountainbridge
Edinburgh
EH3 9QG

Auditor

Azets Audit Services
Chartered Accountants
Exchange Place 3
Semple Street
Edinburgh
EH3 8BL

WEST LOTHIAN LEISURE
Administrative Information
For the year ended 31 March 2024

Board

Trustees who held office to the date of signing are as follows:

Beverley Greer	Secretary
Sergio Tansini	Chair
Cllr. Tom Conn	Member
Gillian Hentges	Member
Suzanne McAdam	Member
Cllr Peter Heggie	Member (Resigned 21 st September 2023)
Cllr Daniel Logue	Member
Craig Campbell	Member
Michelle Chambers Cran	Member (Appointed 16 May 2024)
Kim Anne Walker	Member (Appointed 16 May 2024)

WEST LoTHIAN LEISURE

Board Report

For the year ended 31 March 2024

Chair's Statement

As we close this challenging yet transformative year, I am filled with a deep sense of pride and gratitude for what we have accomplished. The past twelve months have tested our resilience, demanded tough decisions, and required unwavering commitment from every member of our organisation. Despite these difficulties, I am pleased to report that we are concluding the year with a much improved financial position and a renewed sense of purpose.

Acknowledgment of Challenges and Achievements

This year has been marked by significant challenges. Rising living costs, unprecedented inflationary pressures, high energy costs, insufficient capital funding, and proposed removal of the charity's management fee by our partners, West Lothian Council, over a 4-year period; creating an unsustainable position requiring significant intervention.

The economic environment forced us to confront the need for rationalisation and consolidation of our services. These were not easy decisions, as they involved reevaluating our operations, making tough choices on resource allocation, and streamlining our activities to ensure a sustainable future.

However, amidst these challenges, we achieved some remarkable things:

- Record numbers of 2.6m visits to our venues and services, an increase of 4% from the previous year.
- Record concessionary scheme visits (97k), an increase of 25% from the previous year, ensuring we continue to provide affordable access for those in our community who need it most.
- Reduced our subsidy per visit (the amount we subsidise each individual visit) by 61p.
- Further invested in our people establishing an employee engagement forum, launching a new learning and development platform, and relaunching our annual people engagement survey.
- Delivered new investments and initiatives such as a golf simulator, "Exert" our high-intensity training studio, the new academy arena for our expanding academy programs, and hosted our first-ever Xcite colour run.
- Refreshed our branding and created a new strapline, further highlighting our charitable status "Your charity, investing every penny you spend back into a healthier and happier West Lothian".

Financial Overview

Our financial performance this year is a testament to our strategic planning and sound financial stewardship. At the beginning of the year, we faced a projected budget deficit of £1,185k. By year-end, we successfully reduced this to a deficit of £531k; a deficit reduction of 55%.

Gratitude and Acknowledgments

Our achievements this year would not have been possible without the extraordinary dedication and hard work of our staff, volunteers, and partners. I extend my deepest gratitude to our team, whose commitment and passion have been the driving force behind our successes.

Thanks as always to West Lothian Council for their support during the year and the management fee they provide, which has been crucial in helping us run our services over the past year.

I am delighted to welcome Michelle Chambers-Cran and Kim Walker to our Board of Directors. Their knowledge, extensive experience and fresh perspectives will undoubtedly strengthen our board.

Future Outlook and Goals

Looking ahead, we are excited about the future and the opportunities it holds. We plan to build on the solid foundation established this year by expanding our programs and exploring new initiatives that align with our vision. We'll continue to focus on improving access to community spaces, growing new business, improving the customer experience and ensuring that our services are accessible to all who need them.

WEST LOTHIAN LEISURE

Board Report

For the year ended 31 March 2024

While this year presented significant hurdles, it also revealed the strength, resilience, and potential of our organisation. Together, we have not only overcome these challenges but have positioned ourselves for a bright and impactful future. Thank you for your continued support and belief in our vision to help create a West Lothian where everyone can live a healthier, happier and longer life.

Sergio Tansini, Chair, September 2024

WEST LOTHIAN LEISURE

Board Report

For the year ended 31 March 2024

The Board of Trustees (Non-Executive Directors) presents its report and audited financial statements for the year to 31 March 2024.

Objectives and Activities

West Lothian Leisure, which converted from a Community Benefit Society to a Company Limited by Guarantee on 17 August 2016, has charitable status granted by HM Revenue and Customs in Scotland.

West Lothian Leisure was incorporated on 1 February 1998 and provides sports, cultural, outdoor education and leisure facilities to the community of West Lothian. It operates as a not for profit distributing organisation. Surpluses if generated are available to reinvest in the facilities to maintain and improve the service. The main facilities leased from West Lothian Council and managed by West Lothian Leisure are as follows:

Xcite Broxburn Sports Centre, Xcite Craigswood Sports Centre, Xcite East Calder Sports Centre, Xcite Linlithgow Leisure Centre, Xcite Armadale Swimming Pool, Xcite Bathgate Sports Centre, Xcite Broxburn Swimming Pool, Xcite Livingston Leisure Centre, Xcite Whitburn Leisure Centre, Polkemmet Country Park Golf Course and Range, Howden Park Arts Centre, as well as sports and cultural facilities at two community high schools and six high schools. West Lothian Leisure also took on the management of the Winchburgh Sport and Wellbeing Hub during the previous financial year.

On the 31st August the lease for Xcite Broxburn Swimming Pool, Xcite Livingston Leisure Centre, Xcite Armadale Swimming Pool and Howden Park Arts Centre were terminated.

The Company is governed by the Articles of Association, Standing Orders, Operating Guidelines and Code of Conduct for West Lothian Leisure Limited.

STRATEGIC REPORT

Strategies for Achieving the Stated Aims

West Lothian Leisure's Business Plan sets out the vision and values of the organisation together with strategies to achieve the stated aims. This document is developed in partnership with West Lothian Council and other stakeholders and approved by the Board. At each Board meeting performance against the stated success criteria is reported and where performance is below target actions to get back on track are discussed and agreed.

The Business Plan is supported by Departmental Plans and Facility Plans which have more specific action plans that relate to the stated aims.

- **Improving Access to Community Spaces**
 - Expanding portfolio into more community spaces
 - Expanding programming in community spaces
- **Grow New Business**
 - Grow revenues out with existing portfolio
 - Develop new sources of organic growth
 - Grow grants & funding revenue
- **Improving Lives & Communities**
 - Impacting more lives through H&W services
 - Make sure everyone is aware of charitable status
- **Improving the Customer Experience (Internal & External)**
 - Invest in our people, ensuring they have the skills needed to succeed
 - Create a customer focussed, innovative culture
 - Improving customer service

WEST LOTHIAN LEISURE

Board Report

For the year ended 31 March 2024

- **Sweat Our Assets**
 - Working smarter to maximise margins
 - Invest in existing spaces where we are well placed to win
 - Develop use of outdoor space

Achievements and Performance

The 31st March 2024 brings to a close the second full year of trading without any government imposed covid-19 restrictions. Throughout 2023/24 West Lothian Leisure (WLL) continued to recover from the pandemic with 2.59 million visits across our venues and services (93% of pre-covid attendance despite the closure of four venues 5 months into the year).

WLL continued to battle against the significant challenges of a reducing management fee, high energy costs, unprecedented inflation and cost of living pressures. WLL continued its commitment to paying the real living wage resulting in an over 10% pay increase for nearly 57% of our staff.

2023/24 has been one of the most challenging in the company's history. In April 2023 we were faced with a £1,185k budget deficit and the real threat of running out of cash in less than 2 years' time. A year on, and following a quite significant strategic shift, which involved closing four venues at the end of August 2023, the position is very different. A revised year-end deficit of £531k (excluding pension actuarial adjustments) was achieved and this included £112k of one-off costs relating to the closures. The closures have resulted in WLL being back to a sustainable position although management fee reductions proposed for 2026/27 and 2027/28 will require further action.

While the rationalisation and consolidation of our facilities and services has not been easy, for the company or our communities, the results 7 months on are notable. Despite these challenges, 2023/24 saw some excellent achievements & performance, including:

Our Communities

- Delivered a total Social Value of £14.4m in the year to March 2024, a 12% increase on the previous year, continuing to demonstrate the positive social, economic, and environmental impacts created by the activities of West Lothian Leisure.
- Over 6,100 children continue to participate in coaching classes every week with 28% growth in gymnastics as a consequence of the creation of the new Xcite Academy Arena in Bathgate.
- Continued growth in gym visits (up 28% on the prior year), including an amazing 228% increase in Xcite Fitness Factory appointments, a programme designed to enhance the fitness journey of 12-15 year olds.
- An overall Net Promoter Score (a customer loyalty metric that gauges the likelihood of our customers recommending our products or services to others) of 55 remains well above the national benchmark and is a fantastic reflection of the work being done to meet customer expectations.

Our Partnerships

- Continued to strengthen our partnership with West Lothian Council throughout the year, particularly through the challenges of rationalisation and consolidation, and thank them for their ongoing support. Despite the challenging economic climate, the collaboration and commitment to our joint initiatives has allowed us to continue to enhance the well-being of residents across West Lothian.
- Supported over 50 students through our Education to Employment partnership with West Lothian College, with 11 of them going on to secure employment with us.

WEST LoTHIAN LEISURE

Board Report

For the year ended 31 March 2024

Our Business

- Reduced the operating deficit by 55% resulting in a 61p reduction in subsidy per visit.
- Retained 96% of our members compared to the prior year despite the challenges of rationalisation and consolidation of services.
- Usage increased by 4% compared to the previous financial year.

Our Health Programmes

- Welcomed over 43,000 visits to our Ageing Well programme in the year and were delighted to welcome 115 care home residents who participated in our 'Canalypics' games event in May.
- Launched the new GP Referral 'Test of Change' model in January, designed to help us expand our programmes and reach more people.

Our People

- Successfully redeployed 63% of staff under the threat of redundancy with no compulsory redundancies.
- Completed our first employee engagement survey for over 7 years, achieving an organisational average score of 94 out of 100.
- Launched our new Learning Experience Platform and wellbeing hub.
- Created a brand-new Employee Forum with representatives across our venues giving our employees a voice within the organisation.

Financial Review

The financial statements for the year ending 31 March 2024 show a deficit of £617,350 (2023: deficit of £340,873). This is before an actuarial loss of £810,000 (2023: gain of £6,044,000) resulting in an overall loss of £1,427,350 (2023: gain of £5,703,127). The overall net fund balance at 31 March 2024 is now a net asset balance of £533,709 compared to a net asset balance of £1,961,059 at 31 March 2023.

West Lothian Leisure had previously experienced significant growth in membership prior to the pandemic; however, it has faced a significant period of business recovery to build back membership and other income to pre-Covid-19 levels. This was made all the more difficult as a result of the cost of living crisis and global economic problems.

The reduction to membership as a result of covid and the continued cost pressures (especially energy and wages) resulted in a budget being approved showing a deficit of £1,185k. It was decided to address this funding gap and the proposed future reductions to the management fee by closing four venues. This happened earlier than initially anticipated at the end of August 2023. This enabled the operating deficit (excluding pension scheme adjustments) to be reduced to £531,350 for 2023/24.

Income

Membership continued to recover post covid with membership numbers at the start of the year at 97% of membership numbers for March 2020. The closure of the four venues had a significant impact on membership numbers but by the end of the year membership numbers were back to 96% of the level before the closures. Overall membership income was up £710k (over 12%) on the previous year.

Leisure Service income (which includes pay per visit, club, room hire and NHS services) was only £10k down on last year despite the closure of four venues.

The West Lothian Council management fee for the year was £2,025k (£3,691k 2022/23). The £1,500k of additional funding to aid the recovery from the impact COVID came to an end. The landlord's maintenance funding reduced by £40k. 2022/23 included £187k of one-off capital funding and £287k towards start up costs

WEST LoTHIAN LEISURE

Board Report

For the year ended 31 March 2024

for the Winchburgh facility. In 2023/24 WLC kindly provided £146k towards the cost of maintaining the real living wage and £202k to cover the redundancy costs for the staff at the venues that closed.

Other income including donations and external funding remained reasonably steady but disappointingly saw a reduction in the NHS funding. Investment income increase by nearly 63% as a result of higher interest rates and the placement of £1.5m on a 95-day notice account to maximise the return on surplus cash.

Expenditure

Salary costs increased by £327k compared to 2022/23 adjusting for redundancy costs and the adjustment for the defined benefit pension fund. Salary costs include £219k (2023: £nil) for voluntary redundancy and early retirement costs. The FRS102 pension scheme adjustment was £115k compared to £486k for 2022/23.

West Lothian Leisure continues its commitment to paying the real living wage (increase applied from 1st April - £10.90 per hour from £9.90). A graded pay award of 5,7 or 10% was applied to all other staff from the 1st April 2023. Employer national Insurance contributions returned to their previous level of 13.8% after being temporarily increased by 1.25% for part of 2022/23 and the employer contribution to the Lothian Pension Fund increased by 0.5%. The pay award was partially offset by the savings made from the venue closures.

Significant savings were achieved on energy costs as a result of the closures, energy costs coming in at £655k under budget. Property costs include £876k of maintenance spend, reactive maintenance being overspent against budget due to a number of plant failures. A £26k refund of insurance premiums was received as a result of the restructure.

Input VAT was higher than normal in 2022/23 due to the replacement of gym equipment in all venues bar Bathgate. Depreciation has increased significantly compared to last year as a result of the replacement of the gym equipment and a number of fixed asset additions, notably the replacement of the artificial pitch, the indoor golf simulator and the Exert studio at Bathgate.

A loss on disposal of £147k was made on the gym equipment disposed of following the closure of the gyms at Livingston and Armadale.

Supplies and services include £112k of one off costs relating to the closure of the four venues and termination of the leases.

Investment for Growth

Investment for growth continued to focus on implementing a digital transformation strategy and transforming the company website. We continue to diversify by investing in new products and activities, for example a new golf simulator at Bathgate and the conversion of the indoor bowling hall into a multi function academy arena. The new 'Fitness Factory' gym access launched in May 2023, providing gym access for 12–15-year-olds. The new cycle circuit opened at Linlithgow Leisure Centre at the end of May 2023.

Strategic Risks

Each year a strategic risk register and associated risk assessments are presented to the Audit and Finance Sub Committee and to the Board.

The most severe risks have moved from those associated with the Covid pandemic to those related to the national and global, financial shockwaves affecting the UK economy and customer confidence.

WEST LOTHIAN LEISURE

Board Report

For the year ended 31 March 2024

The current high-level risks are:

- Unplanned or unexpected increase in operating costs and/or inflation.
- Continued economic downturn and the cost-of-living crisis could threaten financial sustainability.
- Further reduction in WLL's core management fee from WLC which threatens financial sustainability.
- Lack of access to funding resulting in inability to invest in facilities.
- Another Covid-19 pandemic or other infectious disease could temporarily and significantly affect the ability of WLL to provide services and adversely impact its revenue - threatening financial sustainability.
- Business Plan not delivering on business objectives/company goals.
- Major plant failure could result in service disruption and facility(s) closure leading to loss of income.
- Increased staff turnover or difficulties recruiting results in vacancies not being filled and potential disruption to services.

The risk assessments associated with these risks identify existing controls and further actions for risk reduction.

Investment Policy

A business case is presented to the Board for approval for any investment proposals and this includes an assessment of additional income generated (and/or costs saved), payback period and a risk assessment. Other private finance borrowing options are available; however, it should be noted that due to previous borrowing, current repayments to the Council are significant and any future borrowing requests should carefully consider the ability of WLL to take on more debt.

Principal Funding Sources

The majority of income comes from customer receipts - primarily membership income, pay and play income. Other principal income sources are West Lothian Council's management fee and partner funding from NHS Lothian for specific health and wellbeing programmes.

Reserves Policy

General Funds are unrestricted funds which are available for use at the discretion of the trustees in furtherance of the general objectives of the charitable company which have not been designated for any other purpose.

Designated Funds are unrestricted funds that have been set aside for a specific purpose, which will be utilised during the next and future years against specific expenditure for asset improvement.

Restricted Funds are funds which are to be used in accordance with specific restrictions imposed by donors or which have been raised by the charitable company for particular purposes. The costs of raising and administering such funds are charged against the specific fund.

Free Reserves are funds which can be freely spent on our charitable purposes. These exclude any restricted funds and the value of fixed assets (net of outstanding finance) as these assets can't be readily sold to meet any funding deficit. Free reserves at 31st March 2024 were deficit £154,712 (2023: surplus £943,078).

The Board has examined the Company's requirements for reserves in light of the main risks to the organisation. In 2019 it established a new policy whereby the company should aim to retain a minimum of at least £300,000 of reserves.

Incoming resources for the year ended 31 March 2024 were £12,705,155 (2023: £13,655,616). Overall funds on 31 March 2024 were £533,709 (2023: surplus of £1,961,059). The underlying result for the year (ignoring

WEST LoTHIAN LEISURE

Board Report

For the year ended 31 March 2024

pension adjustments) has resulted in the unrestricted reserves decreasing from £1,300,059 to £768,709 which complies with the new reserves policy.

In addition to carrying reserves WLL has a letter of support from West Lothian Council. West Lothian Council, as sole member of the company, have indicated that they have a process in place which the company believes would lead to the provision of funding to cover a trading deficit in excess of available cash reserves, should one occur.

Risk Management

The Board has assessed and recorded the major risks to which the Company is exposed, in particular those relating to the operations and finances of the Company and is satisfied that systems are in place to mitigate these risks.

Plans for future periods

We have prioritised collaborative working with West Lothian Council so that: we can better align our service delivery with Council strategic objectives; our services are better co-ordinated and integrated; we can deliver excellent value for money. We will also continue to work closely with the Health and Social Care Partnership, Sports Scotland, Creative Scotland and West Lothian College. Our business plan review allows us to ensure our vision is shared and that we are focusing on the right actions to ensure we contribute to our partners' outcomes.

We will continue to focus our work in the following areas:

1. Increased Income:

- Strong focus on implementing and investing in the sales and retention process to grow and keep more members.
- Identifying and accessing new sources of funding including donations and external funding for programmes from national agencies and charitable organisations.
- Improving productivity by implementing a new, staff performance review framework.
- Improving the way, we market and promote the Xcite brand and services.
- Building and launching a new website.
- Improving customer service excellence and engagement with customers to help shape future service delivery.

2. Managing Costs:

- Continuous review and management of all costs.
- Ongoing review of staff structures to ensure that they match our business and service objectives.
- Continuous review of the asset portfolio to identify potential rationalisation or replacement.
- Maximising the performance and cost efficiency of all support services.
- Support ongoing digital transformation projects.
- Maximising the performance of our buildings and physical assets.
- Ensuring we get excellent value from all our suppliers.
- Implementing the Towards Net Zero policy and investing in energy efficiency in partnership with West Lothian Council.
- Contributing towards the Council's budget reduction plans.

3. Management Fee:

The core management fee from the Council will continue to reduce with a further £250k reduction in 2024/25. The sport and leisure trust sector continues to face unprecedented cost increases in particular energy costs. The cost-of-living crisis continues to cause a reduction in household discretionary spend resulting in decreased expenditure on leisure. Therefore, WLL continues to review all aspects of the business to identify efficiencies and opportunities for business growth, whilst at the

WEST LoTHIAN LEISURE

Board Report

For the year ended 31 March 2024

same time continuing to deliver valued services in the communities it serves for those who need these services most.

It is more important than ever, that we continue to engage constructively with the Council so that a joint position on the type and level of service that the community needs is agreed together with the best delivery model and funding to achieve this.

4. Estate Strategy:

This remains a challenge with the older stock of buildings. West Lothian Leisure is now responsible for the management and funding of all maintenance works for the properties with no capital funding available from West Lothian Council. The reduction in funding, on going maintenance costs and increased operating costs (especially energy) resulted in WLL's request to cease to operate four venues on the 31st August 2023. The four venues were Howden Park, Xcite Armadale, Xcite Broxburn Pool and Xcite Livingston, these being four out of the five venues operating with the largest deficit.

5. Investment Strategy:

The development of a longer-term facility and agreed joint capital investment strategy between the Company and West Lothian Council is required. Prudential borrowing through WLC would be the preferred option to finance this investment but alternative sources of external funding may have to be sought for any large-scale investment.

6. Strategic Planning:

Our strategic and financial plan takes into consideration increased costs of operating the business and the reduction to the core management fee in future years.

We continue to monitor and manage projects aligned to the Business Plan. A new four year Business Plan for 2024 -2028 is being developed to align with the proposed reductions to the Management Fee.

7. Partnership Working:

We have built on and extended our partnership working with key partners principally West Lothian Council, Health and Social Care Partnership, Sport Scotland, West Lothian College, Creative Scotland and Community Leisure UK and continue to be an active member of the West Lothian Community Planning Partnership and Health and Social Care Partnership Strategic Board.

8. Reporting:

We have maintained the quality of reporting of financial and performance information both to partners and the regulatory bodies. Our Annual Report seeks to highlight our achievements in meeting West Lothian Council's strategic objectives. The performance reporting to the Board has also been widened to include KPIs aligned to the success measures described in the Business Plan and individual venue performance against budget.

9. Organisational Culture:

The roll out of the new performance review framework which will have the charity's core values at its heart, should ensure the workforce is more engaged and motivated.

We remain confident that the ongoing culture of service excellence as evidenced by our member experience, high NPS results and renewed focus on our charity values will continue.

10. Environmental Policy:

Following COP26 we launched our new environmental, sustainability and energy policy and implementation plans. 'Towards Net-Zero' sets stretching and ambitious targets to become carbon neutral by 2045. The policy seeks to ensure that addressing the climate change emergency becomes everyone's responsibility and sets out clear aims, objectives and actions.

WEST LoTHIAN LEISURE

Board Report

For the year ended 31 March 2024

Structure, Governance and Management

Structure

West Lothian Leisure is (from August 2016) a Company Limited by Guarantee with West Lothian Council as sole member. The Company also has charitable status granted by the Office of the Scottish Charity Regulator and is recognised as such by HM Revenue and Customs.

West Lothian Leisure was incorporated on 1 February 1998 (as an Industrial and Provident Society) and provides sports and leisure facilities to the community of West Lothian. It operates as a not for profit distributing organisation.

Corporate Governance

The Board (of Trustees or Non-Executive Directors) is committed to demonstrate good Corporate Governance and compliance with the Nolan recommendations in this respect. To this end it has established an Audit and Finance Sub Committee that works to a pre-determined Audit Plan based around these principles. The Audit and Finance Sub Committee monitors and considers the Company's compliance and records through the Audit and Finance Sub Committee Minutes, its findings that are then reported to the full Board of Trustees.

Induction and Training

Trustees are recruited to the Board after interview and approval at a Board meeting. They are selected for appointment if the Board believe their skills, knowledge and experience will benefit the Company. All Trustees receive an induction before joining the Board and additional training as necessary. If there are any areas where additional training is required this would be discussed at a Board meeting, or a one-to-one meeting with the Chair, and a solution identified.

Decision Making

The Standing Orders, Operating Guidelines, Code of Conduct and Articles of Association set out the decision-making powers of the Board, Sub Committees, Chief Executive and Senior Managers. This document is reviewed annually by the Board of Trustees.

The Board has a duty to keep a strategic overview of the organisation including the approval of the corporate strategy and monitoring performance against agreed targets. The Board focusses on strategic issues and through its policy setting lays out a framework within which the Chief Executive and Senior Management Team operate. Pay and remuneration policy is set by the Board, as is the Chief Executive's pay. The Chief Executive determines the grading of staff (within the policy and arrangements set by the Board) and determines staff duties and responsibilities.

Employee Engagement

WLL takes its responsibility to engage with and inform employees about matters relating to company performance and other matters of interest seriously. Hybrid working for head office staff has become an established way of working. Engagement with outreach and venue staff incorporated many of the new methods developed during the pandemic and included:

- Entire workforce webinars - staff participated in sessions covering company updates and question and answer sessions with the Chief Executive and Leadership Team.
- Regular email bulletins from the Chief Executive.
- Employee communications on new policies, procedures, and staff benefits.
- The creation of an Employee Forum.
- Employee representative on the WLL Board of Directors.
- Training and development for all staff on the new performance review framework.
- Renewed focus on promoting WLL's core values via the performance framework training.
- New on-line induction training platform.

WEST LOTHIAN LEISURE

Board Report

For the year ended 31 March 2024

Directors also oversee the charity's duty of care to its workforce by reviewing and approving the company health and safety policy and regularly review the strategic risk register.

Third Party Indemnity Provision

As part of the overall insurance arrangements for the Company we have in place Trustees and Officers Liability insurance that provides qualifying third-party indemnity provision for the benefit of the Trustees of the Company. This was in force throughout the financial year.

Trustees Attendance at Audit and Finance Sub Committee Meetings

At each AGM six Trustees are appointed to sit on the Audit and Finance Sub Committee, although any Trustee can attend any Audit and Finance Sub Committee meeting.

Attendance Record	Attendance at Audit & Finance Sub Committee meetings			
	Apr	Aug	Nov	Jan
Trustees				
Beverley Greer	P	P	P	P
Suzanne McAdam	P	P	P	P
Sergio Tansini	P	P	P	P
Gillian Hentges	P	P	P	A
CLlr Tom Conn	P	A	A	P
Craig Campbell	A	P	P	P

KEY	CODE
Apologises	A
Resigned	R
Present	P
Cancelled	C
Not yet Admitted	NYA
Not Present	NP

Trustees Attendance at 2023/24 Board Meetings

Attendance Record	Attendance at Board meetings				
	Apr	May	Sept	Dec	Feb
Trustees					
Beverley Greer	P	P	P	P	P
Suzanne McAdam	P	P	P	P	P
Craig Campbell	A	P	P	P	P
Sergio Tansini	P	P	P	P	P
Gillian Hentges	P	P	P	P	P
CLlr Peter Heggie	P	A	R	R	R
CLlr Danny Logue	A	A	P	P	A
CLlr Tom Conn	P	P	P	A	P

KEY	CODE
Apologises	A
Resigned	R
Present	P
Cancelled	C
Not yet Admitted	NYA
Not Present	NP

WEST LOTHIAN LEISURE**Board Report****For the year ended 31 March 2024****Statement of Responsibilities of the Board**

The trustees (who are also directors of West Lothian Leisure for the purpose of company law) are responsible for preparing the report of the trustees and the financial statements in accordance with applicable law and United Kingdom Accounting Standards (United Kingdom Generally Accepted Accounting Practice).

Charity law requires the trustees to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the charitable company and of the income and expenditure, of the charitable company for that period. In preparing these financial statements, the trustees are required to:

- Select suitable accounting policies and then apply them consistently;
- Observe the methods and principles of the Charities SORP;
- Make judgements and estimates that are reasonable and prudent;
- State whether applicable accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements; and
- Prepare the financial statements on the going concern basis unless it is inappropriate to presume that charitable company will continue.

The trustees are responsible for keeping adequate accounting records which disclose with reasonable accuracy at any time the financial position of the charitable company and enable them to ensure that the financial statements comply with the articles of association, the Companies Act 2006, the Charities and Trustee Investment (Scotland) Act 2005 and the Charities Accounts (Scotland) Regulations 2006 (as amended). They are also responsible for safeguarding the assets of the charitable company, for ensuring that the assets are properly applied in accordance with charity law and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

Disclosure of Information to the Auditor

To the knowledge and belief of each trustee, at the time the report is approved:

- So far as each trustee is aware, there is no relevant information of which the charitable company's auditor is unaware; and
- They have taken all steps that they ought to have taken as trustees to make themselves aware of any relevant audit information and to establish that the charitable company's auditor is aware of the information.

Auditor

A resolution to re-appoint Azets Audit Services as auditor will be put to the members at the Annual General Meeting.

In approving the Board Report, the Board of Trustees are also approving their Strategic Report in their capacity as company directors.

By order of the Board

Beverley Greer
Secretary

2024

WEST LOTHIAN LEISURE**Independent Auditor's Report to the Member and Trustees****For the year ended 31 March 2024****Opinion**

We have audited the financial statements of West Lothian Leisure (the charitable company) for the year ended 31 March 2024 which comprise the Statement of Financial Activities (incorporating the Income and Expenditure Account), the Balance Sheet, the Statement of Cash Flows and the notes to the financial statements, including a summary of significant accounting policies. The financial reporting framework that has been applied in their preparation is applicable law and United Kingdom Accounting Standards, including Financial Reporting Standard 102 'The Financial Reporting Standard applicable in the UK and Republic of Ireland' (United Kingdom Generally Accepted Accounting Practice).

In our opinion, the financial statements:

- give a true and fair view of the state of the charitable company's affairs as at 31 March 2024 and of its income and expenditure for the year then ended.
- have been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice; and
- have been prepared in accordance with the requirements of the Companies Act 2006, the Charities and Trustee Investment (Scotland) Act 2005 and regulation 8 of the Charities Accounts (Scotland) Regulations 2006 (as amended).

Basis for Opinion

We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)) and applicable law. Our responsibilities under those standards are further described in the auditor's responsibilities for the audit of the financial statements section of our report. We are independent of the charitable company in accordance with the ethical requirements that are relevant to our audit of the financial statements in the United Kingdom, including the Financial Reporting Council's Ethical Standard, and we have fulfilled our ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Conclusions relating to going concern

In auditing the financial statements, we have concluded that the trustees' use of the going concern basis of accounting in the preparation of the financial statements is appropriate.

Based on the work we have performed, we have not identified any material uncertainties relating to events or conditions that, individually or collectively, may cast significant doubt on the charitable company's ability to continue as a going concern for a period of at least twelve months from when the financial statements are authorised for issue.

Our responsibilities and the responsibilities of the trustees with respect to going concern are described in the relevant sections of this report.

WEST LOTHIAN LEISURE

Independent Auditor's Report to the Member and Trustees

For the year ended 31 March 2024

Other Information

The other information comprises the information included in the Board Report, other than the financial statements and our auditor's report thereon. The trustees are responsible for the other information. Our opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in our report, we do not express any form of assurance conclusion thereon.

Our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated.

If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether there is a material misstatement in the financial statements or a material misstatement of the other information. If, based on the work we have performed, we conclude that there is a material misstatement of this other information; we are required to report that fact.

We have nothing to report in this regard.

Opinions on other matters prescribed by the Companies Act 2006

In our opinion, based on the work undertaken in the course of the audit:

- the information given in the Board Report, which includes the Directors' Report and the Strategic Report prepared for the purposes of company law, for the financial year for which the financial statements are prepared is consistent with the financial statements; and
- the Strategic Report and the Directors' Report included within the Board Report have been prepared in accordance with applicable legal requirements.

Matters on which we are required to report by exception

In the light of the knowledge and understanding of the charitable company and its environment obtained in the course of the audit, we have not identified material misstatements in the Board Report (incorporating the Directors' Report and Strategic Report).

We have nothing to report in respect of the following matters in relation to which the Companies Act 2006 and the Charities Accounts (Scotland) Regulations 2006 (as amended) require us to report to you if, in our opinion:

- adequate and proper accounting records have not been kept, or returns adequate for our audit have not been received from branches not visited by us; or
- the financial statements are not in agreement with the accounting records and returns; or
- certain disclosures of trustees' remuneration specified by law are not made; or
- we have not received all the information and explanations we require for our audit.

Responsibilities of the Trustees

As explained more fully in the trustees' responsibilities statement set out on page 14, the trustees (who are the directors for the purposes of company law and trustees for the purposes of charity law) are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view and for such internal control as the trustees determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

WEST LOTHIAN LEISURE

Independent Auditor's Report to the Member and Trustees

For the year ended 31 March 2024

Responsibilities of the Trustees (continued)

In preparing the financial statements, the trustees are responsible for assessing the charitable company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the trustees either intend to liquidate the charitable company or to cease operations, or have no realistic alternative but to do so.

Auditor's Responsibilities for the Audit of the Financial Statements

We have been appointed as auditor under section 44(1)(c) of the Charities and Trustee Investment (Scotland) Act 2005 and under the Companies Act 2006 and report in accordance with the Acts and relevant regulations made or having effect thereunder.

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of our responsibilities is available on the FRC's website at: www.frc.org.uk/auditorsresponsibilities. This description forms part of our Auditor's Report.

The extent to which the audit was considered capable of detecting irregularities including fraud

Irregularities, including fraud, are instances of non-compliance with laws and regulations. We design procedures in line with our responsibilities, outlined above and on the FRC's website, to detect material misstatements in respect of irregularities, including fraud.

We obtain and update our understanding of the charitable company, its activities, its control environment, and likely future developments, including in relation to the legal and regulatory framework applicable and how the charitable company is complying with that framework. Based on this understanding, we identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. This includes consideration of the risk of acts by the charitable company that were contrary to applicable laws and regulations, including fraud.

Our approach to identifying and assessing the risks of material misstatement in respect of irregularities, including fraud and non-compliance with laws and regulations, was as follows:

- the engagement partner ensured that the engagement team collectively had the appropriate competence, capabilities and skills to identify or recognise non-compliance with applicable laws and regulations;
- we identified the laws and regulations applicable to the charitable company through discussions with management and from our commercial knowledge and experience of the sector;
- we focused on specific laws and regulations which we considered may have a direct material effect on the financial statements or the operations of the charitable company, including the Companies Act 2006, taxation legislation and data protection, anti-bribery, employment and health and safety legislation;
- we assessed the extent of compliance with the laws and regulations identified above through making enquiries of management and inspecting legal correspondence; and
- identified laws and regulations were communicated within the audit team regularly and the team remained alert to instances of non-compliance throughout the audit.

WEST LOTHIAN LEISURE

Independent Auditor's Report to the Member and Trustees

For the year ended 31 March 2024

The extent to which the audit was considered capable of detecting irregularities including fraud (continued)

In response to the risk of irregularities and non-compliance with laws and regulations, we designed procedures which included, but were not limited to:

- agreeing financial statement disclosures to underlying supporting documentation;
- reading the minutes of meetings of those charged with governance;
- enquiring of management as to actual and potential litigation and claims; and
- reviewing correspondence with HMRC, relevant regulators and the charitable company's legal advisors.

We assessed the susceptibility of the charitable company's financial statements to material misstatement, including obtaining an understanding of how fraud might occur, by:

- making enquiries of management as to where they considered there was susceptibility to fraud, their knowledge of actual, suspected and alleged fraud; and
- considering the internal controls in place to mitigate risks of fraud and non-compliance with laws and regulations.

To address the risk of fraud through management bias and override of controls, we:

- performed analytical procedures to identify any unusual or unexpected relationships;
- tested journal entries to identify unusual transactions;
- assessed whether judgements and assumptions made in determining the accounting estimates set out in note 3 to the financial statements were indicative of potential bias; and
- investigated the rationale behind significant or unusual transactions.

Because of the inherent limitations of an audit, there is a risk that we will not detect all irregularities, including those leading to a material misstatement in the financial statements or non-compliance with regulation. This risk increases the more that compliance with a law or regulation is removed from the events and transactions reflected in the financial statements, as we will be less likely to become aware of instances of non-compliance. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

Use of Our Report

This report is made solely to the charitable company's members, as a body, in accordance with Chapter 3 of Part 16 of the Companies Act 2006 and to the charitable company's trustees, as a body, in accordance with regulation 10 of the Charities Accounts (Scotland) Regulations 2006 (as amended).

Our audit work has been undertaken so that we might state to the charitable company's members, as a body, and the charitable company's trustees, as a body, those matters we are required to state to them in an Auditor's Report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the charitable company, the charitable company's members, as a body, and the charitable company's trustees, as a body, for our audit work, for this report, or for the opinions we have formed.

Allison Gibson, Senior Statutory Auditor
For and on behalf of Azets Audit Services, Statutory Auditor
Chartered Accountants
Eligible to act as an auditor in terms of Section 1212 of the Companies Act 2006
Exchange Place 3
Seemple Street
Edinburgh, EH3 8BL

Date: 2024

WEST LoTHIAN LEISURE

Statement of Financial Activities (Incorporating the Income and Expenditure Account)

For the year ended 31 March 2024

	Notes	Total Unrestricted 2024 £	Total Unrestricted 2023 £
Income and endowments from:			
Grants and donations		1,536	3,706
Charitable activities			
- Membership fees		6,356,593	5,645,884
- Leisure services		4,119,865	4,130,391
- Management service fee		2,025,492	3,690,870
Investments		82,017	50,356
Other			
- Financial income, refunds & fees		119,652	134,409
Total		12,705,155	13,655,616
Expenditure on:			
Charitable activities			
- Sports and leisure facilities	4	13,351,505	13,859,489
Other			
- Net finance cost on defined benefit pension scheme	8	(29,000)	137,000
Total		13,322,505	13,996,489
Net expenditure		(617,350)	(340,873)
Other recognised gains:			
Actuarial (loss)/ gain on defined benefit pension scheme	8	(810,000)	6,044,000
Net movement in funds		(1,427,350)	5,703,127
Reconciliation of funds:	14		
Total funds brought forward		1,961,059	(3,742,068)
Total funds carried forward		533,709	1,961,059

The notes on pages 22 to 34 form part of these financial statements

WEST LoTHIAN LEISURE

Balance Sheet

As at 31 March 2024

	Notes	2024		2023	
		£	£	£	£
Fixed Assets					
Tangible fixed assets	9		<u>2,100,305</u>		<u>1,615,198</u>
<i>Total fixed assets</i>			2,100,305		1,615,198
Current assets					
Stock		17,840		30,894	
Debtors	10	278,429		715,913	
Cash at bank and in hand		<u>1,608,530</u>		<u>2,677,792</u>	
<i>Total current assets</i>		1,904,799		3,424,599	
Liabilities:					
Creditors: amounts falling due within one year	11	<u>(2,271,027)</u>		<u>(2,693,696)</u>	
<i>Net current (liabilities)/assets</i>			(366,228)		730,903
<i>Total assets less current liabilities</i>			1,734,077		2,346,101
Creditors: amounts falling due after more than one year	12		<u>(965,368)</u>		<u>(1,046,042)</u>
<i>Net assets excluding pension (liability)/asset</i>			768,709		1,300,059
Defined benefit pension (liability)/asset	8		<u>(235,000)</u>		<u>661,000</u>
Total net assets			533,709		1,961,059
The unrestricted funds of the charity:					
General funds			768,709		1,300,059
Pension reserve			(235,000)		661,000
Total charity funds	14		533,709		1,961,059

The financial statements were approved and authorised for issue by the Board on 2024.

Sergio Tansini, Chair

Beverley Greer, Secretary

Registered in Scotland – SC543017
Charity Number – SC027470

The notes on pages 22 to 34 form part of these financial statements

WEST LOTHIAN LEISURE
Statement of Cash Flows
For year ended 31 March 2024

	Notes	2024		2023	
		£	£	£	£
Cash flows from operating activities:					
Net cash (used in)/provided by operating activities	15		(87,634)		187,593
Cash flows from investing activities:					
Interest received		82,017		50,356	
Disposal proceeds of property, plant and equipment		113,403		223,988	
Purchase of property, plant and equipment		(720,557)		(144,580)	
Net cash (used in)/provided by investing activities			(525,137)		129,764
Cash flows from financing activities:					
Repayments of borrowing		(456,491)		(94,061)	
Net cash used in financing activities			(456,491)		(94,061)
Change in cash and cash equivalents in the reporting period	16		(1,069,262)		223,296
Cash and cash equivalents at the beginning of the reporting period			2,677,792		2,454,496
Cash and cash equivalents at the end of the reporting period			1,608,530		2,677,792

The notes on pages 22 to 34 form part of these financial statements

WEST LoTHIAN LEISURE**Notes to the Financial Statements****For year ended 31 March 2024****1. General information**

These financial statements are presented in pounds sterling (GBP) as that is the currency in which the charitable company's transactions are denominated. They comprise the financial statements of West Lothian Leisure for the year ended 31 March 2024.

The principal activity of West Lothian Leisure is the operation of sports and leisure facilities leased from West Lothian Council.

West Lothian Leisure is a private charitable company limited by guarantee incorporated in the United Kingdom and registered in Scotland. It is recognised as a charity for tax purposes by HMRC and is registered with the Office of the Scottish Charity Regulator (OSCR) under charity number SC027470. In the event of the winding up of the charitable company a member is liable to contribute a sum not exceeding £1. Details of the registered office and company registration number can be found on page 1 of these financial statements.

As described in note 19, West Lothian Leisure is deemed to be a subsidiary undertaking of its ultimate parent, West Lothian Council.

2. Accounting Policies**Basis of Accounting**

The financial statements have been prepared under the historical cost convention unless otherwise specified within these accounting policies and in accordance with United Kingdom Accounting Standards, including Financial Reporting Standard 102, 'The Financial Reporting Standard applicable in the United Kingdom and Republic of Ireland' ("FRS 102") (United Kingdom Generally Accepted Accounting Practice), the Statement of Recommended Practice (SORP) 'Accounting and Reporting by Charities preparing their accounts in accordance with the Financial Reporting Standard applicable in the UK and Republic of Ireland (FRS 102)', the Companies Act 2006, the Charities and Trustee Investment (Scotland) Act 2005 and the Charities Accounts (Scotland) Regulations 2006 (as amended).

West Lothian Leisure meets the definition of a public benefit entity under FRS 102. Assets and liabilities are initially recognised at historical cost unless otherwise stated in the relevant accounting policy.

The preparation of financial statements requires the use of certain critical accounting estimates. It also requires trustees to exercise their judgement in the process of applying the accounting policies. Use of available information and application of judgement are inherent in the formation of estimates. Actual outcomes in the future could differ from such estimates. The areas involving a higher degree of judgement or complexity, or areas where assumptions and estimates are significant to the financial statements are disclosed in note 3.

The principal accounting policies applied in the preparation of these financial statements are noted below. These policies have been applied consistently to all the years presented in dealing with items which are considered material in relation to the charitable company's financial statements unless otherwise stated.

WEST LOTHIAN LEISURE

Notes to the Financial Statements

For year ended 31 March 2024

2. Accounting Policies (continued)

Going Concern

The financial statements have been prepared based on accounting policies that are consistent with the treatment of the charitable company as a going concern. In the Board's opinion, the charitable company will be able to continue to trade for the foreseeable future.

West Lothian Leisure has a rolling Service Agreement with West Lothian Council and the current funding agreement within this will fall due for renewal on 31 March 2025. West Lothian Council, as sole member of the company, have indicated that they have a process in place which the company believes would lead to the provision of funding to cover a trading deficit in excess of available cash reserves, should one occur.

The charitable company has net assets at 31 March 2024 of £533,709 (2023: net assets £1,961,059). Excluding the deficit on the defined benefit retirement scheme the charitable company reported net assets of £768,709 (2023 net assets: £1,300,059).

WLC has provided a letter of comfort which means they will agree to meet WLL's everyday cash liabilities until the end of this financial year should WLL be unable to do so. To improve financial viability, WLL continues to review all aspects of its business to identify opportunities to reduce its cost base and grow income. Through a close working relationship with WLC officers, WLL continues to consider the best use of existing facilities as well as the expanding operations in community school facilities.

West Lothian Leisure's Board agreed a £198,578 budget deficit for 2024/25 (and a cash surplus of £239,225), subject to a programme of mitigating actions being developed and implemented to address the total budget pressure of £2.95 million over the period 2023/24 to 2027/28.

West Lothian Leisure wrote to West Lothian Council seeking consent to implement the closure of four venues on 31st August 2023. On 20th June West Lothian Council approved the request to close three venues, with the fourth transferring to a third party. The four venues are Xcite Armadale, Xcite Broxburn Pool, Xcite Livingston and Howden Park Centre. The closure of these venues has allowed the budgeted deficit to be reduced by in the region of £1m.

The most recent cash flow projections to 31st March 2025 show that forecast that cash should not fall below £1.2m.

Income recognition

Income is recognised in the period in which the charitable company is entitled to receipt, receipt is probable, and the amount can be measured with reasonable certainty. Income is deferred only when the charitable company has to fulfil conditions before becoming entitled to it.

- Revenue grants are recognised in the period in which the charitable company is entitled to receipt, receipt is probable, and the amount can be measured with reasonable certainty.
- Membership income is recognised on a straight-line basis in line with the delivery of membership services and the membership agreement.
- Leisure services income is recognised when services are provided.
- Management fee income is recognised in the period to which it relates.
- Other income is recognised in the period to which it relates.
- Investment income is recognised in the period in which it is receivable

WEST LOTHIAN LEISURE

Notes to the Financial Statements

For year ended 31 March 2024

2. Accounting Policies (continued)

Allocation of Expenditure

Expenditure is recognised when a legal or constructive obligation arises. Where possible, expenditure has been charged directly to charitable expenditure or governance costs. Where this is not possible the expenditure has been allocated on the basis of time spent by staff on each activity.

- Charitable expenditure comprises those costs incurred by the charitable company in the delivery of its activities and services for its beneficiaries.
- Governance costs include those costs associated with meeting the constitutional and statutory requirements of the charitable company and include the audit fees and costs linked to the strategic management of the charitable company.

Termination Payments

Termination payments are amounts payable to end an individual's employment and are charged on an accruals basis to the Statement of Financial Activities when the charitable company is demonstrably committed to this course of action. The termination payment will include redundancy and where eligible any compensatory lump sum together with the pension strain payment made to the pension fund. The notional capitalised cost of any compensatory added years awarded is based on an assessment of the present value of all future payments to the retiree until death and is disclosed as an unfunded liability of the pension scheme.

Fixed Assets

Fixed assets are stated at cost less accumulated depreciation and any impairment.

Tangible fixed assets costing more than £2,500 are capitalised and included at cost. Depreciation is charged to write off the cost less the estimated residual value of fixed assets by equal instalments over their estimated useful lives as follows:

Computer equipment	4 years
Furniture and equipment	4 - 8 years

Debtors

Trade and other debtors are recognised at the settlement amount due after any trade discount offered. Prepayments are valued at the amount prepaid net of any trade discounts due.

Cash at bank and in hand

Cash is represented by cash in hand and deposits with financial institutions repayable without penalty on notice of not more than 24 hours. Cash equivalents are highly liquid investments that mature in no more than three months from the date of acquisition and that are readily convertible to known amounts of cash with insignificant risk of change in value.

Stock

Stock represents goods for resale and are valued at the lower of cost and net realisable value in the ordinary course of activities. Net realisable value is based on estimated selling price less any provision for slow moving or obsolete stock.

Creditors

Creditors are recognised where the charitable company has a present obligation resulting from a past event that will result in the transfer of funds to a third party and the amount due to settle the obligation can be measured or estimated reliably. Creditors are normally recognised at their settlement amount after allowing for any trade discounts due.

WEST LOTHIAN LEISURE
Notes to the Financial Statements
For year ended 31 March 2024

2. Accounting Policies (continued)

Financial instruments

Financial instruments are recognised in the Balance Sheet when the charitable company becomes a party to the contractual provisions of the instrument. Financial instruments are initially measured at transaction price unless the arrangement constitutes a financing transaction which includes transaction costs for financial instruments not subsequently measured at fair value. Subsequent to initial recognition, they are accounted for as set out below. A financing transaction is measured at the present value of the future payments discounted at the market rate of interest for a similar debt instrument.

Financial instruments are classified as either 'basic' or 'other' in accordance with Chapter 11 of FRS 102.

At the end of each reporting period, basic financial instruments are measured at amortised cost using the effective interest rate method. All financial instruments not classified as basic are measured at fair value at the end of the reporting period with the resulting changes recognised in income or expenditure. Where the fair value cannot be reliably measured, they are recognised at cost less impairment.

Financial assets are derecognised when the contractual rights to the cash flows from the asset expire, or when the charitable company has transferred substantially all the risks and rewards of ownership. Financial liabilities are derecognised only once the liability has been extinguished through discharge, cancellation or expiry.

Pensions

The charitable company operates a defined benefit scheme in respect of its employees. The assets of the scheme are held in external funds managed by professional investment managers.

In accordance with FRS 102 Retirement Benefits, the Statement of Financial Activities includes: the cost of benefits accruing during the year in respect of current and past service (charged against net outgoing resources); the expected return on the scheme's assets and the increase in the present value of the scheme's liabilities arising from the passage of time (shown as pensions finance charge); actuarial gain or loss recognised in the pension scheme (shown within net movement of funds). In accordance with FRS 102, the Balance Sheet includes the asset/deficit in the scheme taking assets at their year-end market values (current bid value) and liabilities at their actuarially calculated values discounted at year-end AA corporate bond interest rates. Recognition of an actuarial net asset position in the scheme is limited to the extent that the asset is recoverable, for example in the form of repayments from the scheme or reductions in minimum contributions payable for future service. Further details regarding the scheme are disclosed in note 8.

The charitable company also operates a defined contribution pension scheme. Contributions are recognised in the Income and Expenditure Account and Statement of Financial Activities in the period in which they become payable in accordance with the rules of the scheme.

VAT

The charitable company is partially exempt for VAT purposes. Irrecoverable VAT is charged to the Income and Expenditure and Statement of Financial Activities as an expense.

Unrestricted Funds

Surplus revenue funds held within unrestricted funds are carried forward to meet the cost of future activities of both a capital and revenue nature.

Commitments for specific activities and needs in the future are dealt with by making allocations to designated funds.

Leases

Operating lease rentals are charged to the Income and Expenditure and Statement of Financial Activities on a straight-line basis over the term of the lease.

WEST LOTHIAN LEISURE
Notes to the Financial Statements
For year ended 31 March 2024

2. Accounting Policies (continued)

Leases which transfer substantially all of the risks and rewards of ownership to the charity are classed as finance leases. Assets held under finance leases are recognised as assets at the lower of the fair value of the asset at the date of acquisition and the present minimum lease payments. The related obligation to the lessor is included in the balance sheet as a finance lease obligation.

Finance costs, which represent the difference between the total leasing commitment and the fair value of the assets acquired, are charged to the Statement of Financial Activities over the lease term at a constant rate.

Taxation

The charitable company has charitable status and is therefore exempt from taxation under Sections 475-477 and Chapter 3 of the Corporation Taxes Act 2010.

3. Critical Judgements and Estimates

In preparing the financial statements trustees makes estimates and assumptions which affect reported results, financial position and disclosure of contingencies. Use of available information and application of judgement are inherent in the formation of the estimates, together with past experience and expectations of future events that are believed to be reasonable under the circumstances. Actual results in the future could differ from such estimates.

There are no estimates or assumptions with a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial year.

Key sources of accounting estimation have been applied to the pension scheme assumptions and the depreciation rates which are deemed appropriate for the class of assets.

4. Charitable Activities Expenditure – Sports and Leisure Facilities

	2024 £	2023 £
Employee costs (note 6)	7,004,630	6,882,590
Property costs	2,782,964	3,414,630
Transport costs	68,654	76,995
Supplies and services	2,237,021	2,347,571
Irrecoverable VAT	630,902	692,186
Depreciation and impairment	350,091	211,826
Loss on disposal of fixed assets	147,114	87,180
Bank charges	80,327	87,975
Discounts	18,314	21,966
Governance costs (note 5)	31,488	36,570
	<u>13,351,505</u>	<u>13,859,489</u>

The above costs relate to the one activity of the charitable company, to deliver sports and leisure facilities to the community within West Lothian.

5. Governance Costs

	2024 £	2023 £
Audit and other accountancy fees	29,870	29,850
Trustee indemnity insurance	1,618	6,720
	<u>31,488</u>	<u>36,570</u>

WEST LOTHIAN LEISURE
Notes to the Financial Statements
For year ended 31 March 2024

6. Staff Costs and Numbers

	2024	2023
	£	£
Wages and salaries	6,046,661	5,596,297
Social security costs	423,996	389,233
Other pension costs	418,973	411,060
FRS 102 defined benefit pension scheme adjustment	115,000	486,000
	7,004,630	6,882,590

The above amounts include redundancy and pension strain costs of £218,991 (2023: £nil). £202,616 funding was received in connection with these costs (2023: £nil).

The aggregate number of employees whose emoluments exceeded £60,000 was as follows:

	2024	2023
	Number	Number
£60,000 - £69,999	2	2
£70,000 - £79,999	1	1
£90,000 - £99,999	1	-
	4	3

	2024	2023
	Number	Number
The average monthly number of employees during the year was	355	363

One employee is a member of the Board as staff representative. Remuneration including back pay, pension and employer national insurance contributions for their employee role whilst holding office was as follows:

	2024	2023
	£	£
K Anderson	-	22,576
S McAdam	50,879	26,767

One member of the board received remuneration for the role of group fitness instructor during the year:

	2024	2023
	£	£
G Hentges	1,702	300

None of the amounts above included any remuneration for being a director; all amounts were received for employment under employment contract.

No expenses were reimbursed to directors (2023: £nil).

In addition to the trustees, the key management personnel of the charitable company are deemed to be the Chief Executive, Head of Operations, Head of Corporate Services and Head of Finance. The total employee benefits received by key management personnel in the year was £377,485 (2023: £331,102).

WEST LOTHIAN LEISURE
Notes to the Financial Statements
For year ended 31 March 2024

7. Operating Deficit

	2024	2023
	£	£
The operating deficit is stated after charging		
Auditor's remuneration – audit	29,870	29,850
Depreciation of tangible fixed assets	350,091	211,826
Reversal of impairment of tangible fixed assets	-	(87,855)
Loss on disposal of fixed assets	147,114	87,180
Hire of equipment, plant and machinery	26,883	15,549

8. Pension Costs

The total pension cost charged to net expenditure for the year amounted to £504,973 (2023: £1,034,060). Included within this figure is a FRS 102 adjustment of £115,000 (2023: £486,000) and finance income of £29,000 (2023 costs incurred of £137,000).

Defined contribution pension scheme

In 2014 the charitable company introduced a defined contribution pension scheme. New employees are automatically enrolled into this scheme although they may choose to opt out if they wish. Total employer's contributions to this scheme during the year amounted to £157,344 (2023: £141,663).

Defined benefit superannuation scheme

The charitable company is an admitted body of the Lothian Pension Fund. The Superannuation Fund is a defined benefit scheme into which employees' and employer's contributions, and interest and dividends from investments are paid and from which pensions, lump sums and superannuation benefits are paid out. Total employer's contributions to this scheme during the year amounted to £261,629 (2023: £259,768). Employees' contributions are determined based on their salary, increasing the higher the salary and employer's basic contributions are assessed every three years by an actuary and are fixed to ensure the fund remains solvent and, in a position, to meet its future liabilities. The actuarial method used is known as the Projected Unit Method. The last actuarial valuation was at 31 March 2023. Employer contribution for the year to 31 March 2025 are forecast to be £253,000.

In accordance with FRS 102 – Employee Benefits – a valuation of the fund was carried out at 31 March 2024, by Hymans Robertson, independent actuaries, based on the last full triennial valuations and allowing for the changes in financial assumptions as prescribed under FRS 102.

The main assumptions used in the calculations are:

	31 March 2024	31 March 2023
	% per annum	% per annum
Salary increases	3.45%	3.45%
Pension increases	2.75%	2.95%
Discount rate	4.85%	4.75%

Mortality

Life expectancy is based on the Fund's Vita Curves with improvements in line with the CMI 2022 model, with a 25% weighting of 2022 data, standard smoothing (Sk7), initial adjustment of 0.25% and a long-term rate of improvement of 1.5% p.a. for both males and females. Based on these assumptions, the average future life expectancies at age 65 are summarised below:

	Males	Females
Current pensioners	21.2 years	22.6 years
Future pensioners	20.7 years	24.6 years

WEST LOTHIAN LEISURE
Notes to the Financial Statements
For year ended 31 March 2024

8. Pension Costs (continued)

The major categories of assets of the scheme were:

	2024	2023
Equities	71%	72%
Bonds	17%	15%
Property	8%	8%
Cash	4%	5%

The table below compares the estimated present value of the scheme liabilities with the employer assets:

	2024 £'000	2023 £'000
Fair value of employer assets	34,651	33,431
Present value of funded liabilities	(24,794)	(23,743)
Present value of unfunded liabilities	(235)	-
Net asset per actuarial valuation	9,622	9,688
Net asset ceiling restriction	(9,857)	(9,027)
Net (liability)/asset in balance sheet	(235)	661

Analysis of the amount charged to resources expended:

	Year to 31 March 2024 £'000	Year to 31 March 2023 £'000
Past service cost of the defined benefit scheme	(77)	-
Current service cost of the defined benefit scheme	(321)	(756)
	(398)	(756)

Analysis of amount charged to other finance costs:

	Year to 31 March 2024 £'000	Year to 31 March 2023 £'000
Expected return on employer assets	1,584	901
Interest on pension scheme liabilities	(1,126)	(1,038)
Interest on the effect of asset ceiling	(429)	-
Net interest income/(cost)	29	(137)

Analysis of amounts included in other recognised gains and losses:

	Year to 31 March 2024 £'000	Year to 31 March 2023 £'000
Actual return less expected return on pension scheme assets	456	(188)
Other experience	(3,024)	(1,999)
Net change in financial and demographic assumptions underlying the present value of the scheme liabilities	2,159	17,258
Loss on asset ceiling restriction	(401)	(9,027)
Actuarial (loss) / gain recognised in net movement of funds	(810)	6,044

WEST LOTHIAN LEISURE
Notes to the Financial Statements
For year ended 31 March 2024

8. Pension Costs (continued)

Changes in fair value of the scheme assets are as follows:

	Year to 31 March 2024 £'000	Year to 31 March 2023 £'000
Opening fair value of employer assets	33,431	32,856
Interest income on plan assets	1,584	901
Contributions by members	97	101
Contributions by the employer	272	260
Contributions in respect of unfunded benefits	11	10
Actuarial (loss)	(68)	(188)
Unfunded benefits paid	(11)	(10)
Benefits paid	(665)	(499)
Closing fair value of employer assets	<u>34,651</u>	<u>33,431</u>

Changes in the defined benefit obligation are as follows:

	Year to 31 March 2024 £'000	Year to 31 March 2023 £'000
Opening defined benefit obligation	23,743	37,616
Current service cost	321	756
Past service cost	77	-
Interest cost	1,126	1,038
Contributions by members	97	101
Actuarial loss/(gain)	341	(15,259)
Estimated benefits paid	(665)	(499)
Estimated unfunded benefits paid	(11)	(10)
Closing defined benefit obligation	<u>25,029</u>	<u>23,743</u>

9. Tangible Fixed Assets

	Furniture & equipment £	Computer equipment £	Total £
Cost			
As at 1 April 2023	3,111,082	68,743	3,179,825
Additions	830,270	265,445	1,095,715
Disposals	(877,963)	-	(877,963)
As at 31 March 2024	<u>3,063,389</u>	<u>334,188</u>	<u>3,397,577</u>
Depreciation and impairment			
As at 1 April 2023	1,513,938	50,689	1,564,627
Charge for the year	303,273	46,818	350,091
Eliminated on disposals	(617,446)	-	(617,446)
As at 31 March 2024	<u>1,199,765</u>	<u>97,507</u>	<u>1,297,272</u>
Net book value			
As at 31 March 2024	<u>1,863,624</u>	<u>236,681</u>	<u>2,100,305</u>
As at 31 March 2023	<u>1,597,144</u>	<u>18,054</u>	<u>1,615,198</u>

The net book value of the assets held under finance lease agreements as at 31 March 2024 was £1,327,789 (2023: £1,373,371). The depreciation charged on these assets in the year to 31 March 2024 was £225,979 (2023: £150,023).

WEST LoTHIAN LEISURE
Notes to the Financial Statements
For year ended 31 March 2024

10. Debtors

	2024 £	2023 £
Trade debtors	1,033	285,144
Other debtors and prepayments	277,396	430,769
	<u>278,429</u>	<u>715,913</u>

11. Creditors: Amounts falling due within one year

	2024 £	2023 £
Finance lease creditor	211,516	212,175
Tax and social security	7,623	31,075
Trade and other creditors	1,637,975	1,893,363
Accruals and deferred income	413,913	557,083
	<u>2,271,027</u>	<u>2,693,696</u>

Trade and other creditors include £1,490,470 due to West Lothian Council (2023: £1,620,792).

Finance lease creditors are secured over the assets to which they relate.

12. Creditors: Amounts falling due after one year

	2024 £	2023 £
Finance lease creditor	965,368	1,046,042
	<u>965,368</u>	<u>1,046,042</u>
<i>Analysed as follows:</i>		
Repayable between 1 – 2 years	209,639	188,448
Repayable between 2 – 5 years	630,058	699,400
Repayable in more than 5 years	125,671	158,194
	<u>965,368</u>	<u>1,046,042</u>

Finance lease creditors are secured over the assets to which they relate.

WEST LOTHIAN LEISURE

Notes to the Financial Statements

For year ended 31 March 2024

13. Share Capital

The charitable company is limited by guarantee of £1 per member and has no share capital. At 31 March 2024 and 2023 there was one member.

14. Reserves

2024	Balance at 1 April 2023 £	Income £	Expenditure £	Other gains/ (losses) £	Balance at 31 March 2024 £
General funds	1,300,059	12,705,155	(13,236,505)	-	768,709
Pension reserve	661,000	-	(86,000)	(810,000)	(235,000)
Unrestricted funds	1,961,059	12,705,155	(13,322,505)	(810,000)	533,709
2023	Balance at 1 April 2022 £	Income £	Expenditure £	Other gains/ (losses) £	Balance at 31 March 2023 £
General funds	1,017,932	13,655,616	(13,373,489)	-	1,300,059
Pension reserve	(4,760,000)	-	(623,000)	6,044,000	661,000
Unrestricted funds	(3,742,068)	13,655,616	(13,996,489)	6,044,000	1,961,059

15. Reconciliation of net expenditure to net cash flow from operating activities

	2024 £	2023 £
Net expenditure for the reporting period	(617,350)	(340,873)
Depreciation and impairment of fixed assets	350,091	211,826
Interest received	(82,017)	(50,356)
FRS 102 pension adjustments	86,000	623,000
Decrease/(increase) in debtors	437,484	(556,043)
(Decrease)/increase in creditors	(422,010)	211,146
Decrease/(increase) in stock	13,054	1,713
Loss on disposal of fixed assets	147,114	87,180
Net cash (used in)/provided by operating activities	(87,634)	187,593

WEST LoTHIAN LEISURE
Notes to the Financial Statements
For year ended 31 March 2024

16. Analysis of Changes in Net Debt

	Brought forward £	Cash flow £	Non-Cash flow £	Carried forward £
Cash	2,677,792	(1,069,262)	-	1,608,530
Finance lease debt	(1,258,217)	456,491	(375,158)	(1,176,884)
	1,419,575	(612,771)	(375,158)	431,646

17. Commitments

At 31 March 2024 the charitable company had commitments under non-cancellable operating leases for equipment as set out below: -

	2024 £	2023 £
Payments falling due:		
Within one year	10,675	10,675
Within two to five years	9,545	20,220
	20,220	30,895

West Lothian Leisure is committed to the expansion of the gym at Whitburn and Bathgate after securing capital funding from West Lothian Council. This funding will be repayable by way of a deduction against future management fees. The estimated cost of the building work including related fees is £260,000 for Whitburn and £463,000 for Bathgate.

18. Members' Interests

Due to the nature of the charitable company's operations and composition of its Board, being comprised of individuals from public sector and commercial organisations, it is inevitable that transactions will take place with companies and organisations in which a member of West Lothian Leisure has an interest.

The charitable company works in partnership with West Lothian Council with which transactions have been undertaken during the year. The following is a list of members of the Board who held potentially connected positions during the year.

Table showing potential for Director's Connected Interests:

WLL Director	Company	Occupation	Date Joined
Beverley Greer		Sports Coach	27/06/2013
Tom Conn	West Lothian Council	Elected Member	12/03/2020
Peter Heggie	West Lothian Council	Elected Member	30/06/2022
Danny Logue	West Lothian Council	Elected Member	30/06/2022
Suzanne McAdam	West Lothian Leisure	Area Manager	15/09/2022
Craig Campbell		Consultant	23/03/2023
Sergio Tansini		Retired Company Director	04/10/2019
Gillian Hentges	Sainsbury's Bank	Chartered Accountant	26/10/2021
Michelle Chambers Cran	David Lloyd	Regional Manager	16/05/2024
Kim Anne Walker		Retired Managing Director	16/05/2024

WEST Lothian LEISURE**Notes to the Financial Statements****For year ended 31 March 2024****19. Related Party Transactions**

West Lothian Council is the sole member of the charitable company. West Lothian Council may appoint or remove any director from office, provided that the number of directors in office appointed by West Lothian Council at any time does not form a majority or exceed a maximum of 5. West Lothian Council may, by special resolution, direct the directors to take, or refrain from taking, specified action, and is entitled to make any decision of the company as if agreed by the company in a general meeting.

West Lothian Council also commissions the work of the charitable company by virtue of a services agreement, which provides a substantial portion of the charitable company's funding and use of the premises operated by the charitable company.

During the year, £962,950 (2023: £1,002,950) was received from West Lothian Council as a management fee, with a further £713,926 (2023: £713,926) in connection with new facilities taken on in April 2017, a further £nil for facilities taken on during 2022/23 (2023: £287,000) and additional funding of £nil (2023: £1,686,994). In addition to this, £128,000 (2023: £128,000) was received for free under 16s swimming, £120,830 (2023: £120,830) for free under 5s and over 60s swimming, £7,000 (2023: £7,000) for ASN curricular swimming and £87,463 (2023: £87,463) for curricular swimming. A further £82,892 (2023: £77,757) was received in grants and other income during the year.

Payroll and expenses of £6,923,529 (2023: £6,473,346) were disbursed by West Lothian Council and reimbursed by West Lothian Leisure. Other expenditure invoiced during the year totalled £63,960 (2023: £64,889). During the year £146,000 (2023: £nil) was received to cover the additional cost of applying the real living wage and £202,616 (2023: £nil) received from West Lothian Council towards redundancy costs. At the year-end there is a balance due to West Lothian Council of £1,490,470 (2023: £1,620,792) and £nil (2023: £7,322) due from West Lothian Council.



Audit findings report

West Lothian Leisure

Year ended 31 March 2024



Strictly Private & Confidential

The Board of Trustees
 West Lothian Leisure
 Xcite Bathgate Sports Centre
 Balbardie Park
 Torphichen Road
 Bathgate
 West Lothian
 EH48 4LA

Our ref: ALGI/DAMOWESTLL01
 28 August 2024

Dear Sirs

**West Lothian Leisure
 Audit plan for the year ended 31 March 2024**

This Audit Findings Report highlights the significant findings arising from the audit for the benefit of those charged with governance. We appreciate that you may be aware of some of the matters contained in this report, however as required by International Standard on Auditing (UK) 260 we are communicating them to you formally.

As auditor we are responsible for performing the audit, in accordance with International Standards on Auditing (UK) (ISAs (UK)), which is directed towards forming and expressing an opinion on the financial statements. The audit of the financial statements does not relieve management or those charged with governance of their responsibilities, including those in respect of the preparation of financial statements.

There is more detail in respect of the responsibilities of the auditor and those charged with governance within our engagement letter. Our standard terms and conditions can be found at <https://www.azets.co.uk/about-us/policies-legal/terms-of-business/>.

The contents of this report relate only to those matters which came to our attention during the conduct of our normal audit procedures which are designed primarily for the purpose of expressing our opinion on the financial statements. We do not accept any responsibility for any loss occasioned to any third party acting or refraining from acting on the basis of the content of this report, as this report was not prepared for, nor intended for, any other purpose.

We would like to take this opportunity to record our appreciation for the kind assistance provided by your team during our audit. If we can be of any further assistance, please contact either myself or Dave Mottershaw.

Yours faithfully



Allison Gibson
Senior Statutory Auditor
Azets Audit Services

We are an accounting, tax, audit, advisory and business services group that delivers a personal experience both digitally and at your door.

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1. Executive summary

Audit overview

This table summarises the key findings from the statutory audit of West Lothian Leisure for the year ended 31 March 2024 for those charged with governance.

Audit opinion	<p>We do not propose any modifications to our audit opinion which is unqualified.</p> <p>We have no matters to report regarding the adoption of the going concern basis or inadequate disclosures relating to material uncertainties.</p> <p>Our audit work is substantially complete and there are currently no matters which would require modification of our audit report.</p>
Key findings on audit risks and other matters	<p>We have reported our audit findings on pages 2-4 of this report.</p> <p>We are pleased to report that the audit progressed well from our perspective and in accordance with the agreed timetable.</p>
Audit adjustments	<p>We identified two audit adjustments, which have been adjusted in the financial statements. The adjustments increased the deficit for the year by £235,000. Details are provided on page 6.</p> <p>We are required to communicate all potential adjustments, other than those considered to be clearly trivial, to management.</p> <p>The aggregate impact of unadjusted misstatements on the statement of financial activities, were they to be processed, would result in a combined net movement in funds for the year of £46,122 which is immaterial to the financial statements.</p> <p>All unadjusted differences are collectively and individually under materiality.</p>
Accounting systems and internal controls	<p>We have applied our risk-based methodology to your audit. This approach requires us to document, evaluate and assess your business processes and internal controls relating to the financial reporting process.</p> <p>Our audit is not designed to test all internal controls or identify all areas of control weakness. However, where, as part of our testing, we identify any control weaknesses, we would report these to you. Two observations in relation to the control environment are noted on page 8 of this report.</p>

2. Significant risk areas

Significant risks are risks that require special audit consideration and include identified risks of material misstatement that:

- our risk assessment procedures have identified as being close to the upper range of the spectrum of inherent risk due to their nature and a combination of the likelihood and potential magnitude of misstatement; or
- are required to be treated as significant risks due to requirements of ISAs (UK), for example in relation to management override of internal controls.

Significant risks at the financial statement level

The below table summarises conclusions in relation to significant risks of material misstatement identified at the financial statement level. These risks are considered to have a pervasive impact on the financial statements as a whole and potentially affect many assertions for classes of transaction, account balances and disclosures.

Key risk area	Audit Approach	Conclusions
<p>Management override of controls</p> <p>Management is in a unique position to perpetrate fraud because of management's ability to manipulate accounting records and prepare fraudulent financial statements by overriding controls that otherwise appear to be operating effectively.</p> <p>Although the level of risk of management override of controls will vary from entity to entity, the risk is nevertheless present in all entities. Due to the unpredictable way in which such override could occur, it is a risk of material misstatement due to fraud and thus a significant risk.</p> <p>Risk of material misstatement: High</p>	<p>Procedures performed to mitigate risks of material misstatement in this area included:</p> <ul style="list-style-type: none"> • Review of accounting estimates, judgements and decisions made by management; • Testing of journal entries; and • Review of any unusual significant transactions. 	<p>Our review of the accounting records did not identify any significant transactions outside the normal financial control processes. We did not identify any evidence of management override.</p>
<p>Going concern</p> <p>The trustees must undertake a formal assessment of the charitable company's ability to continue as a going concern for at least the 12 months following the signing of the financial statements at both the planning stage of the audit and at the date the financial statements are signed.</p> <p>Risk of material misstatement: Medium</p>	<p>In respect of going concern, we reviewed:</p> <ul style="list-style-type: none"> • Your assessment of going concern at planning and at the date of signing the financial statements; • Budgets and cash flow forecasts covering the 12-month period from the date of signing the financial statements; • Post year end management accounts; and • Cash position at sign off. 	<p>We concur with management's assessment that it is appropriate to continue to adopt the going concern basis and there are no material uncertainties relating to going concern which should be disclosed in the financial statements.</p>

We also held detailed discussions with the finance team in respect of going concern.

Finally, we will ask the Board, via the letter of representation, to confirm that the Board have concluded that the charitable company is a going concern.

Significant risks at the assertion level for classes of transaction, account balances and disclosures

The below table summarises conclusions in relation to significant risks of material misstatement at the assertion level for classes of transaction, account balances and disclosures.

Key risk area	Audit Approach	Conclusions
<p>Fraud in income recognition</p> <p>Material misstatement due to fraudulent financial reporting relating to revenue recognition is a presumed risk in ISA 240 (The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements).</p> <p>Inherent risk of material misstatement:</p> <ul style="list-style-type: none"> • Revenue (Completeness; Occurrence and Cut-off assertions): High 	<p>Procedures performed to mitigate risks of material misstatement in this area included:</p> <ul style="list-style-type: none"> • Review and testing of revenue recognition policies; and • Detailed substantive testing on material revenue streams. 	<p>We have gained satisfactory assurance in respect of the completeness, occurrence and cut-off of revenue transactions in the year.</p>
<p>Key accounting estimate – Pension scheme actuarial assumptions</p> <p>Due to the volatility in market conditions affecting future forecast asset returns, as well as the significant impact on liabilities through changes in actuarial assumptions, the scheme valuation can change significantly year on year.</p> <p>We note that the actuarial report shows a surplus in the scheme this year, FRS 102 only allows a surplus to be recognised to the extent that the charitable company can demonstrate it will benefit from the surplus.</p> <p>Inherent risk of material misstatement:</p> <ul style="list-style-type: none"> • Pensions (Valuation and Presentation & Disclosure assertions): Medium 	<p>Procedures performed to mitigate risks of material misstatement in this area included:</p> <ul style="list-style-type: none"> • Review of the valuation report; • Review and consideration of whether the assumptions applied by the actuary are consistent with those used by other funds; and • Ensuring that disclosures in the financial statements are adequate. 	<p>We have gained satisfactory assurance that the pension valuation has been correctly accounted for and disclosed within the financial statements.</p>

3. Going concern

As auditors, we are required to “obtain sufficient appropriate audit evidence about the appropriateness of management's use of the going concern assumption in the preparation and presentation of the financial statements and to conclude whether there is a material uncertainty about the entity's ability to continue as a going concern” (ISA (UK) 570).

Management's assessment of going concern

West Lothian Lesiure has prepared its financial statements on the going concern basis. Management believe that the financial statements should be prepared on the going concern basis as a result of the level of support committed by West Lothian Council, and based on budgets and forecasts approved by the Board.

Management's assessment covers a period of at least 12 months from expected date of approval of the accounts.

Audit work performed

ISA 570 (revised) specifies mandatory procedures that we are required to carry out on going concern.

We have reviewed management's assessment of going concern, along with the assumptions made in the assessment and the budgets for the next 12 months. There were no material uncertainties identified from this assessment which cast a significant doubt on the ability of the charitable company to continue as a going concern.

Cash flow forecasts

We have reviewed cash flow forecasts prepared by management. These are in line with our understanding

of the business and illustrate that the charitable company has forecasted there to be sufficient cash reserves to continue its operations.

Financial resources available

The funding agreement between West Lothian Leisure and West Lothian Council has been reviewed and confirms the funding for the year ahead.

Other factors

Legal fees have been reviewed for any litigation/claims that might have an impact on the charitable company's ability to continue as a going concern. No issues have been noted from the work performed.

Disclosures

We are satisfied with the quality and adequacy of the disclosures set out in note 2 to the financial statements in relation to going concern.

Conclusion

We concur with management's assessment that it is appropriate to continue to adopt the going concern basis and there are no material uncertainties relating to going concern which should be disclosed in the financial statements.

4. Audit communication

Materiality

Whilst our audit procedures are designed to identify misstatements which are material to our audit opinion, we also report to those charged with governance and management any uncorrected misstatements of lower value errors to the extent that our audit identifies these.

Under ISA (UK) 260 'Communication with those charged with governance', we are obliged to report uncorrected omissions or misstatements other than those which are 'clearly trivial' to those charged with governance. ISA (UK) 260 defines 'clearly trivial' as matters that are clearly inconsequential, whether taken individually or in aggregate and whether judged by any quantitative or qualitative criteria.

An omission or misstatement is regarded as material if it would reasonably influence the users of the financial statements. The assessment of what is material is a matter of professional judgement and is affected by our assessment of the risk profile of the business and the needs of the users.

Accounting policies

The accounting policies used in preparing the financial statements are unchanged from the prior year.

Presentation and disclosures

Our work included a review of the adequacy of disclosures in the financial statements and consideration of the appropriateness of the accounting policies and estimation techniques adopted by the entity.

Overall, we found the disclosed accounting policies, significant accounting estimates and the overall disclosures and presentation to be appropriate.

Fraud and suspected fraud

We have previously discussed the risk of fraud with management. We have not been made aware of any incidents in the period nor have any incidents come to our attention as a result of our audit testing.

Our work as auditor is not intended to identify any instances of fraud of a non-material nature and should not be relied upon for this purpose.

Written representations

We will present the final letter of representation to the Board to sign at the same time as the financial statements are approved.

Related parties

We are not aware of any related party transactions which have not been disclosed in the financial statements.

Confirmations from third parties

Requested third party confirmations have been received from Lindsays, DWF, Barclays and Bank of Scotland.

4. Audit communication (continued)

Unadjusted audit differences

Our summary of the unadjusted audit differences are presented below. We have discussed these adjustments with management and confirmed that the unadjusted differences are individually and cumulatively immaterial.

Unadjusted items - current year						
	JE detail	Statement of Financial Activities		Balance Sheet		Impact on SOFA
		Dr	Cr	Dr	Cr	
1	Other income - unrestricted	£	49,446			
	Grant income - restricted		£	49,446		
	Being reallocation of Cycling Scotland grant funding to restricted funds					£ -
2	Wages and Salaries	£	46,122			
	Accruals - overtime accrual			£	46,122	
	Being adjustment for overtime accrual at year-end					-£ 46,122
Overall impact on net movement in funds - increase deficit by						-£ 46,122

Adjusted audit differences

The financial statements have been adjusted for the following items, following discussion with Management who agreed that these changes should be processed:

Actual adjustments - current year						
	JE detail	Statement of Financial Activities		Balance Sheet		Impact on SOFA
		Dr	Cr	Dr	Cr	
1	gain/loss on disposal of FA (expenditure)	£	8,473			
	gain/loss on disposal of FA (income)		£	8,473		
	Being adjustment to net off gains and losses on disposal of fixed assets					£ -
2	Actuarial loss for year	£	235,000			
	Pension scheme liability			£	235,000	
	Being adjustment to pension actuarial liability					-£ 235,000
Overall impact on net movement in funds - increase deficit by						-£ 235,000

5. Internal controls

Control environment

The purpose of an audit is to express an opinion on the financial statements. As part of our work we considered internal controls relevant to the preparation of the financial statements such that we were able to design appropriate audit procedures. Our audit is not designed to test all internal controls or identify all areas of control weakness. However, where, as part of our testing, we identify any control weaknesses, we have reported these to you below and overleaf. These matters are limited to those which we have concluded are of sufficient importance to merit being reported to you and that have not been reported elsewhere within this report.

Follow up on prior year control recommendations

As part of our current year audit process, we have specifically followed up on control weaknesses and recommendations raised in last year's report as follows:

1. Income received from WLC in respect of "capital funding" was credited to expenditure ledgers. No issues identified in the current year, therefore this observation has been addressed and closed.
2. VAT returns include agency ticket sales, in duplicate. This was not identified until year-end reconciliations were carried out. No such issues were identified this year, and therefore this observation has been addressed and closed.

Area	Assessment	Comment
Control and process environment	Satisfactory	We consider the control environment within the entity to be satisfactory.
Quality of supporting schedules	Satisfactory	The supporting schedules received during the course of the fieldwork were sufficient for our audit purposes.
Responses to audit queries	Satisfactory	Management's responses to our audit queries were appropriate and received on a timely basis.

5. Internal controls (continued)

Control environment

Control points arising from our current year work and our recommendations are summarised below. The recommendations are categorised into three risk ratings as shown in the key.

Key: 1. **Significant deficiency** 2. **Other deficiency** 3. **Other observations**

Area	Observation	Implication	Recommendation	Management Response
Statutory submissions Level 2	It was noted that the confirmation statement was submitted to Companies House after the filing deadline.	Late filing of documents at Companies House is considered to be non-compliance. An automatic striking off notice was issued to the company, which has been cancelled subsequent to the statement having been filed.	We recommend that diary reminders are set to ensure Companies House filings are submitted on time.	Diarised for next year
Reserves Policy Level 2	It was noted that there has not been an update to the reserves policy since 2019.	As the policy has not been reviewed it is possible that due to cost increases the reserves policy is no longer at the correct level.	We recommend that the reserves policy is reviewed.	This will be reviewed by the Board prior to the current year end.

6. Independence and ethics

In accordance with our profession's ethical requirements and further to our audit planning letter issued confirming audit arrangements there are no further matters to bring to your attention in relation to our integrity, objectivity, and independence.

We confirm that Azets Audit Services and the engagement team complied with the FRC's Ethical Standard. We confirm that all threats to our independence have been properly addressed through appropriate safeguards and that we are independent and able to express an objective opinion on the financial statements.

Audit and non-audit services

The following services were provided in the year to 31 March 2024 and to 31 March 2023:

Audit services	Fees 2024 £	Fees 2023 £
Audit of company	32,210	29,850
Total audit services	32,210	29,850

Non audit service	Fees 2024 £	Fees 2023 £	Potential threats	Safeguards applied
Preparation of statutory accounts	Included in audit fee	Included in audit fee	Self-review / Management	Financial statements are prepared based on information provided by your team. Any adjustments are agreed with management. A second manager review of the financial statements is performed, by a member of our team not involved in the delivery of the audit service.
VAT advisory services	£1,870	£nil	Self-review	VAT services are provided by a separate specialist team.

AZETS



Executive Office

West Lothian Civic Centre
Howden South Road
Livingston
West Lothian
EH54 6FF

Our Ref: PW/TS
Your Ref:

Contact: Patrick Welsh
Tel: 01506 281294

e-mail: patrick.welsh@westlothian.gov.uk

Private and Confidential

Mr Ben Lamb
Balbardie Park
Torphichen Road
BATHGATE
West Lothian
EH48 4LA

14 August 2024

Dear Ben

I refer to my previous correspondence of 15 August 2023 and previous years, confirming the financial arrangements between West Lothian Council (WLC) and West Lothian Leisure (WLL). You will be aware that, in terms of WLL's Articles of Association, WLC is the sole member of WLL and, as such, the legal liability of the council is limited to £1 in the event of WLL being wound up.

We have discussed issues arising from the WLL external audit process, and the extent to which WLC would enhance arrangements for financial support during the financial year 2024/25. I am able to confirm that the Council Executive, at its meeting of 13 August 2024, agreed the WLC position and that, on behalf of the council, I should provide confirmation to WLL of that.

The council determined that it will continue to undertake cash flow management with WLL, to allow WLL to meet your everyday cash liabilities in respect of the financial year 2024/25 (1 April 2024 to 31 March 2025), to allow you to remain in credit at all times, thus allowing WLL to proceed as a going concern and meet everyday cash liabilities over the financial year. The cash flow management will continue to be undertaken in its current format, by way of regular reporting by WLL, scrutiny by WLC and engagement between us in relation to financial matters. It should be noted, however, that these arrangements may be subject to enhancement in terms of detail and frequency, should it be considered necessary to ensure appropriate financial arrangements are in place. It is anticipated that WLL would be agreeable to such enhancements following discussion and agreement as to any additional measures which may become necessary.

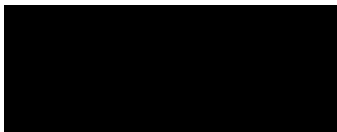
For the avoidance of doubt, WLC continues to require that WLL seeks to agree a balanced annual budget in advance of each financial year and continues to make positive progress in medium term financial planning. WLL will also continue to provide required financial information to the council and to identify options to balance the budget.



I trust this letter provides sufficient comfort for WLL regarding the council's commitment to supporting your organisation.

Please contact me if you have any queries or wish to discuss further.

Yours sincerely



Patrick Welsh
Interim Head of Finance and Property Services