



City of Westminster

Cabinet Member Report

Meeting or Decision Maker:	Cllr Paul Swaddle, Cabinet Member for Community Services and Digital
Date:	28 September 2020
Classification:	General Release
Title:	Policy for Voluntary & Community Sector (VCS) organisations renting or leasing council property in Westminster
Wards Affected:	All
City for All/Policy Context:	Contributes to the Vibrant Communities element of City for All
Key Decision:	Yes
Financial Summary:	The overall impact on the level of financial contribution provided by the Council through this initiative is yet unknown but expected to be minimal
Report of:	Gerald Almeroth, Executive Director of Finance and Resources Ezra Wallace, Director of Policy & Projects

1. Executive Summary

- 1.1 There is currently no designated policy for voluntary and community sector (VCS) organisations that rent or lease council property in Westminster. This has resulted over the years in a range of ad-hoc and inconsistent arrangements where the council has provided varying contributions towards market rent for some VCS organisations occupying council properties. There has been a lack of transparency in these arrangements and in some cases the financial contributions have not reflected the value provided to residents by the VCS organisations in question.

1.2 The new proposed policy will address this situation by introducing the following elements:

- A new financial contribution policy for VCS organisations which assesses six different criteria for each organisation and uses a points-based system to assign the VCS organisation to a Band. The Band will designate what level of contribution towards market rent the applying organisation will be eligible for. There will be five bands ranging from a 0% contribution (Band 0) to a 100% contribution (Band 4).
- A new standard lease template will be introduced for all VCS organisations under the scheme. The lease will be limited to a maximum of 10 years, will preclude sub-letting, and will clarify responsibilities for both parties for repairs.

2. Recommendations

2.1 That the Draft Policy for VCS organisations renting or leasing council property in Appendix B is agreed.

2.2 That the Social Value Assessment Matrix for VCS organisations applying to the scheme in Appendix C is agreed.

2.3 That the General Eligibility Criteria for VCS organisations renting or leasing council property in Appendix D is agreed.

2.4 That the Financial Eligibility Criteria for VCS organisations renting or leasing council property in Appendix E is agreed.

2.5 That the Standard Lease Template for VCS organisations renting or leasing council property in Appendix F is agreed.

2.6 That delegated authority is given to the Executive Director of Finance and Resources to approve minor modifications and updates to the policy.

3. Reasons for Decision

3.1 A policy is needed to standardise the financial contributions that the council makes towards the market rent of VCS organisations occupying council property, so that the council can be shown to be fair, consistent and transparent in its dealings with the voluntary and community sector.

4. Background, including Policy Context

4.1 The lack of consistency around VCS organisations renting or leasing council properties is a long-standing challenge which the council has been trying for address for a number of years. The current ad-hoc arrangements have resulted in several challenges both for the council and for the VCS, including:

- A lack of clarity for both VCS organisations and residents as to why some organisations have been allowed higher rent discounts than others.
- The council being unable to easily demonstrate the full range of financial support it provides to the local VCS (including rent reductions), due to the number of ad-hoc arrangements in place. This can lead to a perceived lack of financial transparency and a lack of visibility of the council's support for the VCS.
- Lettings irregularities taking place across some VCS organisations occupying council property, such as VCS organisations enjoying subsidised rent but sub-letting the property to other organisations at market rent.

4.2 Other London local authorities have introduced clear policies on the use of property by VCS organisations. These usually stipulate that organisations should pay market rent as a baseline. However, the council may choose to subsidise part or all of the rent for certain organisations, based on criteria such as partnership arrangements with the organisation in question. For example, if an organisation is directly commissioned by the council to provide a service, and the organisation requires the use of a certain property in order to deliver that service, then the council may subsidise most or all the rent.

4.3 As part of the research for preparing this new policy officers have analysed all the existing lease arrangements that Westminster City Council has with VCS organisations and the financial contributions the council currently provides towards market rent for these organisations, as of September 2020. This analysis demonstrated that the council provides a wide variety of levels of contribution towards market rents, as set out in the table below.

Financial contribution level provided by the council	No contribution	1-25% of market rent	26 – 50% of market rent	51 – 75% of market rent	76 – 99% of market rent	100% of market rent (nominal rent)
Number of VCS organisations falling into this category	6	3	6	10	1	24

4.4 Some of the VCS organisations that are paying a nominal (or 'peppercorn') rent have purchased the relevant property on a long lease. Most of these leases were purchased within the past couple of decades and still have a substantial duration to run. Officers are determining the best ways to integrate these organisations into the new policy on a case-by-case basis.

5. Details of the new Policy

5.1 Westminster aims to go beyond the example of other councils and establish a simple and transparent assessment process for participating VCS organisations which will be as objective as possible.

- 5.2 Under the new policy, it is proposed that market rent will be charged by default to all VCS organisations using council property. In addition, all occupation will be on the basis of a written agreement or lease.
- 5.3 However, VCS organisations may apply under the council's new Financial Contribution scheme for a contribution towards part or all of the market rent. This scheme aims to recognise the value provided by the VCS to the local community and to reward this appropriately and fairly.
- 5.4 In order to apply to the scheme, VCS organisations will need to meet the general eligibility criteria set out in the draft application form (Appendix D). They will also need to meet the financial eligibility threshold (Appendix E) to ensure that the applying organisation is financially viable but also does not have more than a certain level of reserves. Applying organisations will need to provide sufficient documentation to ensure officers can make a full and fair assessment.
- 5.5 Those organisations which meet the eligibility criteria will then be scored using the six social value measures:
1. Geographical scope of the service provided by the organisation
 2. Demographic scope of the service provided by the organisation
 3. Alignment of the organisation's objectives with the council's strategic objectives as set out in City for All
 4. Whether the organisation addresses a service gap in the council's work programme
 5. Whether the organisation can be shown to deliver value for money
 6. Existing partnership relations between the organisation and the council (e.g. whether they are commissioned directly to provide a key service)
- 5.6 As a result of this scoring, organisations will be provisionally allocated to one of four financial contribution 'bands', which are set out below along with the financial contribution that organisations in each band are entitled to. Fuller details of the scoring matrix are provided in Appendix C.

Band	Financial contribution from the council towards Indicative Market Rent
Band 0	0% contribution
Band 1	25% contribution
Band 2	50% contribution
Band 3	75% contribution
Band 4	100% contribution

- 5.7 In some cases, where a VCS organisation affected by the policy provides a single very specific service to residents (for example, local nurseries providing government-funded childcare places), a modified process may be used to set a financial contribution level which reflects more precisely the service being provided. This ensures that the process is fair towards organisations which provide one specific but essential resident service. For nurseries, for instance, the level of financial contribution provided will reflect the number of funded

childcare places which the nursery offers to local residents. This alternative process will be applied at the discretion of officers.

- 5.8 As part of the implementation of this new policy, there will be a process of engagement with the council's VCS partners, and the council will also provide details of avenues of support that VCS organisations that are struggling financially can make use of.
- 5.9 Initial assessments of applications will be made by an advisory board of council officers drawn from relevant areas of expertise. Final decisions will be made by the Cabinet Member for Community Services and Digital.
- 5.10 The final decision regarding what level of financial contribution an organisation receives is fully at the discretion of the council. There is no absolute guarantee that an organisation which meets the minimum eligibility criteria will definitely be awarded any financial contribution.
- 5.11 By taking part in this Financial Contribution scheme, participating VCS organisations accept that the valuation of the Indicative Market Rent for a property which is provided by the council is final and not negotiable under this scheme. Property valuations are provided for the council on a quarterly basis by an independent firm of chartered surveyors.
- 5.12 Any VCS organisations that subsequently receive financial contributions from the council under this scheme will be required to use the standard lease template provided by the council. Key standard elements of this template include:
 - Limited term of maximum 10 years
 - Review provisions at 5-year intervals
 - Clear arrangements for meeting ongoing building maintenance/repair costs
 - Preclusion of sub-letting or third-party property occupation agreements other than in exceptional circumstances, and at the discretion of the council
- 5.13 Should this policy be approved, officers aim to introduce this policy with the first tranche of VCS organisations beginning in September 2020. The policy will be applied retrospectively to existing VCS organisations occupying council property when rent reviews are due.
- 5.14 This Policy will contribute towards the Vibrant Communities element of the council's City for All strategy by ensuring that the local VCS is financially well supported and that new VCS organisations feel able to start up or move to Westminster. Having a closer partnership with the VCS will help ensure that the council will be able to make the best decisions to support the most vulnerable in the population.

6. Financial Implications

- 6.1 The level of financial contributions towards market rent provided to VCS organisations is currently £1.3m per annum. Through the introduction of the proposed policy, individual contributions will be determined through a standardised assessment process. This will include an assessment of the VCS organisation's financial health and the social value that they provide to Westminster residents. The financial assessment will seek to ensure that the organisation is financially stable but are also in a position whereby they require a level of contribution from the council.
- 6.2 The overall impact on the level of financial contribution provided by the Council through this initiative is yet unknown but expected to be minimal since the proposed new assessment process will be applied at the point that current lease arrangements expire. If the level of financial contribution currently received by each VCS organisation is rounded either up or down to the closest of the proposed four funding bands then the impact is a small increase in financial contribution of £10k per annum.

7. Legal Implications

- 7.1 Local authorities have the benefit of statutory powers pursuant to section 123 of the Local Government Act 1972, subject to applicable legal constraints, allowing them to dispose of land in any manner. Such disposals include, amongst other things, the granting of leases as contemplated in this report.
- 7.2 Where property to be leased by a local authority is vested in that local authority's general fund, leases must be granted for the best consideration reasonably obtainable, as set out in section 123 of the Local Government Act 1972 (except in the case of short tenancies), unless the proposed letting falls within the exemptions set out in the Local Government Act 1972: General Disposal Consent 2003. If a proposed lease for less than the best consideration reasonably obtainable does not fall within those exemptions, the Secretary of State's express consent to the disposal would have to be sought and obtained. When a lease is granted for a term of less than seven years however, it is a short tenancy for the purposes of section 123 Local Government Act 1972. Therefore, where a lease is granted for a term of less than seven years the requirement to obtain the best consideration reasonably obtainable set out in the Local Government Act 1972 does not apply to such leases.
- 7.3 Where a lease is of land vested in a local authority's Housing Revenue Account ("HRA") the legislation governing lettings is the Housing Act 1985. That legislation confirms there should be no letting of land held by a local authority for certain purposes within the local authority's HRA without the consent of the Secretary of State. However, a number of general consents known as the General Housing Consents 2013 (referred to below as "the General Consents") have been issued by the Secretary of State to facilitate the disposal of property vested in the HRA if the disposal falls within the criteria set out in those General Consents. If a proposed letting of property vested in the HRA does not fall within

the criteria set out in those General Consents, the express consent of the Secretary of State to the lease being considered will have to be sought and obtained before that letting can proceed.

- 7.4 Whether the property is vested in the General Fund or the HRA at the time of disposal, when dealing with publicly owned property assets, the Council must comply with its fiduciary duty and must have regard to that in respect of, amongst other things, the sums charged as rent when letting those properties.
- 7.5 Where a lease is granted within the security of tenure provisions of Part II of the Landlord and Tenant Act 1954 (“the 1954 Act”) at the end of the term the tenant will be able to hold over on the terms of the lease regardless of expiry of the term and a landlord may only bring the lease to an end at the end of the term if statutorily limited grounds for doing so apply. However, the leases contemplated by this report are opted out of security of tenure provisions of the 1954 Act and will therefore come to an end at the end of the term granted without the lessee having any right to hold over when the term granted expires.
- 7.6 Part 4 of the Equality Act 2010 imposes a duty, when selling, renting, assigning or managing premises not to unlawfully discriminate against people who have a protected characteristic. This applies to premises in both the public and private sectors. Protected characteristics include the following:
- disability
 - gender reassignment
 - pregnancy or maternity
 - race
 - sex
 - sexual orientation
 - religion or belief
- 7.7 In addition to this, local authorities have a statutory public sector equality duty (referred to as “PSED”) pursuant to section 149 Equality Act 2010. Consequently local authorities are obliged to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the section 149(1)(a) EqA 2010. They must also have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. The matters considered in this report, including but not limited to the decision made pursuant to this report, the proposed policy and the subsequent proposed lettings are therefore subject to the PSED.
- 7.8 Financial contributions can give rise to State Aid issues but only if recipients are providing goods or services on the market i.e. they provide goods or services in return for remuneration. If they are not engaged in either of those activities, they are not what is termed ‘undertakings’ in the Treaty on the Functioning of the European Union and consequently the financial contributions are not State Aid. Generally, Voluntary and Community Sector organisations are unlikely to provide goods or services for remuneration and therefore are unlikely to be undertakings. However, some consideration should be given to the nature of

each VCS to confirm the position. If a recipient is an undertaking the next step is to determine whether the aid ... 'distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods...in so far as it affects trade between Member States..' (Article 107 TFEU). There are exemptions and exceptions, the most relevant of which is aid up to the value of 200,000 euros (De Minimis Aid) and aid relating to Services of General Economic Interest (SGEI), services which are of public benefit but which the market is unlikely to provide without some form of intervention by the state e.g because a commercial operator could not cover its costs/make a profit.

7.9 If State Aid is unlawfully given the European Commission can issue an injunction or a 'recovery order' against the Member State concerned requiring it to recover the aid plus interest. It is the recipient that must return the aid but the body who granted it (in this case, the Council) needs to ensure that, in cases where it is not absolutely certain that a recipient is not an undertaking or one of the exemptions and exceptions cannot be relied on, there is a mechanism by which it can recover the aid from the recipient i.e. by ensuring there is a suitable term in a written agreement with the recipient.

7.10 Otherwise the legal implications are as set out in this report.

8. Consultation

8.1 As this policy is very specific in its scope, the council will not be holding a formal public consultation on these proposed changes. Instead, the council will engage directly and early on with those organisations and partners who will be most affected by this policy.

If you have any queries about this Report or wish to inspect any of the Background Papers, please contact:

Isobel Caton Harrison, Policy Officer, icharrison@westminster.gov.uk

APPENDICES

Appendix A: Other Implications

Appendix B: Draft Policy for VCS organisations renting or leasing council property

Appendix C: Social Value Assessment Matrix for VCS organisations applying to the Financial Contribution Scheme

Appendix D: General eligibility criteria and application form to the Financial Contribution Scheme

Appendix E: Financial eligibility criteria and application form to the Financial Contribution Scheme

Appendix F: Standard template lease for VCS organisations renting or leasing council property

BACKGROUND PAPERS: None

For completion by the **Cabinet Member for Community Services and Digital**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: _____

State nature of interest if any

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(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled **Policy for Voluntary & Community Sector (VCS) organisations renting or leasing council property in Westminster** and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for Community Services and Digital

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
.....
.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the

criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

Appendix A: Other Implications

- 1. Resources Implications** – The policy will require some minor additional officer resource to assess the applications to the financial contribution scheme. However, this should be met within existing staffing levels.

2. **Business Plan Implications** – The policy will be incorporated into relevant business plans for 2020-21.
3. **Risk Management Implications** - The policy will be kept under review and updated with any changes to legislation.
4. **Health and Wellbeing Impact Assessment including Health and Safety Implications** – None
5. **Crime and Disorder Implications** – None
6. **Impact on the Environment** – None
7. **Equalities Implications** – An Equalities Impact Assessment has been completed for this policy, and will be further updated once the policy has been implemented. No adverse impacts on groups with protected characteristics has been identified.
8. **Staffing Implications** – None
9. **Human Rights Implications** – None
10. **Energy Measure Implications** – None
11. **Communications Implications** - The council will engage directly and early on with those organisations and partners who will be most affected by this policy. The new policy and application process will be clearly set out on the council's website.