



SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

ANNUAL GENERAL MEETING
THURSDAY, 19 MAY 2016

AGENDA AND REPORTS

South Cambridgeshire Hall
Cambourne Business Park
Cambourne, Cambridge
CB23 6EA

OUR LONG-TERM VISION

South Cambridgeshire will continue to be the best place to live, work and study in the country. Our district will demonstrate impressive and sustainable economic growth. Our residents will have a superb quality of life in an exceptionally beautiful, rural and green environment.

OUR VALUES

We will demonstrate our corporate values in all our actions. These are:

- Working Together
- Integrity
- Dynamism
- Innovation

EXCLUSION OF PRESS AND PUBLIC

The law allows Councils to consider a limited range of issues in private session without members of the Press and public being present. Typically, such issues relate to personal details, financial and business affairs, legal privilege and so on. In every case, the public interest in excluding the Press and Public from the meeting room must outweigh the public interest in having the information disclosed to them. The following statement will be proposed, seconded and voted upon.

"I propose that the Press and public be excluded from the meeting during the consideration of the following item number(s) in accordance with Section 100(A) (4) of the Local Government Act 1972 on the grounds that, if present, there would be disclosure to them of exempt information as defined in paragraph(s) of Part 1 of Schedule 12A of the Act (as amended)."

If exempt (confidential) information has been provided as part of the agenda, the Press and public will not be able to view it. There will be an explanation on the website however as to why the information is exempt.

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

TO: The Chairman and Members of the
South Cambridgeshire District Council

NOTICE IS HEREBY GIVEN that the Annual General Meeting of the **COUNCIL** will be held in the **COUNCIL CHAMBER, FIRST FLOOR** at **2.00 P.M.** on

THURSDAY, 19 MAY 2016

and I am, therefore to summon you to attend accordingly for the transaction of the business specified below.

DATED 11 May 2016

JEAN HUNTER
Chief Executive

The Council is committed to improving, for all members of the community, access to its agendas and minutes. We try to take all circumstances into account but, if you have any specific needs, please let us know, and we will do what we can to help you.

AGENDA

1. ELECTION OF CHAIRMAN OF THE COUNCIL 2016/17

To **ELECT** the Chairman of the Council for the 2016/17 Civic Year.

2. ELECTION OF VICE-CHAIRMAN OF THE COUNCIL 2016/17

To **ELECT** the Vice-Chairman of the Council for the 2016/17 Civic Year.

3. APOLOGIES

To receive any apologies for absence.

4. DECLARATIONS OF INTEREST

To receive any declarations of interest for items on this agenda.

5. REGISTER OF INTERESTS

Members are requested to inform Democratic Services of any changes in their Register of Members' Financial and Other Interests form.

6. MINUTES

To authorise the Chairman to sign the Minutes of the meeting held on 25 February 2016 and the Minutes of the extraordinary meeting held on 23 March 2016 as correct records.

(Pages 1 - 22)

7. REPORT OF THE RETURNING OFFICER

To **RECEIVE** the attached report on the results of the local elections held on 5 May 2016.

(Pages 23 - 26)

8. ELECTION OF LEADER OF THE COUNCIL

To **ELECT** a Leader of the Council.

9. ANNOUNCEMENTS

To receive any announcements from the Chairman, Leader, the Executive or the Head of Paid Service.

10. QUESTIONS FROM THE PUBLIC

To note that no questions from the public have been received.

11. PETITIONS

To note that no petitions for consideration by Full Council have been received.

12. TO CONSIDER THE FOLLOWING RECOMMENDATIONS:

12 (a) Name of Corporate Governance Committee (Corporate Governance Committee, 18 March 2016)

The Corporate Governance Committee **RECOMMENDED** to Annual Council that the name of the Committee be amended to the 'Audit and Corporate Governance Committee'.

13. ERMINE STREET HOUSING LTD: RE-APPOINTMENT OF DIRECTOR

To **APPROVE** the re-appointment of Stephen Hills as Director of the Council's housing company, Ermine Street Housing Ltd, for a further 12 months alongside his role as Director of Housing for the Council.

14. POLITICAL PROPORTIONALITY AND ALLOCATION OF SEATS TO COMMITTEES FOR 2016/17

To **APPROVE**:

- (a) The allocation of seats on committees.
- (b) The nominations of the political group leaders to seats on committees.
- (c) The appointment of Chairmen and Vice-Chairmen of committees.
- (d) The re-appointment of Grant Osbourn as the Council's lead independent person and Gillian Holmes as the Council's deputy independent person for a further four-year term of office.

(Appendices B and C of the report will follow).

(Pages 27 - 34)

15. APPOINTMENTS TO OUTSIDE, JOINT AND OTHER MEMBER BODIES FOR 2016/17

To **APPROVE** appointments to outside, joint and other Member bodies for 2016/17.

(Nominations from Group Leaders will follow).

16. JOINT SCRUTINY & OVERVIEW COMMITTEE AND PARTNERSHIPS REVIEW COMMITTEE ANNUAL REPORT 2015/16

To **RECEIVE** the joint Scrutiny & Overview and Partnerships Review Committee Annual Report for 2015/16.

(Pages 35 - 48)

17. MAJOR OPPOSITION GROUP LEADER'S ANNUAL STATEMENT

To **RECEIVE** the Major Opposition Group Leader's Annual Statement.

(Pages 49 - 50)

18. WRITE OFF OF OUTSTANDING DEBTS 2015/16

To **NOTE** the amounts written off under delegated powers.

(Pages 51 - 56)

19. APPROVAL OF UK MUNICIPAL BONDS AGENCY'S FRAMEWORK AGREEMENT

The Council is recommended to:

- (a) **APPROVE** the Council's entry into the Framework Agreement and its accompanying schedules including the joint and several guarantee;
- (b) **DELEGATE** authority to the Executive Director as Section 151 Officer and Monitoring Officer to sign those documents, as appropriate, on behalf of the Council.
- (c) **GRANT** the Section 151 Officer delegated authority to agree amendments to the Framework Agreement as appropriate.

Due to its size, the appendix to the report for this item has not been included in the agenda pack and can instead be viewed online at www.scambs.gov.uk under 'your council', followed by 'councillors, minutes and agendas'.

(Pages 57 - 70)

20. QUESTIONS FROM COUNCILLORS

A period of up to 30 minutes will be allocated for this item, to include those questions where notice has been provided (as set out on the agenda below) and questions which may be asked without notice.

Members wishing to ask a question without notice should indicate this intention to the Democratic Services Team Leader prior to the commencement of the item.

Members' names will be drawn at random by the Chairman until there are no further questions or until the expiration of the 30 minute time period.

20 (a) From Councillor Sebastian Kindersley

"When Members attended a meeting with the Leader on 10 March we were told agreeing to the outline Devolution Deal was the first step in a negotiation process and was necessary in order to keep a 'seat at the table'. Further, we were told by the Leader that signing up at that point would not commit South Cambridgeshire District Council to the Devolution Deal as proposed.

Despite those assurances the Chancellor announced East Anglian Devolution as a 'done deal' in the subsequent Budget.

I understand further negotiations have been taking place but that the Chancellor is not prepared to concede either the principle of a directly elected Mayor nor the geographic spread proposed of Cambridgeshire, Peterborough, Suffolk and Norfolk.

The Council meeting proposed for 28 June is two days before the Government deadline for a decision on Devolution. Given that there will only be about four weeks between the 19 May meeting and the publication of the papers for the 28 June meeting there is clearly little scope for meaningful input from South Cambridgeshire residents.

That being the case, it would be useful to know what the Leader's recommendation might be; what the Leader is asking for in the current negotiations with government and why all councillors have not been kept updated of the progress in negotiations since the Budget on 16 March, over 2 months ago?

Is the Leader planning on involving Councillors in this process at all or is he planning on simply presenting the Council with a fait accompli when the papers for the 28 June meeting are published?

Negotiations are rapidly approaching a 'take it or leave it' point.

Will the Leader and his Conservative administration be taking the Devolution Deal as required by the Chancellor or will they be leaving it as not currently being in the best interests of the people of South Cambridgeshire?"

20 (b) From Councillor Bridget Smith

"The new Cabinet Member for The City Deal has not yet set any dates for his Portfolio Holder Meetings. When might we expect these to commence, how often will they take place and how will he use them to include members in scrutiny of the City Deal and in its processes and decision making?"

20 (c) From Councillor Aidan Van de Weyer

"It is with considerable regret that we find that our Council has once again featured in the pages of Private Eye (edition dated 1 April 2016 - www.private-eye.co.uk/issue-1415/news). If we are to believe the account given, our Leader was allegedly involved in providing misleading information to a planning inspector.

We found out about this in the same month that it was revealed that our new Police & Crime Commissioner, Jason Ablewhite, makes jokes about 'pikeys', something for which he refuses to apologise, characterising his comments as banter.

This seems to confirm the impression that the Conservative leadership in Cambridgeshire suffers from an ingrained racism, in particular towards gypsies and travellers.

Could the Leader reassure the Council that he believes that planning decisions should be made on the basis of truth and evidence not prejudice and distortion?

What will the Leader be doing to ensure that public concerns about racism in our councils' leadership are allayed?"

20 (d) From Councillor Tumi Hawins

"Firstly I would like to congratulate the Leader, Councillor Manning on his emphatic re-election. However, I note with interest the comments he is quoted in the Cambridge News, to have made. The quote I refer to is this:

'Overall, the Lib Dems have won some seats back today which were always safe Lib Dem seats. We didn't lose any councillors, but we lost some seats where some Conservative members had stood down. For us [the Conservatives] it's steady as we go; there is no change for us.'

I found the statement rather disappointing, as it seemed to denigrate such a good result and the hard work done by so many people.

Now, I know that sometimes the press inadvertently get it wrong. So, can the Leader please clarify for the records which seats he was referring to as being safe Lib Dem seats and explain how the Conservatives could say there is no change when the party lost 2 seats it previously held, and failed to gain the seat vacated by an Independent which they had so wanted?"

20 (e) From Councillor Anna Bradnam

"Under the arrangements for Shared Services between South Cambridgeshire District Council, Huntingdon District Council and Cambridge City Council we understood that the Terms and Conditions for employees would be protected under the Transfer of Undertakings (Protection of Employment) Regulations, known as TUPE. This involved staff in IT and Building Control being transferred to Huntingdon DC, staff in Legal Services being transferred to Cambridge City and staff from City Waste Services being transferred to South Cambs.

We note with concern that a number of experienced employees left after the recent TUPE transfers.

Please would the Council let us know the number and grades of SCDC staff who were involved in the TUPE process, who subsequently lost or left their jobs?"

20 (f) From Councillor Hazel Smith

"The Conservative leaflet for the local elections stated that 'SCDC's plan to build new council homes for local people has taken off'. We all know that the policies introduced by the Conservative government since May 2015 mean that this just isn't true! The Council's business plan for its council house building programme is now in tatters.

At previous meetings, we have been reassured that the Council leadership is doing all it can to reduce the impact of government policies but that the Council itself could not clearly state its opposition to them.

Could the Leader and the Housing Portfolio holder update the Council on their success in this regard and tell us about their plans to continue their efforts?"

21. CHAIRMAN'S ENGAGEMENTS

To **NOTE** engagements attended by the Chairman and Vice-Chairman since the last Council meeting:

Date	Event	Attended by
8 April 2016	St Neots Charity Ball	Vice- Chairman
9 April 2016	Beat the Indoor Bowls Mayor – Wisbech Town Council	Chairman
18 April 2016	Steeple Morden Village Hall – Invitation to post Refurbishment Open Evening	Chairman
21 April 2016	Waterbeach Queen's Birthday Celebration – Tea Party	Chairman
21 April 2016	SCDC Queen's Birthday Celebration – Street Party, Quiz and Beacon lighting	Chairman and Vice-Chairman
22 April 2016	Uttlesford District Council – St George's Day	Vice-Chairman
22 April 2016	Opening of our new homes for affordable rent and shared ownership at Whittlesford	Chairman
23 April 2016	City of Peterborough – last night of the Proms Concert	Vice-Chairman
24 April 2016	Ely Evensong	Chairman
25 April 2016	Annual WI Council, Cambridge	Chairman
27 April 2016	Town Mayor of Haverhill and Consort: Mayor's Service of Thanksgiving	Chairman
28 April 2016	The Mayor of Chatteris fund raising Indian meal	Chairman
28 April 2016	The Mayor of Chatteris fund raising Indian meal	Vice-Chairman
10 May 2016	Queens Reception at Buckingham Palace	Chairman
12 May 2016	Home Close, Swavesey completion event	Chairman

GUIDANCE NOTES FOR VISITORS TO SOUTH CAMBRIDGESHIRE HALL

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- **Do not** re-enter the building until the officer in charge or the fire brigade confirms that it is safe to do so.

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Recording of Business and Use of Mobile Phones

We are open and transparent about how we make decisions. We allow recording, filming and photography at Council, Cabinet and other meetings, which members of the public can attend, so long as proceedings at the meeting are not disrupted. We also allow the use of social media during meetings to bring Council issues to the attention of a wider audience. To minimise disturbance to others attending the meeting, please switch your phone or other mobile device to silent / vibrate mode.

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If a member of the public interrupts proceedings at a meeting, the Chairman will warn the person concerned. If they continue to interrupt, the Chairman will order their removal from the meeting room. If there is a general disturbance in any part of the meeting room open to the public, the Chairman may call for that part to be cleared. The meeting will be suspended until order has been restored.

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Agenda Item 6

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

Minutes of a meeting of the Council held on
Thursday, 25 February 2016 at 2.00 p.m.

PRESENT: Councillor Sue Ellington – Chairman
Councillor David McCraith – Vice-Chairman

Councillors: David Bard, Val Barrett, Henry Batchelor, Anna Bradnam, Francis Burkitt, Brian Burling, Tom Bygott, Nigel Cathcart, Graham Cone, Pippa Corney, Christopher Cross, Kevin Cuffley, Simon Edwards, Andrew Fraser, Jose Hales, Roger Hall, Philippa Hart, Tumi Hawkins, Roger Hickford, Mark Howell, Caroline Hunt, Peter Johnson, Sebastian Kindersley, Douglas de Lacey, Janet Lockwood, Mervyn Loynes, Ray Manning, Mick Martin, Raymond Matthews, Cicely Murfitt, Charles Nightingale, Tony Orgee, Robin Page, Alex Riley, Deborah Roberts, Tim Scott, Ben Shelton, Bridget Smith, Hazel Smith, Edd Stonham, Peter Topping, Richard Turner, Robert Turner, Bunty Waters, Aidan Van de Weyer, David Whiteman-Downes, John Williams, Tim Wotherspoon and Nick Wright

Officers: Alex Colyer Executive Director, Corporate Services
Jean Hunter Chief Executive
Shirley Tracey Interim Monitoring Officer
Graham Watts Democratic Services Team Leader

1. APOLOGIES

Apologies for absence were received from Councillors Grenville Chamberlain, Simon Crocker, Neil Davies, Lynda Harford, James Hockney and Des O'Brien.

Councillor Sue Ellington, Chairman, welcomed Shirley Tracey to her first meeting of the Council in her new role as Interim Monitoring Officer.

2. DECLARATIONS OF INTEREST

Councillor Brian Burling declared a disclosable pecuniary interest in item number 8(d) as a rate payer and indicated that he would leave the meeting upon consideration of this item.

3. REGISTER OF INTERESTS

The Chairman reminded Members that they needed to update their register of interests whenever their circumstances changed.

4. MINUTES

The minutes of the previous meeting held on 28 January 2016 were confirmed and signed by the Chairman as a correct record, subject to typographical corrections at minute numbers 2 and 5 and the inclusion of the correct reference to the New Communities Joint Strategic Needs Assessment at minute number 12(b).

5. ANNOUNCEMENTS

Councillor Ray Manning, Leader of the Council, reminded Members that a report on the Local Development Plan would be considered at the Planning Portfolio Holder Meeting on 14 March 2016 and subsequently an extraordinary meeting of the Council on 23 March 2016. This would provide the Council with an opportunity to consider the results of the consultation that had been carried out regarding proposed modifications and agree what the Council sent back to the Inspectors. It was noted that the report for the Portfolio Holder Meeting would be published on 4 March 2016.

Councillor Manning also reported that extensive discussions were currently ongoing between the Government and Leaders of local Councils regarding devolution. He invited Members of the Council to join him for an informal question and answer session at the close of the meeting.

6. QUESTIONS FROM THE PUBLIC

No questions from members of the public had been received.

7. PETITIONS

No petitions for consideration by the Council had been received since the last meeting.

8. TO CONSIDER THE FOLLOWING RECOMMENDATIONS:

8 (a) Members' Allowances 2016/17

Councillor Ray Manning, Leader of the Council, proposed the recommendations contained within the report following a review of the Members' Allowances Scheme undertaken by the Independent Remuneration Panel. Councillor Simon Edwards, Deputy Leader of Portfolio Holder for Finance and Staffing, seconded the proposal.

Councillor Anna Bradnam queried Appendix B to the report which set out proposed changes to Officer Employment Procedure Rules. It was noted that the changes set out in the appendix had already been approved at a previous meeting of the Council and were included within the report to assist in explaining the new role of the Independent and Deputy Persons with regard to the appointment and dismissal of the Council's Chief Officers. Councillor Bradnam, in acknowledging the process for Chief Officers, asked why reference had not been included to Executive Directors in the appendix. It was agreed that a response to this query would be provided directly to Councillor Bradnam.

Council unanimously **AGREED**:

- (1) Pending the next review of South Cambridgeshire District Council's Members' Allowance Scheme, that any changes to current Special Responsibility Allowance payments deemed necessary to reflect changes in Member roles and responsibilities should be made by a re-allocation of current Special Responsibility Allowance payments without increasing the Council's overall Special Responsibility Allowance cost envelope.
- (2) That the Members' Basic Allowance be increased by the equivalent percentage amount that the Council agrees to apply to the pay rates of Council staff, effective from 1 April 2016, and that thereafter the Basic Allowance is increased annually on the same indexed basis pending the next review of the Members' Allowance Scheme.

- (3) That where a Councillor in receipt of the allowance fails to attend 50% of the meetings for which that allowance is paid in any six-month period, that Councillor be invited to repay an appropriate sum of the allowance received during that period.
- (4) That there should be no increase to the Independent Person's or their Deputy's annual allowance payment, given that the additional commitment involved is intrinsically ad hoc and may never be performed during their period of office.

8 (b) Corporate Plan Priorities 2015-2020 (Cabinet, 11 February 2016)

Councillor Peter Topping, Portfolio Holder for Finance and Staffing, proposed that the Council approved the Corporate Plan, setting out the Council's vision, objectives and actions for 2016-2021, as set out in Appendix 1 to the report.

Councillor Roger Hickford, Chairman of the Scrutiny and Overview Committee, seconded the proposal.

Councillor Sebastian Kindersley made reference to the intention of the Council's housing company, Ermine Street Housing Ltd, to act as an ethical landlord and was of the view that this implied other private landlords acted unethically. Councillor Mark Howell, Portfolio Holder for Housing, said that this related to the additional support the housing company would offer, as much as it could, to those tenants who were experiencing difficulties, such as financial difficulties, for example. He acknowledged that there were excellent private landlords operating in the district, some of which offered similar services.

Councillor Douglas de Lacey proposed an amendment to the Corporate Plan objective 'homes for our future', stated in the document as being to 'secure the delivery of a wide range of housing to meet the needs of existing and future communities'. His amendment was to include the words 'in line with the Council's Local Plan' and add a new paragraph (i) under the objective to read 'reaffirm the Council's requirement for 40% of affordable homes'.

Councillor Deborah Roberts seconded the amendment.

Councillor John Williams moved an amendment to Councillor de Lacey's original amendment, to add the word 'emerging' so that it read 'in line with the Council's emerging Local Plan'.

Councillor de Lacey accepted this amendment to his original amendment.

Councillor Ray Manning, Leader of the Council, said that the Council's policy on affordable housing was included in other documents and that it would not be appropriate to include such reference within this high level Corporate Plan. He also reminded Members that the Council's policy in respect of affordable housing was 40%, subject to viability. Councillor Simon Edwards, Deputy Leader and Finance and Staffing Portfolio Holder, supported this view and felt it would be unwise to commit to a value for affordable housing in the Corporate Plan. Councillor Topping agreed that this level of detail was not appropriate for inclusion in the Plan.

Councillor Anna Bradnam proposed removing the paragraph in relation to affordable housing from the amendment, which Councillor de Lacey accepted. The substantive amendment therefore became to add the words 'in line with the Council's emerging Local Plan' after the words 'secure the delivery of a wide range of housing to meet the needs of existing and future communities' in respect of the 'homes for our future'

objective.

Voting on the substantive amendment, with 17 votes in favour and 34 votes against, the amendment was lost.

Enough Members as prescribed in Council's Standing Orders requested a recorded vote. Votes were therefore cast as follows:

In favour

Councillors Henry Batchelor, Anna Bradnam, Nigel Cathcart, Jose Hales, Philippa Hart, Tumi Hawkins, Peter Johnson, Sebastian Kindersley, Douglas de Lacey, Janet Lockwood, Cicely Murfitt, Robin Page, Deborah Roberts, Bridget Smith, Edd Stonham, Aidan Van de Weyer and John Williams.

Against

Councillors David Bard, Val Barrett, Francis Burkitt, Brian Burling, Tom Bygott, Graham Cone, Pippa Corney, Christopher Cross, Kevin Cuffley, Simon Edwards, Sue Ellington, Andrew Fraser, Roger Hall, Roger Hickford, Mark Howell, Caroline Hunt, Mervyn Loynes, Ray Manning, Mick Martin, Raymond Matthews, David McCraith, Charles Nightingale, Tony Orgee, Alex Riley, Tim Scott, Ben Shelton, Hazel Smith, Peter Topping, Richard Turner, Robert Turner, Bunty Waters, David Whiteman-Downes, Tim Wotherspoon and Nick Wright.

Councillor Cathcart was of the opinion that something should be included within the Corporate Plan to reflect that the Local Development Plan should be adopted as a matter of urgency, as this was something that the Council needed to progress as quickly as possible. He also felt that reference to the protection of conservation and the natural environment had been omitted from the document. Councillor Topping reiterated that this was a high level but welcomed the comments.

Voting on the original motion, with 31 votes in favour, 5 against, 13 abstentions and 2 not voting, Council **APPROVED** the Corporate Plan setting out the Council's vision, objectives and actions for 2016–2021, as set out in Appendix 1 to the report.

Enough Members as prescribed in Council's Standing Orders requested a recorded vote. Votes were therefore cast as follows:

In favour

Councillors David Bard, Val Barrett, Francis Burkitt, Brian Burling, Tom Bygott, Graham Cone, Christopher Cross, Kevin Cuffley, Simon Edwards, Sue Ellington, Andrew Fraser, Roger Hickford, Mark Howell, Caroline Hunt, Mervyn Loynes, Ray Manning, Mick Martin, Raymond Matthews, David McCraith, Charles Nightingale, Tony Orgee, Alex Riley, Tim Scott, Ben Shelton, Peter Topping, Richard Turner, Robert Turner, Bunty Waters, David Whiteman-Downes, Tim Wotherspoon and Nick Wright.

Against

Councillors Jose Hales, Philippa Hart, Peter Johnson, Robin Page and Aidan Van de Weyer.

Abstention

Councillors Henry Batchelor, Anna Bradnam, Nigel Cathcart, Tumi Hawkins, Sebastian Kindersley, Douglas de Lacey, Janet Lockwood, Cicely Murfitt, Deborah Roberts, Bridget Smith, Hazel Smith, Edd Stonham and John Williams.

Not voting

Councillors Pippa Corney and Roger Hall.

8 (c) **Medium Term Financial Strategy (General Fund budget 2016/17 including Council Tax setting), Housing Revenue Account (including housing rents), Capital Programme 2016/17-2020/21 and Treasury Management Strategy (Revised 2015/16 and 2016/17) (Cabinet, 11 February 2016)**

Councillor Simon Edwards proposed recommendations (a) to (x) as set out in the agenda, subject to Appendix G in recommendation (i) referring to Appendix G(1), together with the wording of the statutory resolution in respect of the Council Tax for 2016/17 that had been circulated in the revised supplement.

Councillor Edwards highlighted the following aspects of the proposed budget to Members, which had been produced following significant changes announced as part of the Local Government Finance Settlement:

- the Revenue Support Grant would reduce by 48.7% from 2015-16 to 2016-17, by a further 75.2% in 2017-18 and to nil in 2018-19. The reduction to nil had been anticipated, but not as early as 2018-19;
- the basic principles of retained business rates would remain, however, an adjustment to the tariff deduction imposed by the Government would be introduced in 2019-20;
- the Government was proposing changes to the New Homes Bonus scheme and modelling in the report outlined the scheme changing from a six year scheme to a four year scheme from 2017-18. The Government was consulting on other reforms to New Homes Bonus, including:
 - withholding new New Homes Bonus allocations in areas where no Local Plan had been produced;
 - reducing payments for homes built on appeal;
 - only making payments for delivery above a baseline representing 'deadweight';
- beyond 2017-18 it was possible that some of these other reforms could have adverse implications for the amount of New Homes Bonus that the Council may receive;
- £5 million of New Homes Bonus funding as a contribution towards the A14 infrastructure improvement scheme was still allocated in the Council's budget for 2020-2021;
- all Councils had the ability to raise Council Tax by £5 as apposed to increasing Council Tax by any amount up to 2% without triggering a referendum. Three options for the District Council in terms of Council Tax increases had been set out in paragraphs 19, 20 and 23 of the original report, with each having a different impact on the savings or additional income that the Council would be required to make. The table in paragraph 19 of the original report summarised the impact of the different options that had been modelled. The option proposed was an increase in Council Tax of £5 this year and for every year of this parliament, with an increase of 2% year on year thereafter;
- significant savings had already been achieved in some areas, such as those through the shared waste service;

- the successful pilot of Ermine Street Housing Ltd had seen the company provide an income stream for the Council, with other projects such as the commercialisation programme anticipated to provide other sources of income;
- the Rural Services Grant had been increased from £32,261 to £129,850 in 2016-17 and from £46,457 to £104,848 in 2017-18. A new Transition Grant would also be available of £75,842 in 2016-17 and £75,575 in 2017-18;
- of the precautionary items listed in Appendix B2 of the report, specific reference was made to an increase of £250,000 for homelessness for 2016-17. This was a particular risk for the Council and would be monitored to establish how this aspect of the budget could be modelled in the future;
- the Capital Programme showed a General Fund allocation for capital receipts but was essentially a loan to fund Ermine Street Housing Ltd;
- in terms of the Housing Revenue Account capital expenditure, this had reduced by a third as a result of the imposed reduction in rents;
- local authority landlords and registered providers were now required to apply a 1% reduction in rent levels across each of the next four years. Legislation was still going through Parliament, but it was anticipated that the draft Housing and Planning Bill 2015 would be passed in March for implementation in April 2016. This actually equated to a 4% reduction in view of the fact that 3% rent increase had originally been accounted for in the Housing Revenue Account Business Plan;
- Appendix G(1) set out a Housing Revenue Account based on those in sheltered housing also receiving a 1% rent reduction. This was the option proposed, to ensure equality for all Council tenants.

Councillor Mark Howell, Portfolio Holder for Housing, seconded the proposal.

Councillor Bridget Smith, Leader of the Opposition, was heartened that the proposal included a rise in Council Tax which would protect the services that residents and communities depended upon. She said that this was the right thing to do and that the proposal reflected a responsible budget which she would be able to support.

Councillor Tumi Hawkins highlighted the risks to the Council as a result of changes the Government was imposing with regards to social housing, which she said would be compounded by changes to private housing. Councillor Hawkins was particularly concerned about the pressure these changes would place on the authority's budget and the impact on the welfare of residents.

Councillor Sebastian Kindersley was pleased to see that additional funding had been earmarked in the list of precautionary items in respect of homelessness. He referred to an increase in traveller pitches from £68 per week to £78 which he thought was a high percentage increase and felt it necessary to highlight. Councillor Kindersley also supported provision of the Robson Court scheme in Gamlingay included in the new built and redevelopment programme.

Councillor Mark Howell, Portfolio Holder for Housing, reiterated that the 1% reduction in rent actually equated to a 4% reduction year on year due to the fact that the original Housing Revenue Account business plan had factored in a 3% rent increase. In terms of homelessness, Councillor Howell explained that additional funding had been identified in the list of precautionary items in case it was needed and further consideration would be given to making more provision available for homelessness in the Council's future budgets. He emphasised, however, that prevention work was key to addressing homelessness in the district and asked all Members to inform anyone who they thought may be at risk to contact the Council.

Voting on recommendations (a) to (x) as set out on the agenda, subject to Appendix G in recommendation (i) referring to Appendix G(1), with 48 votes in favour, 2 abstentions and 1 not voting Council:

- (a) **APPROVED** the General Fund Capital Programme and the associated funding up to the year ending 31 March 2021, as set out in Appendix A1 of the report as submitted.
- (b) **APPROVED** the revenue estimates for 2016-17 as submitted in the General Fund summary, as set out in Appendix B1 of the report.
- (c) **APPROVED** the precautionary items for the General Fund, as set out in Appendix B2 of the report.
- (d) **APPROVED** the Medium Term Financial Strategy for the General Fund, as set out in Appendix B3 of the report, based on the assumptions set out in the report.
- (e) **APPROVED** the fees and charges proposed for 2016-17, as set out in Appendix B4 of the report.
- (f) **RESOLVED** that the Executive Management Team be instructed to identify additional income/ savings of £300,000 in 2016-17, rising to £930,000 from 2017-18.
- (g) **RESOLVED** that the Council Tax requirement for 2016-17 is £7,852,090.
- (h) **RESOLVED** that the Council sets the amount of Council Tax for each of the relevant categories of dwelling in accordance with Section 30(2) of the Local Government Finance Act 1992 on the basis of a District Council Tax for general expenses on a Band D property of £130.31 plus the relevant amounts required by the precepts of Parish Councils, Cambridgeshire County Council, the Cambridgeshire Police and Crime Commissioner and the Cambridgeshire Fire Authority, details of those precepts and their effect as set out in the statutory resolution below.
- (i) **APPROVED** the Housing Revenue Account revenue budget, summarised in the Housing Revenue Account Summary Forecast 2015-16 to 2020-21, as set out in Appendix G(1) of the Housing Revenue Account budget setting report, in the context of the updated 30 Year Housing Revenue Account Business Plan.
- (j) **AGREED**, subject to resolution (x) below, council dwellings rents for existing tenants be reduced by 1%, in line with legislative requirements, anticipated to be introduced as part of the Welfare Reform and Work Bill 2015, with effect from 4th April 2016.
- (k) **APPROVED** the inclusion of an ongoing savings target for Housing Revenue Account services for the period from 2017-18 to 2020-21, at the initial rate of £250,000 per annum, recognising the financial constraints placed upon the Housing Revenue Account by changes in national housing policy.
- (l) **APPROVED** inflationary increases of 1.4% in garage rents for 2016-17, in line with the base rate of inflation for the year assumed in the Housing Revenue Account Budget Setting Report.

- (m) **APPROVED** proposed service charges for Housing Revenue Account services and facilities provided to both tenants and leaseholders, as set out in Appendix B of the Housing Revenue Account budget setting report.
- (n) **APPROVED** the charge for the cost of the provision of the alarm service in sheltered housing being set at £3 a week.
- (o) **APPROVED** the latest budget, spend profile and funding mix for each of the schemes in the new build programme, as set out in Section 5 and Appendix E of the Housing Revenue Account budget setting report.
- (p) **APPROVED** to earmark the required level of additional funding for new build investment between 2016-17 and 2020-21 to ensure that commitments can be met in respect of the investment of all right to buy receipts retained by the authority, up to the end of December 2015.
- (q) **APPROVED** the revised Housing Capital Investment Plan, as set out in Appendix H of the Housing Revenue Account budget setting report, in the context of the updated 30 Year Housing Revenue Account Business Plan.
- (r) **RESOLVED** to grant delegation to the Executive Director (Corporate Services) in consultation with the Leader, to allow the Self-Build Vanguard scheme to proceed during 2016-17, should the business case presented be financially viable for both the General Fund and the Housing Revenue Account.
- (s) **APPROVED** the borrowing and investment strategy for the year to 31 March 2017, as set out in Appendix D1 of the report.
- (t) **APPROVED** the prudential indicators required by the Prudential Code for Capital Finance in Local Authorities for the year to 31 March 2017, as set out in Appendix D2 of the report.
- (u) **APPROVED** the Capital Strategy 2016-17 to 2020-21 and Corporate Asset Management Plan 2016-17 to 2020-21, as set out in Appendices D4 and D5.
- (v) **RESOLVED** that any unspent New Homes Bonus money allocated to the City Deal be approved to roll forward to 2017-18.
- (w) **RESOLVED** that the Executive Director (Corporate Services) be given delegated authority to issue the final version of the Estimates Book, incorporating the amendments required from Council's decisions.
- (x) **NOTED** The Government's exemption of supported housing from the 1% rent cut.

A recorded vote was held further to the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014 and Council Standing Order 16.6. Votes were therefore cast as follows:

In favour

Councillors David Bard, Val Barrett, Henry Batchelor, Anna Bradnam, Francis Burkitt, Brian Burling, Tom Bygott, Nigel Cathcart, Graham Cone, Pippa Corney, Christopher Cross, Kevin Cuffley, Simon Edwards, Sue Ellington, Andrew Fraser, Jose Hales, Roger Hall, Philippa Hart, Tumi Hawkins, Roger Hickford, Mark Howell, Caroline Hunt, Peter Johnson, Sebastian Kindersley, Douglas de Lacey, Janet Lockwood, Mervyn Loynes, Ray Manning, Mick Martin, David McCraith, Cicely Murfitt, Charles Nightingale, Tony Orgee, Alex Riley, Tim Scott, Ben Shelton, Bridget Smith, Hazel Smith, Edd Stonham, Peter Topping, Richard Turner, Robert Turner, Bunty Waters, Aidan Van de Weyer, David Whiteman-Downes, John Williams, Tim Wotherspoon and Nick Wright.

Abstention

Councillors Robin Page and Deborah Roberts.

Not voting

Councillor Raymond Matthews.

Voting on the statutory resolution in respect of the Council Tax for 2016-17, in addition to resolution (g) above, with 49 votes in favour, 1 abstention and 1 not voting Council **AGREED** the following statutory resolution:

That the following amounts be now calculated by the Council for the year 2016-17 in accordance with Sections 31 to 36 of the Local Government Finance Act 1992:

- | | | |
|-----|--------------------|---|
| (a) | £91,936,833 | being the aggregate of the amounts which the Council estimates for the items set out in Section 31A (2) (a) to (f) of the Act (gross expenditure including parish precepts, the Housing Revenue Account and additions to reserves) |
| (b) | £79,309,268 | being the aggregate of the amounts which the Council estimates for the items set out in Section 31A (3) (a) to (d) of the Act (gross income including the Housing Revenue Account and use of reserves) |
| (c) | £12,627,565 | being the amount by which the aggregate at (a) above exceeds the aggregate at (b) above, calculated by the Council, in accordance with Section 31A (4) of the Act, as its council tax requirement for the year (net expenditure to be met from council tax) being the district amount of £7,852,090 and the parish precepts of £4,775,475 |
| (d) | £209.56 | being the amount calculated by the Council, in accordance with Section 31B of the Act, as the basic amount of its council tax for the year (average council tax for a band D property for the District including parishes) |
| (e) | £4,775,475 | being the aggregate amount of all special items referred to in Section 34(1) of the Act (parish precepts) |

- (f) **£130.31** being the amount calculated by the Council, in accordance with Section 34(2) of the Act, as the basic amount of its council tax for the year for dwellings in those parts of its area to which no special item relates (average council tax for a Band D property for the District excluding parishes), the amounts being for each of the categories of dwellings shown below in Table 1
- (h) In accordance with Section 34(3) of the Act, the basic amounts of council tax for the year for dwellings in those parts of its area to which a special item relates are shown by adding the amounts for band D for the District Council in Table 1 below and Appendix A of the revised supplement
- (i) In accordance with Section 36(1) of the Act, the amounts to be taken into account for the year in respect of categories of dwellings listed in different valuation bands are shown by adding the amounts for each band in Table 1 below and Appendix A of the revised supplement.

That it be noted that for the year 2016-17 Cambridgeshire County Council, the Cambridgeshire Police and Crime Commissioner and Cambridgeshire and Peterborough Fire Authority have stated the following amounts in precepts issued to the Council, in accordance with Section 40 of the Local Government Finance Act 1992, for each of the categories of dwellings as shown in Table 1:

Table 1	Band A £	Band B £	Band C £	Band D £	Band E £	Band F £	Band G £	Band H £
County Council	778.08	907.76	1037.44	1,167.12	1,426.48	1,685.84	1,945.20	2,334.24
Police & Crime Commissioner	122.10	142.45	162.80	183.15	223.85	264.55	305.25	366.30
District Council	86.87	101.35	115.83	130.31	159.27	188.23	217.18	260.62
Fire Authority	43.68	50.96	58.24	65.52	80.08	94.64	109.20	131.04

and

- j) that the Council, in accordance with Section 30(2) of the Local Government Finance Act 1992, hereby sets the amounts set out in Appendix B of the revised supplement as the amounts of council tax for the year 2016-17 for each of the categories of dwellings shown in Appendix B.

SUPPORTING INFORMATION IN RESPECT OF SETTING THE COUNCIL TAX

Including the precepts from the County Council, the Police and Crime Commissioner, Fire Authority and all of the parishes, the formal Council Resolution would produce a council tax for a band D property of:

£ p			%
District Council	General Expenses	130.31	+3.99%
	Special Expenses for Parish Precepts (average)	79.25	+3.87%
County Council		1,144.26	+0.00%
	Adult Social Care	22.86	
Police Authority		183.15	+0.99%
Fire Authority		65.52	+1.96%
Total		1,625.35	+2.13%

On these figures the council tax would range from £1,030.73 for B and A to £3,351.52 for Band H before any discounts or benefits.

Appendix C of the revised supplement showed the General Fund summary including Parish precepts and the final Formula Grant figure.

A recorded vote was held further to the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014 and Council Standing Order 16.6. Votes were therefore cast as follows:

In favour

Councillors David Bard, Val Barrett, Henry Batchelor, Anna Bradnam, Francis Burkitt, Brian Burling, Tom Bygott, Nigel Cathcart, Graham Cone, Pippa Corney, Christopher Cross, Kevin Cuffley, Simon Edwards, Sue Ellington, Andrew Fraser, Jose Hales, Roger Hall, Philippa Hart, Tumi Hawkins, Roger Hickford, Mark Howell, Caroline Hunt, Peter Johnson, Sebastian Kindersley, Douglas de Lacey, Janet Lockwood, Mervyn Loynes, Ray Manning, Mick Martin, Raymond Matthews, David McCraith, Cicely Murfitt, Charles Nightingale, Tony Orgee, Alex Riley, Tim Scott, Ben Shelton, Bridget Smith, Hazel Smith, Edd Stonham, Peter Topping, Richard Turner, Robert Turner, Bunty Waters, Aidan Van de Weyer, David Whiteman-Downes, John Williams, Tim Wotherspoon and Nick Wright.

Abstention

Councillor Deborah Roberts.

Not voting

Councillor Robin Page.

Councillor Edwards, on behalf of the Council, took this opportunity to thank officers for the tremendous work they had undertaken, in challenging circumstances, to produce the budget papers for this meeting. A round of applause by Members of the Council in support of Councillor Edwards' comments followed.

8 (d) Swavesey Byways Rate

Councillor Brian Burling, having declared a disclosable pecuniary interest in minute number 2, left the meeting during the consideration of this item.

Councillor Robert Turner, Portfolio Holder for Planning, proposed the recommendations contained within the report. The proposal was seconded by Councillor Nick Wright, Portfolio Holder for Economic Development.

Council unanimously **RESOLVED** to:

- (a) Maintain the current level of byeway maintenance for the period 2016-17.
- (b) Levy a rate at £1.10 to fund the required maintenance for the period 2016-17.

8 (e) Membership changes

Councillor Ray Manning, Leader of the Council, proposed that Councillor Graham Cone be appointed onto the Council's Scrutiny and Overview Committee. Councillor Simon Edwards, Deputy Leader and Finance and Staffing Portfolio Holder, seconded the proposal.

Councillor Manning took this opportunity to thank Councillor David Whiteman-Downes, who had resigned from the Committee due to work commitments, for his contributions.

Council unanimously **APPOINTED** Councillor Graham Cone onto the Scrutiny and Overview Committee.

9. ADVICE NOTE ON ELECTED MEMBER INVOLVEMENT IN THE GREATER CAMBRIDGE CITY DEAL

Councillor Francis Burkitt, Portfolio Holder for the Greater Cambridge City Deal, proposed that the advice note on elected Member involvement in the Greater Cambridge City Deal, as included within the agenda pack, be endorsed.

Councillor Ray Manning, Leader of the Council, seconded the proposal.

Councillor Bridget Smith, Leader of the Opposition, could not support the advice note which she felt essentially said that the District Council had no special position as a consultee on City Deal projects. She had originally understood that the Council would be a 'super-consultee' as a City Deal partner and said that the advice note now made it clear that the Council had no greater voice on City Deal issues than anyone else. Councillor Smith felt that the Council had been misled and that the protocol as suggested in the note was undemocratic. She therefore requested that it be sent back to the Executive Board for further work as, in her view, it was currently not fit for purpose.

Councillor Aidan Van de Weyer referred to the Notice of Motion agreed by the Council at its meeting on 26 November 2015, where it requested a protocol as to how Members individually, and the Council as a body, should respond to City Deal consultations. He did not feel that the advice note described how the Council as a body could respond to City Deal consultations. Referring to the advice note itself, paragraph 2.4 stated that Members of the partner Councils were fully involved in the City Deal programme. He did not agree with this statement. The note also suggested that Members could lobby individual officers and he therefore requested a list of officers and their contact details. Councillor Van de Weyer was of the opinion that this document was not a protocol for how the Council as a body interacted with the City Deal and supported Councillor Smith's suggestion of sending it back to the Executive Board for reconsideration.

Councillor Nigel Cathcart, particularly in view of the next Local Development Plan, felt that the voting arrangements for the City Deal should be reconsidered. He suggested a system where only those Members of South Cambridgeshire District Council should vote for issues affecting the South Cambridgeshire area in order to safeguard the district.

Councillor Robin Page agreed with the comment that the City Deal was undemocratic and was concerned that its projects would ruin South Cambridgeshire's countryside. Councillor Deborah Roberts had the same view in respect of the countryside and was unsure as to what exactly the City Deal would provide for the people of South Cambridgeshire. She made the point that the City Council Member on the Board gained more coverage in the local press than any other Member.

Councillor Sebastian Kindersley raised concerns regarding the establishment of Local Liaison Forums, as referred to in paragraph 3.5 of the document. He said that some of the City Deal transport infrastructure scheme projects would have significant impacts on a wide ranging area, so it was likely that some villages affected by some of these schemes may not be represented on the Forum.

Councillor Manning reminded Members that there were three Members entitled to vote on the City Deal Executive Board, with one of those votes being a South Cambridgeshire District Council vote. He was of the opinion that the person appointed to represent the Council on that body would have an idea of what the District Council would want and cast their vote accordingly. Councillor Manning also made the point that any Member of the Council had the right to address the Executive Board or Joint Assembly in the same way as members of the public.

NOTE – Councillor Robin Page left the meeting at this stage of proceedings.

Councillor Francis Burkitt made the following points in response to the comments raised during debate:

- the title 'City Deal' gave people an incorrect perception and he wanted to make it clear to people that this was a joint venture for the Greater Cambridge area, not solely for the City of Cambridge. He implored Members to get behind and support the implementation of the City Deal in view of the fact that the Council was a key strategic partner. This was one of the reasons why the Council as a body could not be a 'super-consultee', because it would effectively mean consulting with itself on City Deal consultations. It was therefore much better that individual Members could provide their input into the Executive Board or Joint Assembly, as suggested in paragraph 4.1 of the advice note;
- the exception to the Council being a 'super-consultee' was in relation to the Local Development Plan, the detailed arrangements around which would be worked up in more detail as reflected in paragraph 4.2 of the advice note;
- a list of officers for the various workstreams of the City Deal programme would be published in due course;
- in terms of concerns about the future of South Cambridgeshire's countryside, Councillor Burkitt made it clear that he would be a loud rural voice on the Executive Board;
- the more people understood what the City Deal was about and what it was seeking to deliver, the more people would appreciate and support it. The City Deal's new Strategic Communications Manager, due to commence their new role at the end of the month, would assist in promoting the City Deal in this respect;
- the City Council Member on the Board did appear in the local media more often than any other Member, due to the fact that Councillor Lewis Herbert as the City Council's representative on the Executive Board was the Chairman and spokesperson for the Board;
- Local Liaison Forums already existed via the County Council for transport infrastructure schemes and the City Deal's transport infrastructure schemes would follow the same process in that respect.

Councillor Burkitt closed by saying that he wanted Members to get on board with the City Deal and think of it as an extension of the District Council.

Voting on the proposal, with 36 votes in favour, 12 against and 2 abstentions, Council **ENDORSED** the advice note on elected Member involvement in the Greater Cambridge City Deal.

Enough Members as prescribed in Council Standing Orders requested a recorded vote. Votes were therefore cast as follows:

In favour

Councillors David Bard, Val Barret, Francis Burkitt, Brian Burling, Tom Bygott, Graham Cone, Pippa Corney, Christopher Cross, Kevin Cuffley, Simon Edwards, Sue Ellington, Andrew Fraser, Roger Hall, Roger Hickford, Mark Howell, Caroline Hunt, Peter Johnson, Douglas de Lacey, Mervyn Loynes, Ray Manning, Mick Martin, Raymond Matthews, David McCraith, Charles Nightingale, Tony Orgee, Alex Riley, Tim Scott, Ben Shelton, Edd Stonham, Peter Topping, Richard Turner, Robert Turner, Bunty Waters, David Whiteman-Downes, Tim Wotherspoon and Nick Wright.

Against

Councillors Henry Batchelor, Anna Bradnam, Nigel Cathcart, Jose Hales, Philippa Hart, Tumi Hawkins, Sebastian Kindersley, Janet Lockwood, Bridget Smith, Hazel Smith, Aidan Van de Weyer and John Williams.

Abstention

Councillors Cicely Murfitt and Deborah Roberts.

10. QUESTIONS FROM COUNCILLORS

10 (a) From Councillor Bridget Smith

Councillor Bridget Smith asked the following question:

“The Gold Investors in People Award was to be celebrated. However, of late, training opportunities for Members have been in short supply. What plan does the Portfolio Holder have to reverse this trend and become more proactive in addressing Member training and development needs, including those that Members may not actually be aware of themselves?”

Councillor Peter Topping, Portfolio Holder for Corporate and Customer Services, took issue with Councillor Smith’s assessment of sessions for Members being in short supply and said that it depended on what her interpretation of a training and development session was. He referred to a Healthwatch briefing held prior to this meeting which had attracted a relatively large number of Members and, although was not a traditional training session, did broaden the knowledge of those in attendance on a key subject.

Councillor Topping also referred to externally facilitated training sessions and said that he had often approved Members to attend upon request, on the proviso that it was within budget and the Member provided an update as to what they learnt as a result of attending.

In terms of attracting Members to attend sessions, he reflected on a Digital by Default seminar that he had tried to set up last year which had to be cancelled due to a lack of interest. He said that he would give some consideration as to how sessions were promoted in the future but closed by saying that Members also had to take some responsibility to attend sessions that were put on for them.

Councillor Bridget Smith did not ask a supplementary question but made the point that training for the Scrutiny and Overview Committee, for example, used to be very comprehensive whereas, in her view, it was clear that the same level of training was now not being undertaken.

10 (b) From Councillor Hazel Smith

Councillor Hazel Smith asked the following question:

“With this Council's initiatives to provide for more truly affordable housing now in tatters as the result of Government policy changes, can the Portfolio Holder tell me what plans we are making to deal with a rising tide of homelessness and overcrowding that we seem powerless to prevent?”

Councillor Mark Howell, Portfolio Holder for Housing, acknowledged that the changes imposed by Government had provided some challenges in this respect. He said, however, that the Council was still seeking to build as many homes as it could, with 364 new homes scheduled to be built until 2019.

Councillor Smith, as a supplementary, asked how the Council would be prioritising discretionary housing payments in order to support those individuals in need and also asked whether any additional support could be given to related charities who were also under significant pressure.

Councillor Howell listed the different categories of people that were entitled to housing support, outlining how complex this area was and the difficult task the Council would have in prioritising support, which he said needed to take place. He added that, unfortunately, this would mean no additional support could be offered to charities and acknowledged the difficult position they were also in as a result of these changes.

10 (c) From Councillor Ben Shelton

Councillor Ben Shelton asked the following question:

“This Council holds personal and sensitive information on our residents, and that information in the wrong hands could leave our residents vulnerable. Can the Leader confirm that this authority is doing all it can to prevent any cyber attacks, and that we have the best and up to date systems for dealing with any threats.”

Councillor Peter Topping, Portfolio Holder for Corporate and Customer Services, confirmed that there were multiple systems in place to scan all inbound emails. It was noted that the average daily message volume for the Council was just over 20,000 messages and in the last three months 26 viruses had been blocked as a result of the Council's scanning.

Councillor Topping added that the Council would always protect against known vulnerabilities but would continue to need all users to be vigilant and careful when opening email attachments.

Councillor Shelton, as a supplementary, asked whether the ICT shared service would have any impact on the level of attacks or how the Council would be safeguarding against any such occurrences in the future.

Councillor Topping said that the shared service was already operational and a joined up approach to this important issue was in place.

10 (d) Questions without notice

Councillor Bridget Smith, Leader of the Opposition, asked for clarification as to whether there was any chance of the current Local Plan not being adopted in view of the next Local Plan scheduled for 2019. She asked, if so, at what stage this would be acknowledged in order that officers could focus their resources on the development of the new Plan.

Councillor Robert Turner, Portfolio Holder for Planning, said that the schedule of work in respect of the Local Development Plan had been confirmed and that the Council had to respond to any issues raised by the Inspectors at the relevant time. A number of modifications to the submitted Local Plan had been proposed in response to the letter received by the Inspectors last year, which had been the basis of a recent consultation. The outcomes of this consultation were scheduled for consideration at his Portfolio Holder Meeting on 14 March 2016, prior to the extraordinary meeting of Council on 23 March 2016. He clarified that work would not cease on this Local Plan until the Council had been instructed to do so by the Inspectors. Councillor Turner closed by saying that he still believed that this Plan would be adopted.

11. NOTICES OF MOTION

No Notices of Motion had been received.

12. CHAIRMAN'S ENGAGEMENTS

Those engagements attended by the Chairman and Vice-Chairman since the last meeting, as set out in the agenda, were noted.

The Meeting ended at 3.53 p.m.

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

Minutes of a meeting of the Council held on
Wednesday, 23 March 2016 at 2.00 p.m.

PRESENT: Councillor Sue Ellington – Chairman
Councillor David McCraith – Vice-Chairman

Councillors: David Bard, Val Barrett, Henry Batchelor, Anna Bradnam, Francis Burkitt, Nigel Cathcart, Grenville Chamberlain, Graham Cone, Pippa Corney, Simon Crocker, Christopher Cross, Kevin Cuffley, Simon Edwards, Andrew Fraser, Jose Hales, Roger Hall, Lynda Harford, Roger Hickford, Mark Howell, Caroline Hunt, Peter Johnson, Sebastian Kindersley, Janet Lockwood, Mervyn Loynes, Ray Manning, Mick Martin, Raymond Matthews, Cicely Murfitt, Charles Nightingale, Tony Orgee, Tim Scott, Ben Shelton, Bridget Smith, Hazel Smith, Peter Topping, Richard Turner, Robert Turner, Bunty Waters, Aidan Van de Weyer, John Williams, Tim Wotherspoon and Nick Wright

Officers:	Jonathan Dixon	Principal Planning Policy Officer (Transport)
	Tim Driver	Legal Officer
	Jean Hunter	Chief Executive
	Jo Mills	Planning and New Communities Director
	David Roberts	Principal Planning Policy Officer
	Graham Watts	Democratic Services Team Leader

1. APOLOGIES

Apologies for absence were received from Councillors Tom Bygott, Neil Davies, Philippa Hart, Tumi Hawkins, Douglas de Lacey, Des O'Brien, Alex Riley, Deborah Roberts, Edd Stonham and David Whiteman-Downes.

2. DECLARATIONS OF INTEREST

Reference was made to the comprehensive interests declared by Members at the meeting of Council held on 13 March 2014 when the Local Development Plan was initially being considered for submission. Members took the interests they declared at that meeting as read in respect of the Local Development Plan's further work and consequential modifications for consideration at this meeting.

Councillor Cicely Murfitt, in addition to the interest she declared at the meeting on 13 March 2014, declared a disclosable pecuniary interest due to the fact that she knew one of the owners of Bourn Airfield. She therefore left the Council Chamber at this stage of proceedings and was not in attendance during the discussion or vote for minute number 3.

3. SOUTH CAMBRIDGESHIRE LOCAL PLAN - CONSIDERATION OF CONSULTATION ON PROPOSED MODIFICATIONS

NOTE – further to her declaration of a disclosable pecuniary interest in minute number 2, Councillor Cicely Murfitt had left the meeting prior to the commencement of this item and was not present for the discussion or vote.

Council considered a report which set out the results of the consultation on proposed modifications to the Cambridge Local Plan and South Cambridgeshire Local Plan, held between 2 December 2015 and 25 January 2016.

Councillor Robert Turner, Portfolio Holder for Planning, proposed the recommendations contained within the report and took an opportunity to pay tribute to Caroline Hunt, Planning Policy Manager, and her team who had undertaken so much work to get the Council to this stage of the process. He also thanked colleagues from Cambridgeshire County Council and Cambridge City Council.

Councillor Turner, in presenting the report, reminded Members that two years ago the Council had agreed to submit the Local Plan for examination by Inspectors. A letter had subsequently been received by the Inspectors in May 2014 requesting further work in a number of areas and the Council had agreed to undertake this work to address the issues raised by the Inspectors. The additional work fed into the creation of the proposed modifications consultation document for Cambridge and South Cambridgeshire. He explained that this had been approved by both Councils for consultation at their respective meetings held on 30 November 2015.

Councillor Turner reported that the consultation process had taken place between 2 December 2015 and 25 January 2016 on proposed modifications to the Cambridge Local Plan and South Cambridgeshire Local Plan, together with the associated sustainability appraisal report. It was noted that the consultation had received a total of 1,037 representations, made up of responses from 222 individuals, groups and organisations as outlined in the report. All representations had been assessed and reviewed by the consultants as part of the evidence base for the Local Plan, which had also taken relevant Greater Cambridge City Deal transport infrastructure schemes into account.

Councillor Turner highlighted that the main modification proposed following the conclusion of the consultation process related to the piece of land located in the green belt to the south of the Cambridge Biomedical Campus. Further work on this aspect of the Plan would be undertaken separately and considered again by the Council in due course.

Councillor Ray Manning, Leader of the Council, seconded the proposal.

Councillor Aidan Van de Weyer was pleased to see that further work would take place in respect of the land south of the Biomedical Campus, particularly in view of the close proximity of this piece of land to Nine Wells nature reserve. He added that any development on this piece of land would have a detrimental impact on the delicate ecosystem and hydrology of the nature reserve's system of wells. Councillor Van de Weyer said that this important nature reserve needed to be protected and was keen for Members to ensure that this occurred when the matter came back to the Council for reconsideration later in the year.

Councillor Peter Johnson expressed his concern in removing the limit of 1,400 houses from Waterbeach, meaning that additional houses proposed in the area could be built earlier than anticipated. For this reason, he explained that he was unable to support the proposal.

Councillor Tony Orgee referred Members to the proposed modifications in respect of sites at the Abingtons and said that he was very happy to support them. They had received widespread local support and he thanked the Parish Council for its proactive action in this regard, as well as officers for their advice and assistance.

Councillor John Williams, Deputy Leader of the Opposition, was also pleased to see that consideration of land near to the Nine Wells nature reserve site was being deferred. He highlighted a site located north of Cherry Hinton in terms of its extremely close proximity to an airfield and asked, in the context of current ongoing airport activities, what mechanism the Council had at its disposal to ensure that the airport owner made the necessary changes to its operation to ensure that development could take place.

Councillor Sebastian Kindersley highlighted the importance of the Local Development Plan and urged the Council not to be so passive, stating that it needed to take much greater control of its own destiny. He referred to a significant debate recently held at Cambridgeshire County Council in respect of a devolution proposal which, he said, would remove planning and development control matters, including related policies, from local authority control. He cited this Local Plan process as an example of why it was so important for such policy and strategy documents to be developed, considered and decided by local Councils and by locally elected representatives.

Councillor Ben Shelton supported the additional work that would be undertaken in respect of the site located near the Nine Wells nature reserve.

Councillor Turner, in responding to comments regarding the piece of land located near the Nine Wells nature reserve, thanked Members for their contributions and confirmed that more work would be undertaken, including further investigations into ecology, flooding and various other issues. He acknowledged that it was a sensitive piece of the green belt, explaining that this was the reason for proposing that consideration of this aspect of the Plan be deferred. The outcomes of the further work would be submitted to a future meeting of the Council.

In respect of the land north of Cherry Hinton, Councillor Turner reported that a live planning application for the site had been received which would be considered by the Cambridge Fringes Joint Development Control Committee. He had advised the local Parish Council that relocation of the airport's testing bay would require the submission of a further application. Councillor Turner also stated that any Section 106 funding to support this site would be taken out of the costings of the Wing development, therefore acknowledging that there were cost implications.

Councillor Turner supported Councillor Kindersley's comments regarding the importance of the Council having control over what was happening in the area it represented. He stated that he had never known a Local Plan go through such an in-depth process, leaving the Council susceptible to speculative planning applications. This was a point he had made in several meetings with Members of Parliament and Ministers and he reiterated that he was negotiating as much as he could to ensure that the Local Plan could be adopted as soon as possible.

Councillor Bridget Smith, Leader of the Opposition, highlighted the proposed amendment to Policy CC/2 in respect of renewable and low carbon energy generation, with particular reference to wind turbines. She had opposed the original submission in this respect, but felt that the revised modification placed communities in a worse position, citing a very successful community wind turbine in Gamlingay that she felt would not be permitted if put forward in the context of this revision to the Local Plan. She said that the community wind turbine in her village had lots of benefits and what was included in this modification precluded communities developing similar proposals unless they had a Neighbourhood Plan in place. With regard to Neighbourhood Plans, she said that the uptake in South Cambridgeshire had been very low compared to other Councils which she felt was as a result of people being misled into thinking that they would cost up to £30,000 and could only be developed for large villages. Councillor Smith asked if there was anything further that could be done to better support schemes such as the community wind turbine in Gamlingay, as well as the development of Neighbourhood Plans. She also suggested amending the number of wind turbines referred to in the proposed modification from one to two.

Councillor Nigel Cathcart felt that the timetable associated with the Local Plan process going forward was too vague, but was pleased with the progress that had been made in responding to the issues raised by the Inspectors. He sought an assurance, however, that the Council was doing everything it could to ensure that the Plan was adopted as soon as possible. He was also keen for the Council to seek advice and reinforce its position where possible in respect of any appeals received resulting from speculative planning applications.

Councillor Nick Wright, Portfolio Holder for Economic Development, was pleased to see the inclusion of proposals put forward by Graveley Parish Council included in the proposed modifications and thanked officers for their support in that respect.

Councillor Turner did not support Councillor Smith's suggestion to change the modification in respect of Policy CC/2 from one wind turbine to two and said that community wind turbines could be included as part of a Neighbourhood Plan. He made the point that, although larger villages tended to produce Neighbourhood Plans, one of the district's smallest villages had also produced a Plan so emphasised that any village had the opportunity to develop a Neighbourhood Plan.

Councillor Ray Manning, Leader of the Council, said that at various meetings comments or objections had been made in respect of the amount of time the Local Plan had taken to produce and get adopted. He said that a contributing factor to the complexities of the Plan was the fact that there were lots of people wishing to live in South Cambridgeshire, therefore meaning that there was a large demand for new houses. In respect of Nine Wells nature reserve, Councillor Manning reiterated that this issue would come back to the Council for further consideration. He emphasised the importance of having the Local Plan adopted as soon as possible, particularly in respect of the submission of speculative planning applications and being able to confirm the district's five year land supply.

The Chairman noted that the majority of Members speaking had thanked officers for the vast amount of work and quality of work that they had undertaken, both in terms of preparing the initial Local Plan and the further work required in response to the letter by

the Inspectors. She took this opportunity to add her own thanks to the officers involved.

Voting on the proposal, with 41 votes in favour and 1 vote against, Council **AGREED**:

- (a) That the Proposed Modification Report on Consultation, as set out in Appendix A and the supplement to Appendix A(i), the proposed modifications to the South Cambridgeshire Local Plan at Appendix C and the supplement to the Sustainability Appraisal Addendum at Appendix E, be approved for submission to the Inspectors examining the Local Plan.
- (b) That the documents attached to the report at Appendices F to J be noted and submitted as part of the evidence base for the Local Plan.
- (c) That delegated authority be given to the Director of Planning and New Communities to make any subsequent minor amendments and editing changes, in consultation with the Planning Portfolio Holder.

Enough Members as prescribed by Council's Standing Orders requested a recorded vote. Votes were therefore cast as follows:

In favour

Councillors David Bard, Val Barrett, Henry Batchelor, Anna Bradnam, Francis Burkitt, Nigel Cathcart, Grenville Chamberlain, Graham Cone, Pippa Corney, Simon Crocker, Kevin Cuffley, Simon Edwards, Sue Ellington, Andrew Fraser, Jose Hales, Roger Hall, Lynda Harford, Roger Hickford, Mark Howell, Caroline Hunt, Sebastian Kindersley, Janet Lockwood, Mervyn Loynes, Ray Manning, Mick Martin, Raymond Matthews, David McCraith, Charles Nightingale, Tony Orgee, Tim Scott, Ben Shelton, Bridget Smith, Hazel Smith, Peter Topping, Richard Turner, Robert Turner, Bunty Waters, Aidan Van de Weyer, John Williams, Tim Wotherspoon and Nick Wright.

Against

Councillor Peter Johnson.

The Meeting ended at 2.45 p.m.

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Agenda Item 7

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT OF THE RETURNING OFFICER

I, Jean Hunter, Returning Officer for the several wards in the District of South Cambridgeshire, do hereby certify that the persons named below have been duly elected to the office of Councillor on 5 May 2016:

WARD	NAME AND ADDRESS
BASSINGBOURN	Nigel CATHCART 68 Spring Lane Bassingbourn SG8 5HT
BOURN	Mervyn Benjamin LOYNES Common Farm 28 The Green Eltisley Cambridgeshire PE19 6TG
COTTENHAM	Simon Mark EDWARDS 8 Manor Farm Close Oakington Cambridge CB24 3AT
GAMILINGAY	Sebastian Gerald Molesworth KINDERSLEY The Manor Barn East Hatley Cambridgeshire SG19 3JA
GIRTON	Douglas Raymond DE LACEY 9 Woodlands Park Girton Cambs CB3 0QB
HARSTON & HAUXTON	Janet Elizabeth LOCKWOOD 31 High Street Hauxton Cambridge CB22 5HW
HASLINGFIELD & THE EVERSDENS	Doug CATTERMOLE 20 The Elms Haslingfield Cambridge CB23 1ND

WARD	NAME AND ADDRESS
HISTON & IMPINGTON	Neil Sinnett DAVIES 8 Dwyer Joyce Close Histon Cambridge CB24 9JZ
LINTON	John Dennis BATCHELOR 1 Maltings Cottages Long Lane Linton Cambridge CB21 4NS
LONGSTANTON	Alex RILEY St Michael's Mount St Michael's Longstanton Cambs CB24 3BZ
MELBOURN	Val BARRETT 2 Station Road Melbourn Royston SG8 6DX
PAPWORTH AND ELSWORTH	Mark Philip HOWELL 2 Vinter Close Papworth Everard Cambridge CB23 3RU
SAWSTON	Kevin CUFFLEY 9 Dale Way Sawston Cambridge CB22 3LE
THE MORDENS	Cicely Anne Elsa Demain MURFITT 10 Silver Street Guilden Morden Royston SG8 0JT
THE SHELFORDS AND STAPLEFORD	Charlie NIGHTINGALE 12 Aylesford Way Stapleford CB22 5DP
THE WILBRAHAMS	Rob TURNER 1 Rectory Farm Road Little Wilbraham Cambridge CB21 5LB

WARD	NAME AND ADDRESS
WATERBEACH	Ingrid Jane TREGOING 5 Shipp's Field Waterbeach Cambridgeshire CB25 9DZ
WHITTLESFORD	Peter William Wilson TOPPING 11 West End Whittlesford Cambridgeshire CB22 4LX
WILLINGHAM & OVER	Ray Maurice Antony MANNING 130 Station Road Willingham Cambridgeshire CB24 5HG

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Report To: Council
Lead Officer: Executive Director (Corporate Services)

19 May 2016

Political proportionality and allocation of seats to Committees for 2016/17

Purpose

1. To seek Council's approval of the establishment of committees, the allocation of seats on committees and the appointment of Members and substitute Members to committees. This report also requests that Council appoints the Chairmen and Vice-Chairmen of committees and re-appoints the Lead Independent Person and Deputy Independent Person.

Recommendations

2. That Council approves:
 - (a) The allocation of seats on committees.
 - (b) The nominations of the political group leaders to seats on committees.
 - (c) The appointment of Chairmen and Vice-Chairmen of committees.
 - (d) The re-appointment of Grant Osbourn as the Council's Lead Independent Person and Gillian Holmes as the Council's Deputy Independent Person.

Reasons for Recommendations

3. The details set out in the appendices to this report have been drawn up in consultation with the Council's political group leaders.

Background

4. Political groups on the Council are formed in accordance with the Local Government (Committees and Political Groups) Regulations 1990 when two or more Councillors notify the Chief Executive, as Proper Officer, of their wish to be treated as a political group.
5. Section 15 of the Local Government and Housing Act 1989 imposes a duty on the local authority at its annual meeting, or as soon as possible after it, to review the allocation of seats on the committees of the Council between the political groups. The Council may carry out such a review at any other time and may do so if requested by a political group.

6. The following principles laid down in the Act apply to the allocation of seats:
 - (a) that not all the seats on the body are allocated to the same political group;
 - (b) that the majority of the seats on the body are allocated to a particular political group if the number of persons belonging to that group is a majority of the authority's membership;
 - (c) subject to paragraphs (a) and (b) above, that the number of seats on the ordinary committees of a relevant authority which are allocated to each political group bears the same proportion to the total of all the seats on the ordinary committees of that authority as is borne by the number of members of that group to the membership of the authority;
 - (d) subject to paragraphs (a) to (c) above, that the number of seats on the body which are allocated to each political group bears the same proportion to the number of all the seats on the body as is borne by the number of members of that group on the membership of the authority.
7. These principles must be applied as far as practicable. Where adjustments are required to reflect rounding up and down of fractions, officers will make recommendations as to which figures best meet the principles, but the final decision rests with Council on the recommendation of political group leaders.
8. There is provision for non-group members to be offered seats on certain Council bodies, but this has no basis in legislation. It is a matter for the political groups to determine if they wish to offer seats from their allocation to non-group members.
9. Although the appointment of non-group members to any bodies technically upsets the political balance calculations, these appointments may be made by the Council so long as there is no dissent expressed by any councillor (a "no dissent alternative"). The Council is therefore not obliged to follow the proportionality rules and may make different arrangements, provided the following procedures set out in Section 17 of the Local Government and Housing Act 1989 are followed: -
 - (i) due notice is given in the agenda for the meeting;
 - (ii) no Member of the Council votes against the proposal, although there may be abstentions.
10. The Local Government and Housing Act 1989 requires that, once the Council has determined the allocation of committee places between the political groups, the Council must then appoint the nominees of the political groups to the committees.

Considerations

Political Proportionality and Nominations

11. Further to the local elections held on 5 May 2016, the current political makeup of the Council's 57 seats is as follows:

Conservative – 36
Liberal Democrat – 14
Independent Group – 5
Labour – 1
Independent (non-group) – 1
12. This equates to 55 Councillors in political groups who are entitled to committee seats.

13. The political balance of the Council can be calculated by using the formula below:

$$\frac{\text{Number of Councillors in a specific political group}}{\text{Number of Councillors in all political groups (55)}} \times 100$$

14. The breakdown of each political group is therefore as follows:

Conservative – 65.5%
 Liberal Democrat – 25.5%
 Independent Group – 9%

15. Each of the political groups (formed when two or more Councillors notify the Chief Executive, as Proper Officer, of their wish to be treated as a group) is entitled to a certain number of seats on committees. This is based upon their group's percentage representation, as detailed above.

16. The Council's current committee structure comprises of 75 seats. The calculation to determine the entitlement of political groups to seats on committees is as follows:

$$\frac{\% \text{ for each political group (para. 14 above)} \times \text{number of committee seats (75)}}{100}$$

17. The notional entitlement to committee seats for each political group is therefore as follows:

Conservative	49.125	=	49 seats
Liberal Democrat	19.125	=	19 seats
Independent Group	6.75	=	<u>7 seats</u>
	75		75 seats

Joint Committees

18. Six seats are also available on the Joint Development Control Committee – Cambridge Fringes.

19. The calculation to determine the entitlement of political groups to seats on the joint committee is as follows:

$$\frac{\% \text{ for each political group (para. 14 above)} \times \text{number of joint committee seats (6)}}{100}$$

20. The notional entitlement to joint committee seats for each political group is therefore as follows:

Conservative	3.93	=	4 seats
Liberal Democrat	1.53	=	1 seat
Independent Group	0.54	=	<u>1 seat</u>
	6	=	6 seats

21. The proposed allocation of seats to committees, taking account of these changes, is set out at **Appendix A**.

Nominations and Substitutes

22. Council is required to appoint up to five substitutes per committee from each political group in a hierarchical list to all Council committees. Council may also appoint substitutes to any bodies where provisions for substitutes exist in that body's terms of reference. The Constitution, in Section A of Part 5, requires that the nominations of the groups be accepted by Council. The nominations of political groups to seats on committees, including substitute members, are attached as **Appendix B**.

Mandatory Training Requirements

23. Political group leaders have been reminded that members and substitute members of the Planning Committee, Licensing Committee and Employment Committee may only serve on these bodies once they have received the necessary training.

Appointment of Chairmen and Vice-Chairmen of committees

24. Nominations for the appointment of Chairmen and Vice-Chairmen of committees are attached as **Appendix C**.

Re-appointment of lead independent person and deputy independent person

25. The Council, at its Annual General Meeting on 23 May 2013, appointed Grant Osbourn as the lead independent person and Gillian Holmes as the deputy independent person to assist in the assessment of conduct complaints. These appointments were for the period 1 July 2013 to 30 June 2016, subject to annual ratification at Full Council. This report therefore seeks re-appointment of Grant Osbourn and Gillian Holmes to hold these respective positions for a further four-year term of office, subject to annual ratification.

Options

26. Council can opt to approve the proposal set out in the report, or agree another proposal that reflects the principles of political proportionality.
27. The requirement to allocate seats according to political groups' proportionate strengths can be overridden by some other arrangement, either in relation to all committees, sub-committees and other bodies or in relation to any individual committee, sub-committee or other body, provided that no councillor votes against the alternative arrangement when it is proposed (a "no dissent" alternative). Paragraph 9 of the report should be noted when considering this option.

Implications

28. In the writing of this report, taking into account financial, legal, staffing, risk management, equality and diversity, climate change, community safety and any other key issues, there are no significant implications.

Effect on Strategic Aims

29. Appointing councillors to committees, in accordance with the political balance of the Council, and the associated allocation of seats on committees, will enable the Council to properly discharge its functions.

Background Papers

The following background papers were used in the preparation of this report:

- South Cambridgeshire District Council's Constitution
- The Local Government and Housing Act 1989
- The Local Government (Committees and Political Groups) Regulations 1990

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Telephone: (01954) 713030

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Committee seat allocation

Figures in brackets reflect the exact calculation for each political group's entitlement to committee seats based on the breakdown of each group as set out in paragraphs 13 and 14 of the report and as outlined below:

Political proportionality of each group:	Committee seat entitlement of each group:
Conservative – 65.5%	Conservative – 49 seats
Liberal Democrat – 25.5%	Liberal Democrat – 19 seats
Independent – 9%	Independent – 7 seats

Table 1 – proposed committee seat allocation

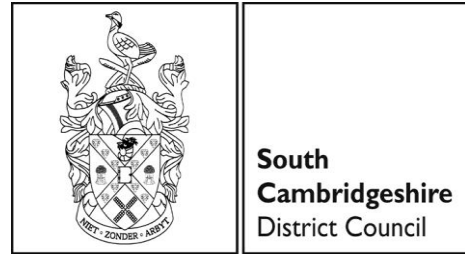
	No. of seats	Conservative	Liberal Democrat	Independent
Civic Affairs	12	8 (7.86)	3 (3.06)	1 (1.08)
Corporate Governance	9	6 (5.895)	2 (2.295)	1 (0.81)
Employment	9	5 (5.895)	3 (2.295)	1 (0.81)
Licensing	15	10 (9.825)	4 (3.825)	1 (1.35)
Planning	12	8 (7.86)	3 (3.06)	1 (1.08)
Partnerships Review	9	6 (5.895)	2 (2.295)	1 (0.81)
Scrutiny and Overview	9	6 (5.895)	2 (2.295)	1 (0.81)
Total	75	49 (49.125)	19 (19.125)	7 (6.75)

Table 2 – proposed joint committee seat allocation

	No. of seats	Conservative	Liberal Democrat	Independent
Joint Development Control – Cambridge Fringes	6	4 (3.93)	1 (1.53)	1 (0.54)

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Agenda Item 16



South Cambridgeshire District Council

Scrutiny and Overview Annual Report 2015/16

FOREWORD

Scrutiny and Overview Committee



I have taken the decision not to stand for re-election. It was not a decision I took lightly, or indeed wanted to make.

However, with my responsibilities as a County Councillor as well, I have to allocate much more of my time to County matters and issues. I feel my particular skills are more suited to the County at this moment in time of ever changing political landscape. In addition, I am heavily involved in the housing development program at County, and as this project expands, it might not be prudent if I was a District councillor as well.

I have been Chair of Scrutiny for three years. I would like to thank the Leader for having the faith and confidence in me to carry out and perform this very important role. When a Council is dominated by one Party (and I am writing this before the May elections and so I am assuming it is still the same!) it is crucial that the Scrutiny Committee holds the Executive to account.

It is essential that the Committee is seen as impartial and fair, and that involves not being too close to the decision-making processes of this Council – but close enough to know what is going on. (My role at County has allowed me an informative overview of local government, which I have been able to use as Chair of Scrutiny at District).

I feel we, as a Committee, have achieved impartiality and fairness through updating the way we work and the way we bring items before the Committee. Most importantly, we have continued to strive to be the “critical friend” to this Council and to the Executive.

Critical friend is not always an easy role to take on; especially when a Council is ran well. The Committee is usually asking for clarification on minor details in the papers and reports presented to us. When an issue does need to come back to Committee, as long as it has been, or is being, rectified then the Committee has fulfilled its role, although it may ask for a review in the near future.

I would like to thank all the members that have been part of the Scrutiny Committee over the last three years. Within the Committee I think we have struck a balance between the serious work that needed doing, and enjoyment of fulfilling the Role. I also thank Victoria Wallace as lead officer for all the hard work she does for the Committee.

Scrutiny Committee’s remit is the internal functions of the Council, and is therefore a great way for members (particularly the newer members) to learn more about this Council’s activities.

I wish you all well – I will not be very far away!

Councillor Roger Hickford, Chairman of the Scrutiny and Overview Committee

FOREWORD
Partnerships Review Committee

It has been a pleasure to be Chairman of the Partnerships Review Committee for another year. The committee has continued its work to look at the external issues that affect our residents, which has become even more important with the increased work the Council does with other organisations and the move to sharing services and partnership working to deliver services to our residents. The Committee has continued to invite key partners to its meetings in order to better understand what they do and the issues affecting other organisations, many of which are very similar to those our Council faces.



It has been another busy year during which we have been fortunate to have key people with us for our meetings. This year we have met with representatives from the Cambridgeshire Constabulary and the Cambridgeshire Police and Crime Commissioner's Office, the Managing Director of Stagecoach buses and representatives of the County Council's Passenger Transport Team. Cambridgeshire County Council's Chief Executive and other senior heads of service attended our final meeting of the year, to discuss the County Council's budget.

We are looking forward to another exciting and challenging year ahead.

I must thank the individual Committee Members who have regularly attended meetings this year for their commitment and also for the regular updates from Members representing the Council on Outside Bodies.

Councillor Ben Shelton, Chairman of the Partnerships Review Committee

What is Scrutiny and Overview?

The aim of the Council's scrutiny and overview function is to provide an open and transparent forum in which to investigate whether South Cambridgeshire District Council's policies and services are meeting the needs of local people.

Scrutiny and overview committees do not have any decision-making powers, but they do have the power to influence and make evidence-based recommendations to decision-takers. Such recommendations could be informed via performance monitoring, best practice, expert advice, or liaison with stakeholders, partners, service users or members of the public. Scrutiny and overview committees are often described as a Council's 'critical friend'.

Scrutiny and overview committees can also challenge executive decisions, taken by Cabinet, individual Portfolio Holders and occasionally Chief Officers. The Chairman of the Scrutiny and Overview Committee or any five Councillors can, in certain circumstances, 'call-in' a decision that has been made but not yet implemented in accordance with the Council's Scrutiny and Overview Committee Procedure Rules. The Committee is then able to interview the relevant member of Cabinet or officers, examine the evidence and suggest improvements to the decision, or refer it to Full Council for further consideration.

Effective scrutiny provides an additional, independent resource for reviewing decisions and policies without being divisive or confrontational. Councillors on scrutiny and overview committees are in a unique position to influence policy and contribute to the decision-making process.

When working well, scrutiny and overview can help to:

- get to the heart of issues
- develop new ideas
- engage and provide a voice for service users
- improve decision-making
- strengthen accountability
- contribute to policy development
- monitor and improve services

Scrutiny and Overview at South Cambridgeshire District Council

South Cambridgeshire District Council has two scrutiny and overview committees; the Scrutiny and Overview Committee and the Partnerships Review Committee, both of which consist of nine non-executive District Councillors drawn from the political groups in the same proportion as they are represented on the Council as a whole.

The Partnerships Review Committee was introduced to the Council's committee structure on 23 May 2013 at the Annual General Meeting of the Council, where the size of the Scrutiny and Overview Committee was reduced from thirteen to nine. The Partnerships Review Committee has a specific remit to scrutinise, challenge and hold decision takers to account on issues relating to the work of those organisations in the area of South Cambridgeshire, which may or may not involve formal partnerships. Whilst the Partnerships Review Committee's work is mainly externally focussed, the Scrutiny and Overview Committee retains its role of holding executive decision takers to account and centres on those issues considered as 'internal'.

The following Councillors served on the respective committees for the 2015/16 municipal year:

Scrutiny and Overview Committee

Chairman: Councillor Roger Hickford
Vice-Chairman: Councillor Kevin Cuffley
Councillors:
David Bard
Henry Batchelor
Grenville Chamberlain
Graham Cone (from February 2016)
Jose Hales
Philippa Hart
Bunty Waters
David Whiteman-Downes (until February 2016)

The following Councillors were available as substitutes during the year:

Councillors:
Graham Cone
Christopher Cross
Val Barrett
Anna Bradnam
Neil Davies
Douglas de Lacey
Andrew Johnson
Lynda Harford
Deborah Roberts
Ed Stonham

Partnerships Review Committee

Chairman: Councillor Ben Shelton
Vice-Chairman: Councillor James Hockney
Councillors:
David Bard
Henry Batchelor
Kevin Cuffley
Andrew Fraser
Jose Hales
Roger Hall
Janet Lockwood

The following Councillors were available as substitutes during the year:

Councillors:
Grenville Chamberlain
Neil Davies
Douglas de Lacey
Tumi Hawkins
Peter Johnson
Tony Orgee
Deborah Roberts
Ed Stonham
Bunty Waters
Aidan Van De Weyer

How do the scrutiny and overview committees decide what to scrutinise?

The scrutiny and overview committees set their own work programmes and topic suggestions can be gained from numerous sources, including: -

- individual Councillors
- local petitions
- partner organisations
- officers
- residents
- Portfolio Holder Scrutiny Monitors
- the Council's Forward Plan of key decisions

Programme planning takes place at the start of the municipal year and the committee's work programmes are considered as standing items at every meeting of each committee. Additional items for consideration will usually be added during the year as and when they arise, which can be a mixture of one-off topics and items that may require more in-depth review.

The Chairman and Vice-Chairman of the two scrutiny and overview committees usually meet with officers from Democratic Services to agree upon the agenda content and running order prior to each of their meetings.

The Partnerships Review Committee and the Scrutiny and Overview Committee use a work programme prioritisation tool which enables both committees to assess those items that have been suggested or put forward and ascertain whether they should be included in their work programmes, as well as determine their level of priority.

Items included in the work programme usually go through an initial scoping process. This provides an opportunity to consider the rationale behind the Partnerships Review Committee or the Scrutiny and Overview Committee looking into the particular issue, the purpose or objective of scrutiny involvement and a methodology or approach that will be followed for the piece of work.

Scrutiny Reviews

Scrutiny Reviews provide the Partnerships Review Committee and the Scrutiny and Overview Committee with opportunities to consider specific issues in more detail, sometimes outside of formal meetings involving a small group of Councillors with experience, expertise or an interest in the subject being reviewed. The Partnerships Review Committee or Scrutiny and Overview Committee will ultimately agree whether or not a Scrutiny Review on a particular issue will be undertaken. Any initial requests for Scrutiny Reviews will go through a scoping process to outline terms of reference for the review and identify how the piece of work should be conducted. Reviews could be undertaken through one of the following options:

Scrutiny Review by the Full Committee

A Scrutiny Review by the full Partnerships Review Committee or Scrutiny and Overview Committee could take place when all Councillors on the relevant committee express an interest in scrutinising a specific issue. These meetings would normally be held in public with the review culminating in formal recommendations to a decision taker.

Scrutiny Review by a Task and Finish Group

Task and Finish Groups are typically established when significant research and evidence gathering is necessary to assist in the production of a comprehensive report substantiating a set of recommendations to decision takers. An appropriate timetable would be agreed at the commencement of the Scrutiny Review, with most Task and Finish Groups aiming to have completed their reviews by six months. These meetings are usually not held in public.

Scrutiny Review by an Informal Working Group

Informal Working Groups with relevant officers, Portfolio Holders or external parties are an effective means of undertaking Scrutiny Reviews that do not require significant research or evidence and can be completed in a much shorter timescale. Formal recommendations can still come out of a review carried out by Informal Working Groups, but a comprehensive report is usually unnecessary. The informal format of these meetings would mean that they are not held in public.

Scrutiny Review by a Focus Group

A Focus Group could carry out a Scrutiny Review on any issue that requires an urgent response. It would take the shape of a significant fact-finding exercise, taking up one or two full days in an intensive session with very little research required and report its outcomes to relevant officers or decision takers.

Work of the Partnerships Review Committee during 2015/16

The Partnerships Review Committee met on three occasions in the 2015/16 Municipal Year. This was as follows:

16 June 2016

Policing, Crime and Disorder

Cambridgeshire Constabulary's Chief Superintendent and Chief Inspector attended the meeting along with the Director of Public Engagement and Communications and the Outreach Worker from the Cambridgeshire Police and Crime Commissioner's Office.

An in depth discussion took place which included amongst other issues, discussion around the perception and reporting of crime in South Cambridgeshire. Awareness was being raised in the district about human trafficking and the exploitation of vulnerable people and immigrants, which was also discussed in depth.

Representatives from the Police and Crime Commissioner's Office updated the committee on current and future projects and Members were able to raise and discuss local issues, such as Police Community Support Officers and the Rehabilitation of Offenders programme.

22 September 2016

Bus Services

The Managing Director of Stagecoach attended this meeting alongside representatives from Cambridgeshire County Council's Passenger Transport team.

The provision of bus services, school transport, community transport, bus zoning and fares and evening services were discussed. A summary of South Cambridgeshire District Council's Community Transport Strategy was also summarised.

28 February 2016

Cambridgeshire County Council's Budget Proposals

Cambridgeshire County Council's Chief Executive, Service Director for Adult Social Care, Children, Families and Adults (CFA) Directorate and Executive Director for Economy, Transport and Environment attended the meeting to present the County Council's budget proposals. The Service Director for Adult Social Care and CFA gave a presentation which covered the CFA budget and strategy, Adult Social Care, Older people and adults with mental health needs.

The County Council's Executive Director for Economy, Transport and Environment (ETE) gave a presentation setting out the Business Plan proposals for the ETE Directorate.

Members raised local issues with the County Council representatives, including the funding of Adult Social Care, partnership working and the withdrawal of school transport.

Outside Bodies

The Council's Civic Affairs Committee agreed on 5 December 2013 that Members appointed to outside bodies should provide written update reports to the Partnerships Review Committee. Updates on the following outside bodies were received by the Committee:

- Cambridgeshire Advisory Group on Archives and Local Studies
- The Carers' Trust
- The Farmland Museum
- Cambridge International Airport Consultative Committee
- Waterbeach Level Internal Drainage Board
- Regular updates on Health were provided, which included updates on the following issues and bodies:
 - o The Cambridgeshire Health and Wellbeing Board
 - o The Cambridgeshire Health Committee
 - o The Cambridgeshire Older People's Contract
 - o The Better Care Fund
 - o Older People and Adult Community Services

Work of the Scrutiny and Overview Committee during 2015/16

The Scrutiny and Overview Committee met as a full committee on five occasions in the 2015/16 Municipal Year, as follows:

7 July 2015

Shared Services

The Leader and Deputy Leader of the Council presented Shared Services reports and business cases ahead of their presentation to Cabinet. Reports and business cases for Legal, ICT and Building Control Shared Services were presented and discussed. The committee endorsed the recommendations to Cabinet and made two recommendations regarding performance monitoring of the service and scrutiny of the legal practice business plan.

Position Statement on Finance and Performance

As part of his responsibility for overseeing a robust process for managing performance, the Corporate and Customer Services Portfolio Holder presented the Council's Year End Position Statement on Finance, Performance and Risk before this was presented to Cabinet. This enabled Members to maintain a sound understanding of the Council's financial position and performance.

Orchard Park Task and Finish Group

The Chairman of the Orchard Park Task and Finish Group updated the committee on the ongoing work of the group.

3 September 2015

Quarterly Position Statement on Finance, Performance and Risk

The Executive Director (Corporate Services) presented the 2015-2016 first quarterly position statement on finance, performance and risk before it was presented to Cabinet.

Orchard Park Task and Finish Group

The committee received an update on the ongoing work of the Orchard Park Task and Finish Group, the final recommendations of which would be presented to the committee at its November 2015 meeting.

Appointment of Scrutiny Monitors

The committee appointed its Portfolio Holder monitors.

5 November 2015

Quarterly Position Statement on Finance, Performance and Risk

The Portfolio Holders for Finance and Staffing, and Corporate and Customer Services presented the Council's second Quarterly Position Statement on Finance, Performance and Risk. This provided a statement on the Council's position with regard to its General Fund, Housing Revenue Account and Capital budgets, corporate objectives, performance indicators and strategic risks and was presented to the committee before it was presented to Cabinet for approval.

Review of the Corporate Plan

The Corporate and Customer Services Portfolio Holder presented a review of the Council's Corporate Plan, inviting comments and suggestions on the Corporate Plan from committee members. A number of recommendations were made by the committee regarding wording of some of the sections in the Corporate Plan, which were incorporated.

Draft Medium Term Financial Strategy

The Finance and Staffing Portfolio Holder presented the Council's Medium Term Financial Strategy before it was presented to Cabinet at its November 2015 meeting.

Review of Lessons Learned from Orchard Park

A report outlining the findings of the Orchard Park Task and Finish Group was presented by Councillor Lynda Harford who had led the work of the group. 20 final recommendations were presented to and agreed by the committee, which recommended their full endorsement to Cabinet.

At this meeting, the Housing Portfolio Holder also updated the committee on the negative implications for the Council of Government budget announcements regarding housing.

4 February 2016

Business Improvement and Efficiency Programme - Commercialisation

The Council's Corporate Programme Manager presented a report providing the committee with an overview of the Council's Commercialisation Programme approach to service delivery, the aim of which was to generate income for the Council and identify further savings. This was discussed in depth and the committee confirmed its support for the programme.

Customer Contact Service Annual Performance Review 2015

The Benefits Manager presented the Customer Contact Centre's Annual Performance Review. This provided the committee with an annual update on the performance of the Contact Centre for 2015. The committee congratulated the Benefits Manager on the improving performance of the Contact Centre.

Medium Term Financial Strategy

The Council's Medium Term Financial Strategy was presented to the committee before its presentation to the February 2016 Cabinet meeting and subsequent approval at February's meeting of full Council.

Corporate Plan 2016-2021

The Corporate and Customer Services Portfolio Holder presented the Corporate Plan 2016-2021 ahead of its presentation to Cabinet.

Quarterly Position Statement on Finance, Performance and Risk

The Corporate and Customer Services Portfolio Holder presented the Council's third Quarterly Position Statement on Finance, Performance and Risk. This was presented and discussed before its presentation to Cabinet at its February 2016 meeting.

7 April 2016

Shared Services

The committee considered the business cases for the ICT, Legal and Building Control Shared Services as well as considering the governance arrangements for these services. Following a lengthy and in depth discussion, the committee supported the business cases and the Terms of Reference for the Shared Services Group, which were then approved by the Leader of the Council.

Planning Performance

Following its consideration of the Quarterly Position Statement on Finance, Performance and Risk in February 2016, the Committee requested a more detailed report on the performance of the Planning department for its April 2016 meeting. This was presented by the Planning Portfolio Holder and Head of Development Management and informed the committee of the issues facing the Planning department, how these were being addressed and how service improvements were progressing. The committee would continue to monitor this, with a further update requested at its next meeting.

Corporate Plan Outcomes and Key Performance Indicators 2016-2017

The committee considered the outcomes of the Corporate Plan and Key Performance Indicators for 2016-2017, which the committee then recommended to the Leader of the Council for approval.

Scrutiny and Overview Committee Orchard Park Working Group

The Orchard Park Working Group continued the work it had started in July 2014, to review the lessons learned from the development of Orchard Park. The group's remit was to look at how recommendations made in 2008 by the Scrutiny and Overview Committee regarding Orchard Park had been implemented, if they had been applied to subsequent developments and what the effects of them had been. The group completed its work and presented 20 recommendations to Cabinet in January 2016, all of which were endorsed.

Membership of the group:

- Councillor Lynda Harford (Chairman)
- Councillor David Bard
- Councillor Kevin Cuffley
- Councillor Jose Hales
- Councillor Janet Lockwood
- Councillor Bunty Waters

The group was supported by the Sustainable Communities and Partnerships Manager and a Democratic Services Officer.

Monitoring Cabinet Portfolio Holders

Portfolio Holders at South Cambridgeshire District Council in 2015/16 took the majority of their decisions at public Portfolio Holder Meetings. Members of the Scrutiny and Overview Committee were allocated as Scrutiny Monitors for specific Portfolios and attended these meetings to develop greater knowledge in an area of the Council's work, as well as offering well informed challenge and influence. Scrutiny Monitors for 2015/16 were allocated as follows: -

Cabinet Portfolio	Scrutiny Monitor
Leader of the Council	Cllr Lynda Harford
Deputy Leader Finance and Staffing	Cllr Roger Hickford
Corporate and Customer Services	Cllr Henry Batchelor
Economic Development	Cllr Philippa Hart
Environmental Services	Cllr David Bard
Housing	Cllr Bunty Waters
Planning	Cllr Kevin Cuffley
Strategic Planning and Transportation	Grenville Chamberlain

Call-in

Call-in is usually a last resort, when other means of influencing decision-making have failed. Any Call-in would be considered by the Scrutiny and Overview Committee, but this procedure was not used during the 2015/16 municipal year.

Training and development

No requests for training were received in the 2015/16 Municipal Year.

Contact us

If you would like to know more about the Scrutiny and Overview Committee at South Cambridgeshire District Council please contact the Democratic Services Team Leader, Graham Watts, on (01954) 713030 or democratic.services@scambs.gov.uk.

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Agenda Item 17

Major Opposition Group Leader's Annual Statement

South Cambs Liberal Democrats have been at pains to point out, in our recently published manifesto, that it is the Tories nationally who chose to make the cuts that are resulting in reduced services in this Council and restricted choices for our residents. We will not support any further cuts to front line services and will continue to strongly oppose the latest housing bill and its consequences. We will promote affordable rented and shared ownership housing for people to live where they want to live and strongly oppose the Right to Buy which we believe sounds the death knell for social housing. We will use all our influence to ensure that new developments include 40% affordable housing and will challenge developers and landowners to do what is best for our residents and not what just benefits their shareholders.

South Cambs Lib Dems are committed to supporting rural businesses and local jobs for local people throughout the District. We believe that rural businesses are a key part to ensuring that communities are truly sustainable and will do our utmost to drive planning policies that support businesses and allow them to flourish. We shall promote Neighbourhood Plans in our own communities as a means of supporting local economic development and will champion transport links which are good for business.

Access to primary health care is our priority and we will do our utmost to ensure that GP surgeries access sufficient funding to meet the burden of new developments including ready access to good mental health support. Protecting the Green Belt is the key theme in Liberal Democrat planning policies and we will fight to preserve South Cambridgeshire's rural character in the face of unprecedented demands for housing and the disastrous consequences of the suspended Conservative Local Plan. We will promote community energy projects and other initiatives aimed at minimising the district's carbon emissions. South Cambs Lib Dems will promote the delivery a network of rural cycleways suitable for the commuter as well as the recreational cyclist and will work towards a long-term strategic plan which includes rail for South Cambridgeshire.

South Cambs Lib Dems are supportive of the principal aims of the City Deal to reduce congestion and facilitate sustainable travel, but recognise that it has potential to threaten the quality of life for South Cambridgeshire residents. We will champion FREE parking in Park and Ride sites funded by revenue from congestion charging and will promote park and cycle facilities and subsidised rural bus services.

We are delighted to welcome three new Liberal Democrat Councillors to our team and are looking forward to the coming year successfully promoting Liberal values in South Cambridgeshire

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Agenda Item 18



Report To: Council
Lead Officer: Executive Director Corporate Services

19th May 2016

WRITE OFF OF OUTSTANDING DEBTS

Purpose

1. To notify Council of debts written off under powers delegated to the Finance Portfolio Holder and the Chief Financial Officer as required by the Constitution.
2. This is not a key decision; however, the Council's Constitution requires that an annual report regarding the use of delegated authority to write off debts be submitted to Council.

Recommendations

3. It is recommended that Council note the amounts written off under delegated powers.

Reasons for Recommendations

4. The Council has excellent revenue collection rates and has maintained good accounting practice by regularly reviewing debts and writing them off where there is no likelihood of recovering them.

Background

5. The Council's Constitution sets out delegated authority to write off irrecoverable debts. The Chief Financial Officer is authorised to approve the write off of debts up to level 2 (£25,000) and the Finance Portfolio Holder to approve write offs in excess of that amount. The Chief Financial Officer has further delegated authority to write off irrecoverable debts below £2,500 to the Head of Accountancy through the scheme of officer delegation.

Considerations

6. Whilst the Council's revenue collection rates remain high, there are inevitably cases where it proves impossible to collect outstanding amounts. These may be due to legal restrictions, such as in the case of insolvency or death; because the debtor has absconded and cannot be located; or because it is not financially viable to take further action in consideration of the amount of the debt and the particular circumstances.
7. All appropriate options to recover the debt are attempted before the debt is considered for write off.

8. Provisions for bad debt are made annually in the Council's accounts and it is generally recognised to be good accounting practice to write off debts as soon as possible once it has been established that collection is unlikely.
9. During the 2015/16 year, authorisation was given to write off amounts as shown in the first table. The amounts are expressed as a percentage of the 2015/16 collectible charges in the second table, while Table 3 shows the number of debts written off.
10. Whilst Table 4 provides a comparison to the figures from previous years, it is important to note that the amount of debt written off is not a clear indicator of collection performance for the year, nor can it be attributed to one specific cause. In many cases, the debts written off were accrued in previous years, and it is only once the recovery process has been exhausted that writing off a debt becomes a consideration.

Table 1 – Value of debt written off

Type of Debt	Total Amount Authorised by	
	Portfolio Holder	Chief Financial Officer
Rent	-	68,064.00
Council Tax	-	93,895.70
Non-Domestic Rates	-	36,635.40
Sundry Debt	-	51,423.40
Housing Benefit Overpayment	-	148,973.80
LCTS Overpayment*	-	377.07

* Collectible overpayments of Local Council Tax Support are debited to Council Tax accounts.

Table 2 – Value of debt written off as a percentage of charge

Type of Debt	As % of 2015/16 Collectable Charge	
	Portfolio Holder	Chief Financial Officer
Rent	-	0.24%
Council Tax	-	0.92%
Non-Domestic Rates	-	0.05%
Sundry Debt	-	0.60%
Housing Benefit Overpayment	-	11.92%
LCTS Overpayment*	-	-

* As collectible overpayments of Local Council Tax Support are debited to Council Tax accounts, no overall figure of overpayment is recorded.

Table 3 – Number of debts written off

Type of Debt	Number of Debts Written Off	
	Portfolio Holder	Chief Financial Officer
Rent	-	155
Council Tax	-	547
Non-Domestic Rates	-	36
Sundry Debt	-	78
Housing Benefit Overpayment	-	182
LCTS Overpayment	-	2

Table 4 – Previous Years figures

Type of Debt	Year							
	2013/14				2014/15			
	Auth'd by PFH	Auth'd by CFO	Value of Debt Written off as % of Charge	No. Of Debts	Auth'd by PFH	Auth'd by CFO	Value of Debt Written off as % of Charge	No. Of Debts
£	£	%		£	£	%		
Rent	-	37,230.81	0.14%	226	-	48,629.38	0.18	113
Council Tax	-	136,412.00	0.15%	1198	-	94,028.38	0.10	731
Non-Domestic Rates	500,007.34	91,786.00	0.85%	44	438,416.33	49,947.87	0.69	72
Sundry Debt	-	31,266.40	0.48%	7	-	75,191.34	0.95	114
Housing Benefit Overpayment	-	80,875.00	3.28%	121	-	101,309.48	3.67	232
Council Tax Benefit / Local Council Tax Support Overpayment	-	13,266.40	N/A	40	-	-	-	-

Options

10. It is recommended that Council note the amounts written off under delegated powers

Implications

11. In the writing of this report, taking into account financial, legal, staffing, risk management, equality and diversity, climate change, community safety and any other key issues, the following implications have been considered: -

Financial

12. The financial implications vary, dependent upon the type of debt as outlined below.
13. Council Tax. The write off of debts represents a loss of income to the Council's Collection Fund. An allowance for bad debt is made when setting the tax base used to calculate the level of Council Tax. If there is an overall deficit on the collection fund at the end of the financial year this is shared by all the major preceptors, the County Council, and Police and Fire Authorities
14. Rent. There is a direct loss of income to the Council's Housing Revenue Account. Bad debt allowances are set according to a statutory scale based on the value of individual debts.
15. Business Rates. The write off of debts represents a loss of income to the Council's Collection Fund. An allowance for bad debt is made within the accounts. If there is an overall deficit on the collection fund at the end of the financial year this is shared by all the major preceptors, the County Council, and Fire Authorities.
16. Sundry Debts, Write offs represent a direct loss of income to the Council's General Fund or Housing Revenue Account as appropriate.
17. Overpayments of Housing Benefit & Local Council Tax Support. Whilst the write offs are a direct loss of income to the Council's General Fund, the Council still receives a subsidy from central Government in respect of the Housing Benefit paid in the majority of cases. The actual amount of subsidy varies depending on the reason for the overpayment.

Legal

18. The Council has a statutory responsibility to collect certain charges such as Council Tax, Non-Domestic Rates, and overpayments of benefits, and must act reasonably in attempting to collect all money due. Other charges can be subject to legally binding contractual arrangement. In some situations, such as insolvency, the Council is precluded from recovering debts and obliged to write them off.
19. Whilst not a legal requirement it is considered good accounting practice to write off bad debts as soon as it is evident that they are uncollectable.

Risk Management

20. Debts written off during the year are within the budgeted provisions and there are no risk management implications

Consultation responses (including from the Youth Council)

21. None

Effect on Strategic Aims

22. Efficient revenue collection with minimal levels of debts written off is essential to ensure that budgeted funding is available to enable the Council to provide services.

Background Papers

No background papers were relied upon in the writing of this report.

Report Author: Katie Brown – Revenues Manager
Telephone: (01954) 713335

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Report To: Council
Lead Officer: Executive Director

19 May 2016

Approval of UK Municipal Bonds Agency's Framework Agreement, and Joint and Several Guarantee

Purpose

1. This report seeks approval for the Council to enter into the borrowing documents prepared by the UK Municipal Bonds Agency (the "Agency").
2. The Agency requires that local authorities borrowing from it enter into its Framework Agreement. The Agreement includes an accession document confirming that the council has the necessary approvals to sign the Agreement and a joint and several guarantee to those lending money to the Agency in respect of the borrowing of all other local authorities from the Agency. Entering into the Framework Agreement enables the Council to access funding from the Agency as and when required.
3. This report sets out the background to the Agency, key facets of the Framework Agreement and the advantages and disadvantages of entering into the Agreement, including an assessment of the risk that the Council will be called upon under the guarantee. It seeks approval for the Council to enter into the Framework Agreement.
4. This is not a key decision because but has been brought to Cabinet as it requires the Council to agree to the proposed Agency Framework including the joint and several guarantee, and it was first published in the May 2014 Forward Plan.

Recommendations

5. The Council is recommended to:
 - a) approve the Council's entry into the Framework Agreement and its accompanying schedules including the joint and several guarantee;
 - b) delegate authority to the Executive Director as Section 151 Officer and the Monitoring Officer to sign those documents, as appropriate, on behalf of the Council;
 - c) grant the Section 151 Officer delegated authority to agree amendments to the Framework Agreement as appropriate.
6. The Council is asked to note:
 - the Introduction to the Agency in **Appendix 1, section 2**, which explains the Agency in layman's terms;
 - the Framework Agreement and its schedules, including the joint and several guarantee, as set out in **Appendix 1, section 3**;

- the legal advice and counsel's opinion set out in **Appendix 1, sections 1, 4 and 5**;
- consideration of the Council's financial position and financial standing in **section 9**;
- signing the Framework Agreement does not make the Council subject to the joint and several guarantee or provisions of the Framework Agreement until such time it borrows from the Agency; and
- the assessment of the advantages and disadvantages of entering into the Framework Agreement in **section 10**.

Reasons for Recommendations

7. The Agency has been designed to deliver cheaper capital finance to local authorities at a time when the Council has included a significant borrowing requirement in the Council's five year capital programme, in particular for the on-lend finance to Ermine Street Housing. It is in the interests of the Council to obtain finance at a cost which maximises the interest differentials at minimal risk and thereby generating additional income to support General Fund services.

Executive Summary

8. The purpose of the Agency is to deliver cheaper capital finance to local authorities. It will do so via periodic bond issues, as an aggregator for financing from institutions such as the European Investment Bank ("EIB") and by facilitating greater inter-authority lending. The Agency is wholly owned by 56 local authorities and the Local Government Association ("LGA"). The Council is a shareholder in the Agency with a total investment of £50,000.
9. The Council has limited sources of capital finance available to it. The margin charged by the PWLB rose significantly in 2010 and therefore the LGA explored and then, with the support of a number of local authorities, established the Agency as an alternative to the PWLB.
10. The Agency's Framework Agreement sets out the arrangements for borrowing from the Agency and incorporates a joint and several guarantee that requires all local authorities borrowing from the Agency to guarantee the money owed by the Agency to those who have lent it money to fund its loans. The Framework Agreement incorporates a mechanism to prevent a call under the guarantee by requiring borrowers to lend the Agency money to cover a default by another local authority, referred to as "contributions".
11. The Council has the power to enter into the Framework Agreement under Section 1 of the Localism Act 2011 – the general power of competence. Borrowing under the Framework Agreement will be under Section 1 of the Local Government Act 2003 – the power to borrow.
12. Acting on behalf of prospective borrowers, a small group of authorities appointed lawyers, Allen & Overy, to review and advise upon the documentation. Allen & Overy instructed counsel to obtain senior opinion on vires and reasonableness. The advice and opinion resulted in a small number of changes to the Agency's documentation.

13. Counsel raised three key considerations that a local authority must take into account when taking a decision to enter into the Framework Agreement:
 - its specific financial position;
 - whether or not the council is “reasonably financially robust” i.e. the council it can meet the potential demands that the Framework Agreement places upon it; and
 - whether it is to the authority’s advantage to enter into the Framework Agreement taking into account the advantages and disadvantages of doing so.
14. Taken together, these three considerations help address a key requirement of the Wednesbury principles that the Council exercises its powers in a reasonable manner.
15. The Council has a need to borrow of £98.9 million over the next three years comprising £95.5 million of borrowing to fund capital expenditure and £3.4 million of internal borrowing. Use of the Agency will save the Council interest costs; otherwise the Council will use alternative sources of borrowing. Every 0.01 per cent interest saved is worth £9,890. The savings may be significant as the Agency’s bond pricing improves and institutions such as the EIB provide financing to the Agency.
16. Entering into the Framework Agreement enables the Council to access funding from the Agency as and when required. Access to the cheapest source of finance will reduce the costs of borrowing and thus its impact on the Council Tax. Over time, the Agency’s business case suggested that the savings delivered by the Agency would be 0.2 per cent.
17. UK local authorities are heavily supervised and subject to tight statutory control that significantly reduces the probability that a local authority will default on its financial obligations. Furthermore, the Agency will undertake credit assessments of local authorities and limit its exposure to authorities to reduce credit risk. In the event that a local authority needs to refinance its borrowings from the Agency, the PWLB is available to all local authorities as lender of last resort provided that the borrowing from the PWLB is not unlawful. No UK local authority has ever defaulted on one of its primary debt obligations. Taken together, the risk of a default is judged to be low and thus the risk of entering into the Framework Agreement and guarantee is deemed to be low.
18. If a local authority does default, the Agency has liquidity facilities available to it so that it can meet the interest payments due on a bond and cover a limited default on a principal repayment by a local authority; the provisions of the Framework Agreement will be used if these facilities are exhausted. The Council has adequate reserves of £8 million and in the unlikely event of a call for contributions under the Framework Agreement or payment under joint and several guarantee, has access to PWLB funds at 48 hours’ notice if required.
19. The risks associated with the joint and several guarantee are mitigated by the contribution arrangements. Therefore, from a practical perspective, the real risk to the Council is the requirement to make contributions in the event of a default by another borrower and this exposure is proportional because it is calculated by reference to the amount borrowed by the Council as a proportion of all non-defaulting loans made by the Agency. If the Council has no borrowings via the Agency, it will not be called upon under the Framework Agreement.

20. In the unlikely event that the guarantee is called upon, it is also unlikely that bond holders or other providers of finance to the Agency will pursue a single Council for payment because the best outcome for lenders is likely to be achieved by pursuing all the guarantors because this maximises the potential revenues available to repay them.
21. Section 13 of the Local Government Act secures all debts of a local authority on its revenues and therefore it is highly likely that the Agency will be able to recover amounts owed to it by a defaulting authority. In turn, this will enable the Agency to repay sums lent to it under the Framework Agreement or paid out by the Council under the guarantee.
22. The risk that the Council suffers a loss under the Framework Agreement and the joint and several guarantee is therefore a combination of the low risk of a default by a local authority and the low risk that if a local authority does default, local authorities cannot recover sums owed to them.
23. In return for accepting this risk, the Council will receive access to more diverse and cheaper sources of capital finance via the Agency. On balance, the financial advantages outweigh the financial disadvantages.
24. Although the Agency intends that the Framework Agreement is permanent, there may be a need to either amend the Framework Agreement or if the Council wishes, set aside provisions for a period of time without amending the contributions arrangements or joint and several guarantee.

**Background –
THE MUNICIPAL BONDS AGENCY
Establishment:**

25. The establishment of the UK Municipal Bonds Agency was led by the LGA following the announcement in the 2010 Autumn Statement that PWLB rates would increase from 0.15 per cent over Gilts to 1 per cent over Gilts, greatly increasing the cost of new borrowing and refinancing. This followed the introduction of punitive early repayment penalties by the PWLB in 2007, which have prevented local authorities from restructuring their loan portfolios to reduce costs while interest rates are low. Although the Government subsequently introduced the “certainty rate”, which effectively reduced the PWLB’s margin to 0.8 per cent over Gilts in return for the limited disclosure of an authority’s borrowing plans, the LGA found that rate remained higher than a bonds agency should be able to achieve.
26. The LGA also noted that it was easy for UK investors such as pension funds to provide capital to overseas local authorities through the London capital markets, but not so to UK local authorities.
27. The LGA published a revised business case in March 2014 that set out how a bonds agency would issue bonds on behalf of local authorities in an efficient and cost effective manner and at lower rates than the PWLB. It identified that the regulatory environment meant that the PWLB had a de facto monopoly on providing simple loans to local authorities:
 - For regulatory purposes a bank must set aside capital when lending to local authorities – unlike when lending to the Government – and therefore it is difficult for banks to compete with the PWLB on rates and make money other than by offering structured lending products.

- Bond investors value liquidity and benchmark sized issues (£250 million), which makes it difficult for most local authorities to access the bond markets, particularly as one-off bond issues can be costly.
 - Supranational agencies such as the EIB would typically lend only for large projects, typically £150 million or £250 million depending on the project, thereby excluding most local authorities.
28. The LGA's revised business case was published in March 2014 and the company established in June 2014. The agency will act as an intermediary, borrowing the money and on-lending it to local authorities on a matched basis to deliver cheaper capital finance to local authorities through periodic bond issues, as an aggregator for loans from other bodies such as the EIB, and facilitating longer term inter-authority lending via the Agency.
29. The LGA and 56 local government shareholders representing 65 principal local authorities and 1 combined authority have invested over £6 million in the Agency. The Council is a shareholder in the Agency with a total investment of £50,000.
30. The Agency will offer the flexibility to borrow smaller amounts through the capital markets than the Council may be able to achieve on its own. It therefore offers an alternative and complementary source of funding to the Council.

Client Base:

31. The Agency will only lend to UK local authorities who can give a joint and several guarantee. This is currently limited to 353 principal English local authorities that have the general power of competence under section 1(1) of the Localism Act 2011. The Department for Communities and Local Government specifically intended that local authorities should be able to give guarantees using the power in its regulatory impact assessment.
32. The ability to give joint and several guarantees may in due course be extended to other local authorities e.g. combined, Welsh or Scottish authorities. In the event that this occurs, those authorities will be eligible to borrow from the Agency.
33. The Agency would prefer all borrowers to become shareholders. This ensures a strong alignment of interest between borrowers and shareholders, and is viewed positively by ratings agencies and the capital markets. Accordingly, the Agency will charge a higher interest rate to borrowers that are not shareholders, albeit one which remains competitive.

Loan Pricing:

34. The Agency will operate a transparent pricing structure. It will charge local authorities the interest the Agency pays to obtain the funds it on-lends, plus any transaction costs up to a maximum of 0.5 per cent of the amount borrowed, plus a margin to cover its costs. This margin is currently set at:
- 0.10 per cent for shareholders; and
 - 0.15 per cent for non-shareholders.

35. The Agency may adjust these margins for new borrowing transactions at its discretion, but will not increase them. It is expected that these margins will reduce once the Agency is profitable.
36. Transactions costs include the Agency's credit rating agency fees, bank syndicate fees and legal costs. The Council has the option to amortise these over the life of the loan or to expense them.
37. The Agency will not require local authorities to borrow at a rate that is higher than the PWLB, thus when borrowing via the Agency the Council should always achieve a saving. Over time, the rates offered by the Agency are likely to improve as its bonds programme develops and it is able to borrow from institutions such as the EIB.

Early Repayment (Prepayment):

38. The Agency will pass on the cost of early repayment by a local authority (usually referred to as prepayment in financial services) to that local authority. However, the Agency will not profit from the transaction and will assist any local authority seeking early repayment to find the cheapest solution.
39. Prepayment rights will track through between the loans to local authorities and the Agency's financing. For bond issues, voluntary prepayment is calculated in a similar way to the PWLB's early redemption penalties, although one option available to local authorities will be to buy back part of the bond.

Governance

40. The Agency is a public limited company and as such is directed by its Board. It is expected that the Board will include 7 non-executive and 3 executives.
41. In addition, the Board will have the following 2 sub- committees, chaired by independent non-executives:
 - Risk, Compliance and Audit Committee; and
 - Nomination and Remuneration Committee.
42. In addition, the Agency will establish a Local Authority Advisory Board, comprising local authority finance officers, to facilitate two-way communication between the Agency and its borrowers.

Credit Process

43. Prior to approving any loans, the Agency will carry out a credit assessment of each potential borrower.
44. The Agency has developed a proprietary credit scoring model based on similar methodologies to the main credit rating agencies. In order to access funding from the Agency, a local authority will need to be able to achieve a "single A" credit rating on a standalone basis; rating agencies typically "notch up" a local authority to account for implied Government support.
45. In addition to credit scoring, the MBA will ensure appropriate diversification of its lending portfolio, through the contractual concentration limits agreed in the Framework Agreement.

THE FRAMEWORK AGREEMENT AND THE JOINT AND SEVERAL GUARANTEE

Content of the Framework Agreement:

46. The Framework Agreement as set out in **Appendix 1, Section 3** comprises:
- The Framework Agreement itself, which is primarily designed to prevent a call on the joint and several guarantee and lays out how the Agency will interact with local authorities.
 - Schedule 1: *Form of Authority Accession Deed*, which local authorities sign to commit themselves to the Framework Agreement.
 - Schedule 2: *Form of Guarantee*, which is the joint and several guarantee.
 - Schedule 3: *Loan Standard Terms*, which is the loan agreement that covers any borrowing by an authority.
 - Schedule 4: *Form of Loan Confirmation*, which supplements the Loan Standard Terms and confirms details of a loan such as principal, maturity, interest rate and etc. It is signed by the Agency and a borrower.

Need for the Joint and Several Guarantee:

47. The LGA's revised business case highlighted the need for borrowing authorities to sign a joint and several guarantee:
- The joint and several guarantee allows the Agency to issue bonds without having to prepare a full prospectus for each bond issue, pursuant EU's "Prospective Directive", thereby reducing costs and complexity.¹
 - The UK Listing Authority's "listing rules" that govern whether financial instruments can be listed on a UK stock exchange would not permit bonds issued by an agency to be listed on the London Stock Exchange for some years without a joint and several guarantee, meaning the bonds would need to be listed elsewhere such as the Channel Islands or Luxembourg.
 - If, instead of a joint and several guarantee, investors had recourse to an agency's on-lending arrangements, every tranche of financing would require a separate credit rating and investors to assess the participating authorities, which would materially impact an agency's ability to reduce costs and deter a number of potential investors and lenders from lending money to the agency. The joint and several guarantee draws on the strength of the local government sector is simple for investors to understand.

Nature of the Joint and Several Guarantee:

48. The joint and several guarantee is a schedule to the Framework Agreement (Appendix 1, Section 3, Schedule 2) and is direct, unconditional, irrevocable and not separately administered:

"2.1.1 guarantees to each Beneficiary each and every obligation and liability the Company may now or hereafter have to such Beneficiary (whether solely or jointly with one or more persons and whether as principal or as surety or in some other capacity) in respect of the Guaranteed Liabilities and promises to pay to each

¹ Article 1(2)(d) of Directive 2003/71/EC

Beneficiary from time to time on demand the unpaid balance of every sum (of principal, interest or otherwise) now or hereafter owing, due or payable (following the expiry of any grace period provided for) by the Company to any such Beneficiary in respect of any such Guaranteed Liability; and

2.1.2 agrees as a primary obligation to indemnify each Beneficiary from time to time on demand from and against any loss incurred by such Beneficiary as a result of any such Guaranteed Liability being or becoming void, voidable, unenforceable or ineffective as against the Company for any reason whatsoever, whether or not known to such Beneficiary, the amount of such loss being the amount which such Beneficiary would otherwise have been entitled to recover from the Company.”

49. In practice this means that all borrowers are collectively and individually guaranteeing the lenders to the Agency against a default by a local authority.
50. The Council can withdraw from the joint and several guarantee by giving notice and repaying its loans to the Agency. However, the irrevocable nature of the guarantee means that the Council will continue to guarantee the Agency's borrowings at the date of withdrawal until those borrowings mature. This prevents moral hazard i.e. a local authority borrowing from the Agency to achieve a cheaper borrowing rate, but walking away from the obligations. Withdrawal does mean that the Council will not be guaranteeing future borrowing by the Agency.

Preventing a Call on the Guarantee:

51. The Framework Agreement mitigates against a possible call on the joint and several guarantee by minimising the risk of default by a local authority, limiting the possible impact of a default and containing a default before the Agency's ability to make payments is threatened.
52. The Framework Agreement imposes obligations on the Agency that are designed to reduce the possibility of default by a borrower:
 - The Agency must credit assess each borrower and exclude those that do not achieve at least the equivalent of a strong investment grade rating equivalent to an "A" rating from the established credit rating agencies such as Moody's.
 - "Concentration limits" ensure that the Agency will maintain a diverse loan book over time that limits the proportion of the Agency's loan book that can be lent to a single or small group of authorities. (**Appendix 1, Section 3, Paragraph 5.2**)
 - Credit lines are available to the Agency that it must utilise in the event of a local authority missing a payment or defaulting, before it has recourse to other borrowers.
53. The Framework Agreement establishes a "contributions" mechanism that requires borrowers to lend the Agency funds to cover its obligations in the event of a default by a local authority. The contributions are calculated in proportion to an authority's share of the performing loan book. The loans are interest bearing and will be repaid once the Agency has recovered the sums owed to it by the defaulting authority, which it is required to do by the Framework Agreement. If the Council has no outstanding borrowings via the Agency, it will not be called upon to make contributions under the Framework Agreement.

54. The payment schedules set out in the Framework Agreement are designed to ensure timely payments by local authorities so that error or late payment by a borrower does not risk a call for contributions or under the guarantee.
55. The Framework Agreement prevents a borrower from taking action against a defaulting authority so that a single authority cannot jeopardise the structure of the Agency and / or act against the interests of other borrowers.

Accounting for the Guarantee:

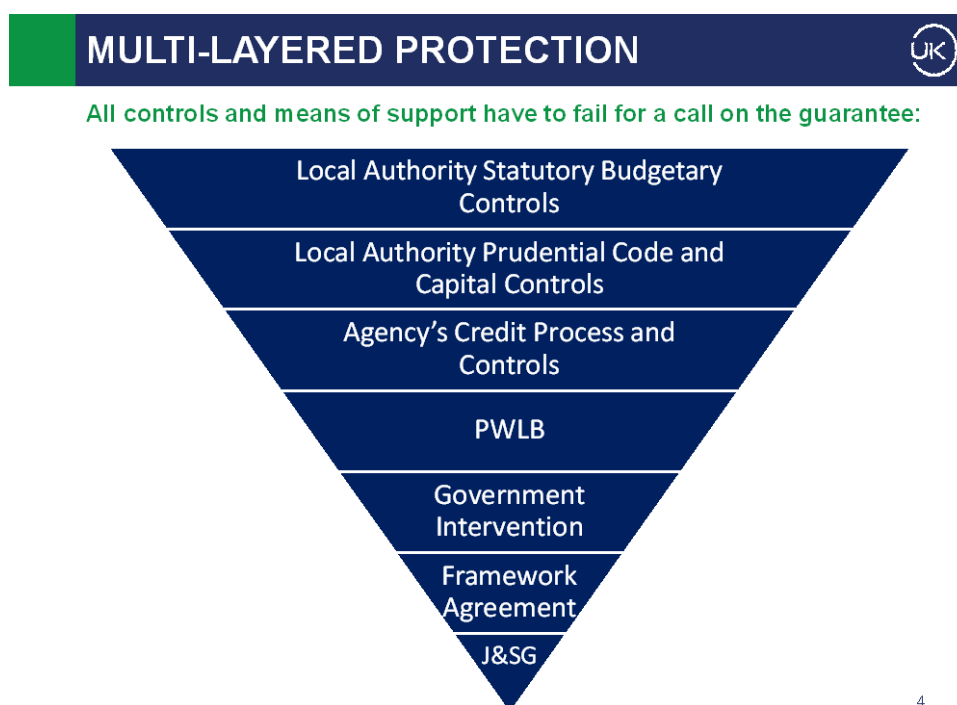
56. The Agency commissioned accounting advice from Grant Thornton setting out the local authority accounting requirements for borrowing via the Agency including the joint and several guarantee, as set out in **Appendix 1, Section 6**.
57. Although the Council is unable to rely on this advice and must procure additional advice if it is uncertain regarding the accounting requirements, Grant Thornton's advice does not raise any concerns at this time. For example, if the Council judges the risk of a call under the joint and several guarantee to be zero, there accounting requirements of entering into the Framework Agreement are minimal and mostly confined to disclosures in the event that the Council borrows from the Agency.

RISK OF DEFAULT BY AN AUTHORITY

58. The risk of a default by a local authority is deemed to be very low: no principal local authority has ever defaulted on a loan. The National Audit Office in its Financial Sustainability of Local Authorities report of November 2014 observed:
“A legal framework at the core of the local government accountability system effectively prevents local authorities becoming insolvent. Local authorities cannot borrow to finance revenue expenditure or run deficits.”
59. The statutory and prudential framework under which local authorities operate is extremely strong and designed to prevent local authorities from over-reaching themselves and becoming insolvent. Key aspects of the framework include:
- Local authorities are prevented from borrowing to fund services by the Local Government Finance Act 1992, which sets out how budgets and the Council Tax must be calculated, particularly Section 31A, 32 and 42A of the Act. These provisions require a budget to be balanced on a cash basis without the use of borrowing.
 - Local authorities must comply with the prudential framework established by Part 1 of the Local Government Act 2003 and related regulations, including the Prudential Code for Capital Finance in Local Authorities published by CIPFA.
 - Section 151 Officers have varied powers and responsibilities that result in prudent financial management. For example, if an authority cannot pay its bills at it falls due, he or she must submit a Section 114 report to the Executive / Council, which must be acted upon. A Section 151 officer must also report on the adequacy of reserves and robustness of budget estimate under Section 25 of the Local Government Act 2003 and action be taken by the Council to remedy an adverse report.
 - A local authority must make a Minimum Revenue Provision (“MRP”) repay debt under the local authorities (Capital Finance and Accounting) (England) Regulations 2003, issued by the Secretary of State under Sections 21 of the Local Government Act 2003 (as amended). This means that a local authority

sets aside cash via its revenue budget, sufficient to ensure it can repay its debt.

60. The Agency's credit assessments, risk management processes and the concentration limits should reduce the possibility that a local authority borrowing from the Agency is likely to default.
61. Local authorities have access to the PWLB as lender of last resort and therefore can refinance any borrowings from the Agency by the PWLB if it cannot repay its debt to the Agency by other means.
62. Historically, the Government has intervened when a local authority finds itself in difficult or the Government deems a local authority to be incapable of managing itself effectively.
63. for the Council to be called upon to make contributions under the Framework Agreement, let alone be called upon under the joint and several guarantee, all the above controls and protections must fail. This has been summarised by the Agency in its presentations as set out in figure 1 below:



4

RISK OF NOT RECOVERING CONTRIBUTIONS OR PAYMENTS UNDER THE JOINT AND SEVERAL GUARANTEE

64. The Local Government Act 2003 provides several key protections to lenders that greatly reduce the possibility that the Agency and therefore the Council would be unable to recover sums owed to it if it is required to make a contribution or pay out under the joint and several guarantee:
 - Section 6 provides that a lender is not required to ensure that a local authority has the power to borrow and is not “prejudiced” in the absence of such a power. This prevents a local authority claiming an act was “ultra vires” to side step its obligations.

- Section 13 provides that all debts rank pari passu i.e. have equal status under the law and thus a creditor cannot be disadvantaged by later subordination of that debt by a local authority.
 - Section 13 also secures all debts of an authority on its revenues, which is the strongest possible security for a loan as the bulk of a local authority's revenues are either raised under statutory powers or allocated by the Government.
 - Section 13 also provides for a receiver to be appointed by the High Court on application if principal and / or interest greater than £10,000 is outstanding for 60 days.
65. The Framework Agreement requires that the Agency must pursue any defaulting authority to the extent that if it does not do so promptly, borrowers can force it to do so. Furthermore, the Framework Agreement provides for a strict application of the proceeds of any debt recovered by the Agency from a defaulting authority.

LEGAL ADVICE AND OPINION

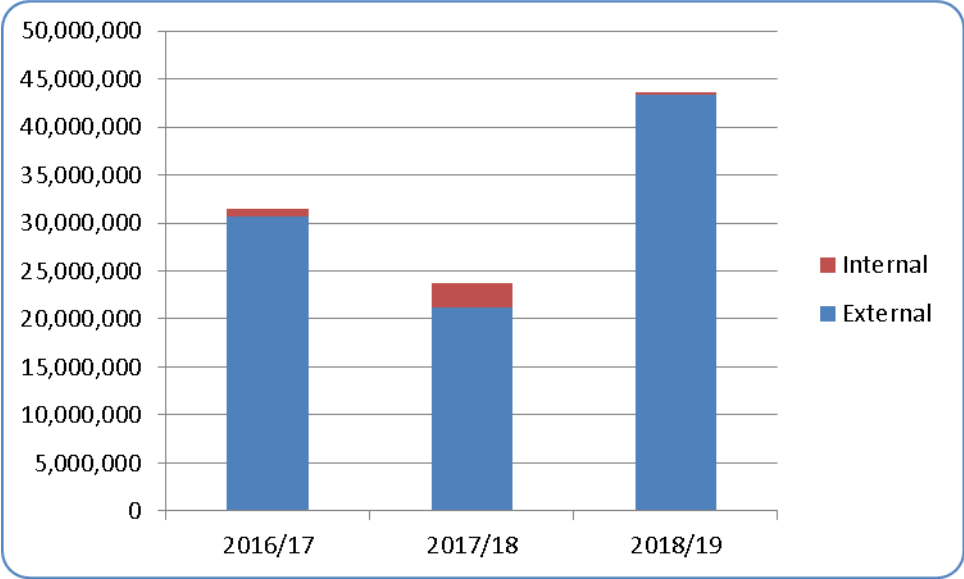
66. A small group of authorities commissioned Allen & Overy, a law firm a specialist in financial transactions, to advise on the Framework Agreement. Allen & Overy engaged Jonathan Swift QC to provide senior counsel's opinion on, amongst other things, whether:
- entry into the Framework agreement, execution of the Guarantee, entry into borrowing transactions under the Framework Agreement and the provision of contribution loans would all be within the general power of competence under the Localism Act 2011; and
 - a local authority that decides to enter into the Framework Agreement and the Guarantee on the basis of the Document Package (**Appendix 1**) would be acting in accordance with the requirement of Wednesbury reasonableness.
67. His main conclusions were:
- local authorities do have the power, in principle, to enter into the arrangement envisaged by the Framework Agreement; and
 - whilst it would, in principle, be lawful for a reasonably financially robust local authority to enter into the commitments entailed in the Framework Agreement, the final assessment of whether or not it would be reasonable use of the in principle power must be made taking into account the specific financial position of each local authority, whether it is financially robust and the balance of the advantages and disadvantages of doing so.
68. Wider considerations, such as establishing the independence of the sector, whether they have merit or not, should not have a bearing on the Council's assessment of the advantages and disadvantages of entering into the Framework Agreement.
69. Jonathan Swift QC's opinion was procured independently of the Agency.
70. The Council has the power to enter into the Framework Agreement under Section 1 of the Localism Act 2011 – the general power of competence. Borrowing under the Framework Agreement will be under Section 1 of the Local Government Act 2003 – the power to borrow.

FINANCIAL POSITION AND FINANCIAL ROBUSTNESS OF THE COUNCIL

Need to Borrow

71. The Council has a need to borrow of £98.9 million over the next three years comprising £95.5 million of borrowing to fund capital expenditure and £3.4 million of internal borrowing. This is set out in the Council’s Capital Strategy and Treasury Management Strategy and summarised in Figure 2 below:

Borrowing Requirement



72. Use of the Agency will save the Council interest costs; otherwise the Council will use alternative sources of borrowing. Every 0.01 per cent interest saved is worth £9,890. A saving of 0.1 per cent would be worth £98,900. The savings over time may be significant as the Agency’s bond pricing improves and institutions such as the EIB lend money to the Agency. For capital investment in eligible sectors, the EIB can offer funding that is significantly cheaper than either the PWLB or bond markets.

73. The Framework Agreement enables the Council to access funding from the Agency as and when required. Access to the cheapest source of finance will reduce the costs of borrowing and thus its impact on the Council Tax.

74. The Council currently has two key projects the first being the replacement of waste and recycling vehicles providing an enhanced service and potential for increased revenues, the funding to be provided through internal financing. The second project being capital investment in the Council’s wholly owned subsidiary, Ermine Street Housing, offering the opportunity to realise interest receipts which will contribute to Council revenue funding, financed by external borrowing.

Financial Robustness:

75. The Council’s revenue budget and medium term financial strategy demonstrate and set out the financial pressures the Council is under, particularly in light of the funding cuts and uncertainties that changes to the system of local government finance and business rates may bring. Nonetheless, the Council is required to balance its budget and is subject to tight statutory controls and supervision. As highlighted elsewhere in

this report, it is therefore extremely unlikely that the Council will find itself in the position that it is unable to meet the requirements of the Framework Agreement and joint and several guarantee e.g. that it makes contributions if asked.

76. If the Council were called upon, it has access to PWLB funds at 48 hours' notice if required. Loans made to the Agency under the Framework Agreement as part of the contribution arrangements could constitute capital expenditure because loans to third parties are defined as such under the (Capital Finance and Accounting) (England) Regulations 2003 (as amended). Given that the Agency is likely to recover the amounts owed to it by a defaulting authority and that the contributions are in themselves loans, the impact on the revenue budget is likely to be negligible if the Council is required to make a contribution or called upon under the joint and several guarantee.

RISKS AND DISADVANTAGES OF ENTERING INTO THE FRAMEWORK AGREEMENT

77. Exposure to the contribution arrangements and the joint and several guarantee means that entering into the Framework Agreement and borrowing via the Agency is different in nature to borrowing from the Public Works Loan Board, under a bilateral loan facility or through a bond issue in the capital markets.
78. There are inherent risks associated with the proposed structure, not least the joint and several nature of the guarantee. These are:
- The risk that the Council's guarantee may be called independently of any other Guarantee and for the full amount owing by the Agency under the financing document that is covered by the guarantee (and, therefore, such participating local authority is potentially liable to pay out amounts to the MBA that exceed the amounts borrowed).
 - Even if the Council has terminated its Guarantee, it will continue to guarantee the "Guaranteed Liabilities" entered into by the Agency before the termination date. The effect of this is that the Council's liability under its Guarantee may potentially continue in existence for many years after termination.
79. However, the risks associated with the joint and several guarantee are mitigated by the contribution arrangements. The Framework Agreement is such that the Council's exposure, from a practical perspective, is the requirement to make contributions in the event of a default by another borrower and this exposure is proportional because it is calculated by reference to the amount borrowed by the Council as a proportion of all non-defaulting loans made by the Agency.
80. The risk of a default by a local authority is low as set out in section 6 of this report. The ability of the Agency to recover sums owed to it in the event of a default is set out in section 7 of this report.
81. There is a risk that the Agency does not observe its obligations under the Framework Agreement, but the Council is entitled to expect that the Agency will operate in accordance with its obligations under the Framework Agreement when considering whether or not to enter into the Framework Agreement. The LGA and local authorities control the Agency via their shareholdings so could intervene if the Agency did not abide by the Framework Agreement.
82. The prime advantage to the Council is the prospect of lower borrowing costs and the possibility to obtain types of loans that are not available from the PWLB. Cheaper

capital finance will reduce pressure on the Council's finances. This advantage more than offsets the low risk that a local authority defaults and the Agency is unable to recover the debts owed to it in order to repay the Council any contributions it is required to make.

83. The Framework Agreement only comes into effect if the Council does borrow from the Agency. If the Council does not borrow, there is no risk to the Council arising from the contribution arrangements or joint and several guarantee. The Council is not obligated to borrow via the Agency and even if it chooses to legally commit to borrowing via a bond issue, it will not be required to take a loan that is not cheaper than the PWLB, so the bond will not be issued. Therefore, the financial risk to the Council of the Agency either failing to deliver a saving or the Council not borrowing having signed the Framework Agreement is eliminated.

Options

Implications

84. In the writing of this report, taking into account financial, legal, staffing, risk management, equality and diversity, climate change, community safety and any other key issues, the following implications have been considered: -

Financial

85. These are set out throughout the report.
86. The Council, with appropriate professional advice when required, will continue to keep all potential sources of borrowing under review. At present, borrowing via the Agency is likely to be the cheapest source of borrowing available to the Council, particularly as the Agency develops

Legal

87. These are set out throughout the report.

Consultation responses (including from the Youth Council)

88. There is no requirement to consult with the community or stakeholders on this particular issue.

Contribution to strategic aims/ways of working

89. Effective and efficient treasury management helps support the overall achievement of the Council's strategic objectives

Background Papers

No background papers were relied upon in the writing of this report.

Report Author: Sally Smart –Principal Accountant
Telephone: (01954) 713076

UK MUNICIPAL BONDS AGENCY PLC

DOCUMENTS PACKAGE FOR LOCAL AUTHORITIES

21 DECEMBER, 2015

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2	INTRODUCTION TO THE UK MUNICIPAL BONDS AGENCY ("UK MBA") (prepared by UK MBA)
3	FRAMEWORK AGREEMENT – FINAL DRAFT DATED 18 DECEMBER, 2015 (prepared by Clifford Chance)
4	FOLLOW-UP MEMORANDUM (prepared by Allen & Overy)
5	COUNSEL'S OPINION OF JONATHAN SWIFT QC (and accompanying Instructions to Counsel, prepared by Allen & Overy)
6	ACCOUNTING ADVICE (prepared by Grant Thornton)
7	STANDARD CONFIRMATION OF LA'S AUTHORITY TO BORROW FROM UK MBA AND EXECUTE A GUARANTEE (prepared by UK MBA)

DOCUMENT ONE

EXECUTIVE SUMMARY (prepared by Allen & Overy)

UK MUNICIPAL BONDS AGENCY PLC: EXECUTIVE SUMMARY
(PREPARED BY ALLEN & OVERY)

1. Introduction

- 1.1 We have been appointed by Birmingham City Council, Reading Borough Council and Southwark Borough Council (the **Councils**), who are acting as an informal working group on behalf of English local authorities (each, an **LA**), in relation to a Local Authority Financing Framework Agreement (the **Framework Agreement**) which is proposed to be entered into by UK Municipal Bonds Agency PLC (**UK MBA**) and each LA wishing to borrow from UK MBA. We have agreed to provide advice to LAs as to the matters, and to the extent, set out in this Executive Summary and the Follow-up Memorandum referred to below (the **Advice**). The scope of the Advice is limited to those matters: however, we are able to provide further advice to any LA on the documents or transactions referred to therein, which can be arranged separately and to which separate fee arrangements will apply.
- 1.2 Nothing in the Documents Package (as defined below) should be construed as a recommendation by us or any of the Councils to enter into the Framework Agreement. Each LA must form its own assessment as to the merits of entering into the Framework Agreement after taking into account the contents of the Documents Package as a whole, as well as any other factors which that LA deems relevant to its own circumstances.
- 1.3 We have reviewed and commented on six separate drafts of the Framework Agreement (dated 10 April, 2015, 2 September, 2015, 9 September, 2015, 16 September, 2015, 14 December, 2015 and 18 December 2015) prepared by Clifford Chance (acting for UK MBA) We have also provided comments on the Introduction to the UK Municipal Bonds Agency referred to below, which was prepared by UK MBA (and which includes, as an appendix, a layperson's guide to the Framework Agreement). We also prepared the Instructions to Counsel for the purpose of obtaining the Counsel's Opinion referred to below.
- 1.4 This Executive Summary forms part of a package of documents (as seen and initialled by us for identification, the **Documents Package**) which has been prepared jointly by us, the Councils, UK MBA and Clifford Chance to help LAs with their internal approval processes. This Executive Summary is intended to be a summary only and, for the purposes of any LA deciding whether it would be prudent for it to enter into the transactions envisaged by the Framework Agreement, it should be read in conjunction with the rest of the Documents Package. The other documents in the Documents Package are:
- (a) Document 2: Introduction to the UK Municipal Bonds Agency – this provides an overview of UK MBA, its background, its objectives, its operating model and its governance. It also

contains, as an appendix, a "*Guide to the Framework Agreement*", which is intended as a detailed, but layperson accessible, guide to the Framework Agreement. Please note that the "*Guide to the Framework Agreement*" is only intended to be a summary, intended for ease of accessibility to, and not a substitute for, the Framework Agreement and precedence should always be given to the Framework Agreement.

- (b) Document 3: Framework Agreement – final draft dated 14 December, 2015. Please note that it is for each LA to satisfy itself as to whether the execution version of the Framework Agreement that it is being asked to sign is in the same form as the final draft Framework Agreement attached as Document 3.
- (c) Document 4: Follow-up Memorandum – this provides details of the history of our review of the Framework Agreement and outlines the risks originally identified therein, our and Counsel's suggested amendments, the extent to which these risks have been addressed in the final Framework Agreement and, in our opinion, any residual risks that remain for LAs to consider before entering into the Framework Agreement. We also briefly address (i) how the Framework Agreement caters for the concept of a "combined authority" consisting of two or more LAs (pursuant to an order of the Secretary of State pursuant to section 103 of the Local Democracy, Economic Development and Construction Act 2009) and (ii) any further mitigation arising for the benefit of LAs by operation of law (i.e. outside of the Framework Agreement).
- (d) Document 5: Counsel's Opinion – Jonathan Swift QC was asked to provide an opinion as to whether (among other things) (x) entry into the Framework Agreement, execution of the Guarantee (as defined below), entry into borrowing transactions under the Framework Agreement and the provision of contribution loans (if required) would (subject to compliance with *Wednesbury* reasonableness requirements) all be within the general power of competence under the Localism Act; and (y) an LA that decides to enter into the Framework Agreement and the Guarantee on the basis of the Documents Package (assuming that it has properly read and understood its contents and duly evaluated the risks identified, and has followed all appropriate procedural requirements) would be acting in accordance with the requirements of *Wednesbury* reasonableness. His main conclusions are that: (a) LAs do have the power, in principle, to enter into the arrangements envisaged by the Framework Agreement; and (b) whilst it would, in principle, be lawful for a reasonably financially robust LA to enter into the commitments entailed in the Framework Agreement, the final assessment of whether or not it would be a reasonable use of the in principle power must be made taking into account the specific financial position of each LA. Jonathan Swift QC's opinion was procured independently of UK MBA for the benefit of the Councils as an

informal working group on behalf of LAs as a whole. The Instructions to Counsel are also attached for information. Please note that the Instructions to Counsel make reference to an earlier draft of the Framework Agreement; however, having reviewed the version of the Framework Agreement attached as Document 3, Jonathan Swift QC's final opinion relates to that version.

- (e) Document 6: Accounting advice – this report from Grant Thornton (the **Accounting Report**) details the accounting requirements for LAs in relation to the Guarantees and the Loans (as defined below). It sets out the key requirements and options/methodologies available under the Code of Practice for Local Authority Accounting in the UK in preparing statutory financial statements. Please note that, as expressly stated in the Accounting Report at paragraph 2.12, the Accounting Report is provided to LAs for information purposes only and that Grant Thornton will not accept or assume responsibility to any LA for its contents.
- (f) Document 7: Standard confirmation of LA's authority to borrow from UK MBA and execute a Guarantee – this is a template, prepared by UK MBA, of the form of confirmation it will expect to receive from each LA entering into the Framework Agreement.

1.5 It should be noted that, other than in relation to the Framework Agreement, Counsel's Opinion as to *Wednesbury* reasonableness (as described at 1.4(d) above) was based upon working drafts of the documentation constituting the Documents Package (with Counsel giving his Opinion on the proviso that there would be no material change to the final form of these documents). As mentioned above, we (Allen & Overy) have seen and initialled for identification a final form Documents Package, and we are of the view that none of the changes to the documents therein since the drafts of those documents provided to Counsel are material for the purposes of Counsel's analysis as to the requirements of *Wednesbury* reasonableness. For the avoidance of doubt, Counsel's Opinion was based on the final version of the Framework Agreement contained at Document 3 in the Documents Package.

2. **Proposed structure**

2.1 LAs that wish to borrow from UK MBA will (subject to the relevant LA acceding to the Framework Agreement and fulfilling the requirements and CPs in relation thereto) guarantee, on a joint and several basis, UK MBA's payment obligations under all its borrowings from bilateral lenders and all the bonds issued by it in the capital markets (the **Guarantees**). In relation to each LA that enters into the Framework Agreement and executes a Guarantee (a **Participating LA**), the obligations of such Participating LA will only become effective when it first agrees to borrow funds from UK MBA. UK MBA will lend the proceeds of each bilateral borrowing facility and bond issue to one or more of the

Participating LAs (the **Loans**). It is intended that, for each individual Loan, there will be some form of advance commitment or conditionality on the part of the relevant Participating LA to enter into the Loan subject to agreed parameters as to, among others, interest rates and utilisation dates. Such mechanics are intended to allow UK MBA to canvas investor appetite for a bond issue (or other bilateral lending) with certainty as to financial commitments from Participating LAs. Further details on these commitment and conditionality arrangements will be available from UK MBA.

- 2.2 The terms of the Loans will require that each payment of interest or principal by a Participating LA to UK MBA be made a specific number of days prior to the corresponding payment being due from UK MBA under its bilateral borrowing facility or bond issue.
- 2.3 If a Participating LA defaults in making one of these payments to UK MBA, UK MBA may require each other Participating LA that is a party to the Framework Agreement to put UK MBA in funds to cover the shortfall (the **contribution arrangements**). The amount payable by each Participating LA under the contribution arrangements will be the proportion of the shortfall equal to that Participating LA's borrowings as a proportion of the borrowings of all non-defaulting Participating LAs from UK MBA (and therefore any Participating LA with no outstanding borrowings from UK MBA at such time will not be liable to make a contribution loan under the contribution arrangements - but will potentially still be liable to make payments under its Guarantee if (inter alia) UK MBA fails to exercise the contribution arrangements or the contribution arrangements fail to produce the relevant amount of money for UK MBA, as described further below).
- 2.4 The rationale for the structure is that: (i) the existence of the joint and several Guarantees is intended to enable UK MBA to provide LAs with finance on cheaper terms than they would otherwise be able to access; and (ii) the contribution arrangements, and UK MBA's own credit assessment processes, are intended to forestall any need for those Guarantees to be called, and to ensure that if a Participating LA does default on its payments to UK MBA, the shortfall is spread across the remaining Participating LAs in proportion to the outstanding amount of their borrowings from UK MBA.
- 2.5 Given Participating LAs' exposure to the contribution arrangements and/or the Guarantee when borrowing from UK MBA, it is important to understand that entering into the Framework Agreement and borrowing from UK MBA is therefore very different in nature to borrowing from the Public Works Loan Board, under a bilateral loan facility or through a bond issue in the capital markets.

3. **Key risks to Participating LAs**

- 3.1 We (Allen & Overy) are of the view that (other than to the extent described in the Follow-up Memorandum attached as Document 4) the risks and concerns identified by us in relation to the Framework Agreement have been satisfactorily addressed in the final Framework Agreement.
- 3.2 However, there remain inherent risks associated with the proposed structure for any LA entering into the Framework Agreement, not least the joint and several nature of the Guarantees that Participating LAs are required to provide before borrowing from UK MBA. The risk to a Participating LA is that its Guarantee may be called independently of any other Guarantee and for the full amount owing by UK MBA under any financing document which is covered by such Guarantee (and, therefore, such Participating LA is potentially liable to pay out amounts to UK MBA that vastly exceed the amounts borrowed).
- 3.3 Participating LAs should also note that, even after a Participating LA has terminated its Guarantee in accordance with clause 2.4.1 of the Framework Agreement, it will continue to guarantee the "Guaranteed Liabilities" (as defined in the Framework Agreement) entered into by UK MBA before the date of termination of the Guarantee. The effect of this is that a Participating LA's liability under its Guarantee may potentially continue in existence for many years after termination (subject to the limit contained at clause 5.3.5 of the Framework Agreement that UK MBA may not incur borrowings with a term greater than 50 years). This could be the case, for example, where the "Guaranteed Liabilities" are in respect of a bond issue with up to a 20 to 30 year maturity.
- 3.4 However, the risks associated with the Guarantees are, other than in the situation identified in paragraph 3.5 below, mitigated by the contribution arrangements mechanism (which, if operating as intended, would prevent any call on a Guarantee being made, as is the intention behind the structure). The Framework Agreement is therefore designed such that the real exposure for Participating LAs, from a practical perspective, should be under the contribution arrangements rather than the Guarantees, and that the exposure of each Participating LA (though necessarily greater than merely the amount borrowed by it) would be calculated by reference to the amount borrowed by it as a proportion of all non-defaulting Participating LA borrowings under the structure. It should be noted that, subject to the provisions relating to voluntary prepayment contained in clause 6.5 of the Loan Standard Terms, Participating LAs can prepay their Loans by giving not less than 60 days' notice to UK MBA. There is, therefore, a risk that Participating LAs can limit their liability to make a contribution (given that, once a Participating LA has reduced its borrowings from UK MBA to zero, it is not liable to make contribution loans under the contribution arrangements (although its Guarantee can still be called)). It is therefore for each Participating LA to form a view as to the risk of one or more other Participating LAs defaulting under their obligations under the Framework Agreement such that that Participating LA (i) will be liable to make a contribution loan, or (ii) will

be liable to make payments under its Guarantee (for example in the scenario identified in paragraph 3.5 below).

- 3.5 Even though Participating LAs are entitled to expect that UK MBA will operate in accordance with its obligations under the Framework Agreement, Participating LAs are nevertheless inevitably exposed to the risk that UK MBA fails to observe its obligations under the Framework Agreement. This may include failure to sustain and police robust due diligence and credit assessments on acceding LAs (therefore making it more likely that Participating LAs will need to contribute over and above their borrowings whether through the contribution arrangements or the Guarantee). It is also possible that UK MBA itself may default on its underlying bilateral borrowings from counterparties or under bond issues by not managing its cash flows in a prudent manner or that UK MBA may fail to (or be unable to) operate the contribution arrangements in a manner as envisaged in the Framework Agreement, in which case, each Participating LA is exposed to a call on its Guarantee without the protection that the contribution arrangements provide. It is therefore for each Participating LA to form a view as to the extent of these risks.
- 3.6 However, the Framework Agreement does contain provisions to mitigate the risks identified above (as to which we refer you to paragraph 11 of Counsel's Opinion). In summary, these include (without limitation) (i) the contractual obligations upon UK MBA to undertake (among other things) credit assessments of each LA, both when that LA accedes to the Framework Agreement to become a Participating LA, at any time any decision is made to lend to that Participating LA and periodically thereafter, (ii) the limit on the amount each Participating LA may borrow from time to time, (iii) the matched transaction basis on which UK MBA itself will borrow money, and (iv) the power for Participating LAs to collectively instruct UK MBA not to undertake further borrowing.

4. Miscellaneous

- 4.1 Allen & Overy, in providing the Advice, has taken instructions solely from the Councils. We accept a duty of care to LAs in relation to the Advice, but subject to the provisions of paragraph 12 of the Follow-up Memorandum. The statements made by us in this Executive Summary and the Follow-up Memorandum are in relation to the Documents Package (as initialled for identification by us) only and do not take into account any future changes to the documents constituting the Documents Package or any change of law applicable thereto and, for the avoidance of doubt, we do not accept any duty of care in relation to any such changes.
- 4.2 As mentioned earlier, Allen & Overy is able to provide further advice to any LA should it wish further clarifications or advice. This can be arranged separately and separate fee arrangements will apply.

Allen & Overy LLP

21 December, 2015

DOCUMENT TWO

INTRODUCTION TO THE UK MUNICIPAL BONDS AGENCY ("UK MBA") (prepared by UK MBA)

Introduction to the UK Municipal Bonds Agency (“UK MBA”)

A guide for Local Authorities

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Background to the UK MBA

The Local Government Association ("**LGA**") established the UK MBA in June 2014 with the primary objective of reducing UK local authority financing costs, through becoming the most efficient and cost effective provider of finance.

The UK MBA currently has 56 local authority shareholders, along with the LGA, which was the founder shareholder.

The UK MBA will borrow money from a variety of third parties, including local authorities, and on-lend, on a matched funding basis, to UK local authorities.

In order to achieve the most competitive pricing, the UK MBA will have to be viewed as a strong counterparty and have a strong credit rating, achieved through (amongst others), the following mechanisms:

- a joint and several guarantee granted by each of the borrowing local authorities covering the full amounts owed by the UK MBA under any financing document which is covered by the guarantee;
- contribution arrangements whereby, if a local authority defaults on one of its payments to the UK MBA, the UK MBA shall require each other local authority that is party to the Framework Agreement (as defined below) to put UK MBA in funds to cover the shortfall; and
- a very conservative risk profile.

It is acknowledged that, in giving a joint and several guarantee, local authorities will be relying on the UK MBA to ensure appropriate standards of credit worthiness in relation to each of the local authorities and liquidity management.

Why is the joint and several guarantee required?

As part of the original outline business case, significant consideration was given to putting in place a joint and several guarantee, and whether there were any alternatives, which would allow the UK MBA to fulfil its objective of reducing local authority borrowing costs.

The key reasons for requiring a joint and several guarantee to be granted by each local authority wishing to borrow from the UK MBA are as follows:

- The joint and several guarantee allows the UK MBA to issue bonds without having to prepare a prospectus, pursuant to Article 1(2)(d) of Directive 2003/71/EC (the "**Prospectus Directive**"), thereby reducing costs and complexity.
- If instead of a joint and several guarantee investors had recourse to the UK MBA's rights under on-lending arrangements, every tranche of financing which the UK MBA enters into would have to be assessed separately by investors as the underlying mix of local authorities would differ. Over time, this would materially impact the ability of the UK MBA to build a pricing advantage as the volume of third party borrowing increased and, indeed, probably deter a number of potential investors from lending money to the UK MBA.
- If instead of a joint and several guarantee investors had recourse to the UK MBA's rights under on-lending arrangements each bond may be assessed and rated differently by the credit ratings agencies. In addition, ratings agencies would have to review each local authority which was borrowing from the UK MBA.

The UK MBA's Client Base

The UK MBA will only lend to UK local authorities who can give a joint and several guarantee.

This client base is currently limited to 353 principal English local authorities, which have the general power of competence pursuant to section 1(1) of the Localism Act 2011 (the "**General Power of Competence**") including the power to give a joint and several guarantee, and which satisfy the terms of the Framework Agreement (as defined below) in relation to accession of local authorities.

The ability to give joint and several guarantees may in due course be extended to other local authorities, e.g. combined authorities or Scottish or Welsh authorities. In the event that this occurs, they will be eligible to borrow from the UK MBA, subject to appropriate credit checks.

The UK MBA would, in due course, like all local authority borrowers to become shareholders in the UK MBA. This ensures a stronger alignment of interests between local authority borrowers and shareholders and is viewed positively by ratings agencies and the markets. Accordingly, the UK MBA will charge a higher interest rate to local authority borrowers who are not shareholders, albeit one which remains competitive.

Borrowing from the UK MBA

In order to borrow from the UK MBA, a local authority will need to enter into the Local Authority Financing Framework Agreement (the "**Framework Agreement**") with the UK MBA.

The Framework Agreement details how the UK MBA expects to interact with local authority borrowers, including detailing how the joint and several guarantee and contribution arrangements will work and documenting the loan standard terms and conditions.

More details on the Framework Agreement are included in Appendix 1.

Expected UK MBA lending timeline

The UK MBA recognises that approval processes and timelines within local authorities vary. The lead up to the initial bond issue will require a degree of coordination as local authorities who wish to borrow from the UK MBA go through these processes and the volume of demand for financing builds. The UK MBA will establish a regular conference call to facilitate that coordination. Subsequent bond issues should be easier to manage as local authorities will have approved the various documents. Nevertheless, the UK MBA will continue to take soundings from the local authority sector on desired maturities etc., in order to build demand.

To help local authorities through their internal approval process, the following documents package (a draft of which was reviewed by Counsel for the purposes of the Counsel's Opinion referred to below) will be available:

- an executive summary of the structure and the contents of the documents package, prepared by Allen & Overy, legal advisors to an informal working group of local authorities;
- this guide to the UK MBA (including a laypersons guide to the Framework Agreement as Appendix 1);
- a copy of the Framework Agreement;
- independent legal advice, by way of a memorandum from Allen & Overy on the history of their review of the Framework Agreement;
- Opinion of Jonathan Swift QC as to whether (amongst other things):
 - o entry into the Framework Agreement, execution of the joint and several guarantee, entry into borrowing transactions under the Framework Agreement and the provision of contribution loans (if required) would (subject to compliance with *Wednesbury* reasonableness requirements) all be within the General Power of Competence; and
 - o a local authority that decides to enter into the Framework Agreement and the guarantee (assuming that it has properly read and understood the contents of the relevant documentation and duly evaluated the risks identified therein, and has followed all appropriate procedural

requirements) would be acting in accordance with the requirements of *Wednesbury* reasonableness;

- accounting advice to the UK MBA, from Grant Thornton, on the accounting implications of the joint and several guarantee and borrowing from the UK MBA; and
- standard confirmation of local authorities' authority to borrow from the UK MBA and execute a joint and several guarantee.

Once a local authority has signed the required documentation, the UK MBA will carry out its credit assessments as detailed below prior to entering into any loan with a local authority. Once the UK MBA has sufficient borrowing demand built up on an informal basis from various local authorities, it will ask the relevant local authorities to sign an irrevocable commitment to borrow from the UK MBA in the form of a loan confirmation, which will be placed in escrow.

This irrevocable commitment will be limited in terms of, for example, timing and interest rates (along with any other parameters which are agreed between the UK MBA and the relevant local authority when entering into the loan confirmation), i.e. the UK MBA will not lend money to local authorities unless it can "beat" the Public Works Loan Board ("**PWLB**") rate at the time of lending. Equally, the UK MBA will not ask local authorities to sign an open-ended commitment in terms of timing. The loan confirmations will be held in escrow and only released when the conditions around timing, rates and any other stipulations are met.

We expect the majority of local authorities who wish to borrow from the UK MBA in the early stages will have received appropriate internal approvals by the end of March 2016.

The UK MBA has completed all the necessary internal steps to be able to issue a bond to fund borrowing requirements at short notice. Should a sufficient volume of local authorities approve the documentation at an earlier point in time, the UK MBA may look to shorten the timeline.

Nevertheless, the UK MBA will only issue a bond when the market conditions are appropriate, and accordingly will look for flexibility within a 2 to 4 week window, once local authorities have committed to borrowing.

Pricing of the UK MBA's loans

The UK MBA operates a very transparent pricing structure.

The UK MBA will charge a margin over its underlying borrowing costs to borrowing local authorities. This margin is currently set at:

- 10 basis points for shareholders; and
- 15 basis points for non-shareholders.

The UK MBA may adjust these margins for new borrowing transactions downwards at its discretion, but will not increase them. It is expected that over time these margins will reduce.

In addition, the UK MBA will pass on any transaction costs to local authority borrowers. These costs will include: rating agency fees, bank syndication fees and legal costs. For ease, the UK MBA will round up transaction costs to the nearest basis point, but these will not exceed 50 basis points on the total amount borrowed.

Prepayment

Any loans from the UK MBA will be funded by money borrowed by the UK MBA, either from the markets, institutions or local authorities.

Key terms such as prepayment rights will track through between the local authority loans and the UK MBA financing arrangements. For bond issues, voluntary prepayment is typically at “spens”, which is calculated on the basis of the net present value of all future payments calculated using the Gilt yield curve, and requires 60 days notice.

If a local authority wishes to prepay, it may be possible to find cheaper solutions, e.g. it may be cheaper to transfer the loan to another authority. The UK MBA will endeavour to assist with this.

The UK MBA will not look to make a profit on prepayment.

Approach to credit assessment of local authorities

Prior to approving any loans, the UK MBA will carry out a credit review on the relevant local authority.

The UK MBA has developed proprietary credit scoring models based on similar methodologies to the main ratings agencies. In order to access funding from the UK MBA, a local authority would need to be able to achieve a single A credit rating on a stand alone basis (ratings agencies would typically “notch up” a local authority to account for implied Government support).

The UK MBA completes much of the credit analysis offsite, based on publicly available information. Any output would be discussed with the local authority's finance teams prior to finalisation.

It is expected that any non-public information, including the UK MBA's credit score, would be held confidential, on the basis of commercial sensitivity.

In addition to credit scoring, the UK MBA will ensure appropriate diversification of its lending portfolio, through the contractual concentration limits agreed in the Framework Agreement. Over time, as the UK MBA's volume of lending expands, these concentration limits may be amended through the agreement of the parties pursuant to the Framework Agreement.

Key elements of the Framework Agreement

The following comments should be read in conjunction with the Framework Agreement, the terms of which shall always take precedence (including in the event of a dispute). Authorities are urged to read the Framework Agreement in its entirety.

The Framework Agreement is primarily designed to mitigate the risk of a call on the joint and several guarantee, and lays out contractually how the UK MBA will interact with local authorities.

The joint and several guarantee will be provided by local authority borrowers, in favour of the underlying providers of finance. In order to take advantage of the exemption from producing a Prospectus Directive compliant prospectus, the guarantee is required to be unconditional and irrevocable. Accordingly, from the point in time at which the guarantee is executed, a local authority is guaranteeing all financing obligations of the UK MBA. Should a local authority give notice to withdraw from the guarantee, including repaying all outstanding borrowings, it will continue to guarantee the borrowings of the UK MBA which are outstanding at that point in time.

The Framework Agreement mitigates the risk of a call on the joint and several guarantee. It does this in a number of ways:

- It requires the UK MBA to carry out certain processes, e.g. credit checks, and not to lend money to local authorities which it believes do not pass the credit assessment;
- It requires a level of diversification, which ensures that the UK MBA does not become overly concentrated in lending to a particular authority;
- It sets out timelines for payment to ensure that the UK MBA has funds in place on a timely basis, 5 working days in advance for payments of interest and 10 working days for in advance payments of principal; and
- It includes requirements for notification in the event that an authority will have difficulty in meeting its payment obligations.

In addition, the UK MBA will seek to maintain standby liquidity facilities, which are intended to be sized at an amount sufficient to avoid default on an interest payment.

In the event that an authority does not meet its obligations to the UK MBA on a timely basis, the UK MBA is required to ask authorities to make contributions to meet the shortfall in proportion to their borrowings. These contributions are made by way of loans to the UK MBA.

In the event that a contribution is made, the UK MBA is required to pursue recovery of the debt, from the defaulting authority, on a timely basis

Default by a local authority

We are not aware of any default by the principal UK local authorities on any loan.

The statutory and prudential framework under which local authorities operate is amongst the strongest in the world.

Any lender to a local authority has protection, under statute, by way of a first charge on the revenues of that authority.

In addition, the reputational damage which would be suffered by a defaulting local authority would be significant.

On-going interaction with local authorities

The UK MBA will revise credit assessments annually and when any new lending is extended to local authorities.

In addition, the UK MBA intends to establish a Local Authority Advisory Board, comprising finance officers, to ensure on-going two way communication between the UK MBA and representatives of the local authority borrowers.

UK MBA credit rating

The UK MBA has a private credit rating, which it will make public at the appropriate time. The range of local authority borrowers/guarantors may impact this credit rating.

Governance of the UK MBA

The UK MBA is a public limited company and as such is directed by its Board. In due course, it is expected that the Board will include 7 non-executives and 3 executives.

In addition, the Board will have the following 2 sub-committees, chaired by independent non-executives:

- Risk, Compliance and Audit Committee; and
- Nominations and Remuneration Committee.

Details of the Board, the above Committees and their Terms of Reference will be available on the UK MBA's website, in due course.

Appendix 1

Guide to the Framework Agreement

This Appendix 1 (*Guide to the Framework Agreement*) is intended to be a summary only, providing ease of accessibility to, and not a substitute for, the detail of the Framework Agreement. This summary is entirely subject to the terms of the Framework Agreement, which should be read in full and shall at all times take precedence (including in the event of a dispute).

Joint and several guarantee

The joint and several guarantee (“the guarantee”) is irrevocable and unconditional.

The guarantee will become effective at the point in time at which the first loan confirmation between the UK MBA and the local authority is released from escrow (i.e. when the conditions applicable to the relevant loan confirmation are met). At that point in time, the local authority will be guaranteeing all existing finance obligations of the UK MBA and any future finance obligations which are entered into prior to the local authority giving notice to terminate the guarantee.

A local authority can only give notice to terminate the guarantee when it has no outstanding loans from the UK MBA. The irrevocable nature of the guarantee means that, at that point in time, it will continue to guarantee the finance obligations which are in place when notice to withdraw is given. However, it will not be guaranteeing any future financing obligations of the UK MBA.

Contribution arrangements and mechanism

In order to mitigate the risk of a call on the guarantee, contribution arrangement mechanics have been built into the Framework Agreement.

Contribution arrangements enable the UK MBA, in the event of a failure by a local authority to meet a payment obligation within the time frames set out under the Framework Agreement, to call proportional contributions from other borrowing authorities. These timeframes, which are specified in section 3.3 of the Framework Agreement, can be summarised as follows:

1. Payment of interest must be made to the UK MBA by 11am on the fifth business day preceding the due date of such amount under the loan made by the UK MBA to the relevant local authority. For payments of principal and

unless otherwise agreed between the UK MBA and the relevant local authority, it is the tenth business day.

2. If any of these payments have not been made and the UK MBA is unable to obtain sufficient funds by other means by 11am the following day in the case of interest or 2 days after the required date of payment (unless otherwise agreed between the UK MBA and the relevant local authority) in the case of principal, bearing in mind that the UK MBA is obliged to send follow up demands, the UK MBA shall (by 5pm on such day) issue a contribution notice to each non-defaulting local authority (a "**Contribution Notice**").
3. Each Contribution Notice will request each non-defaulting local authority to provide contributions calculated by reference to the proportion of the shortfall equal to its borrowings as a proportion of the borrowings of all non-defaulting local authorities from the UK MBA. Some non-defaulting local authorities' contributions will therefore be zero (where such non-defaulting local authority has no outstanding borrowings from the UK MBA).
4. Contributions must be made by 11am on the date specified in the relevant Contribution Notice which shall be at least 2 business days after the date of the Contribution Notice in the case of interest or 4 business days after the date of the Contribution Notice (unless otherwise agreed between the UK MBA and the relevant local authority) in the case of principal.
5. Should any local authority fail to pay any contribution due under a Contribution Notice, the UK MBA shall issue notices to the other non-defaulting local authorities (a "**Further Contribution Notice**"), requiring a further contribution by 11 am the following business day in the case of interest or 2 business days after the date of such Further Contribution Notice in the case of principal. The UK MBA may, however, elect not to carry out this process if it has obtained the required funds by other means.

The UK MBA may also by agreement with any non-defaulting local authorities issue notices to such local authorities requiring them to pay in aggregate an amount equal to the shortfall less the contributions that have been made (an "**Individual Authority Contribution Notice**"). As indicated at 3 above, contributions by a non-defaulting local authority are calculated by reference to the proportion of the shortfall equal to that local authority's borrowings as a proportion of the borrowings of all non-defaulting local authorities from the UK MBA. For example, if the UK MBA had £110million outstanding loans equally to 11 authorities and one defaulted on a £10million repayment, then each of the remaining 10 would be asked to make a £1million contribution.

Any contributions are in the form of loans to the UK MBA, upon which interest would be payable. The UK MBA is obliged, under the Framework Agreement, to pursue any defaulting authority on a timely basis for full repayment of any outstanding defaulted amounts, and shall use recoveries to repay local authorities which have made any payments under the guarantees or made contribution loans.

Further details of the timelines for payment of interest and principal and related timings for Contribution Notices are contained in the Framework Agreement. The UK MBA may use other liquidity facilities to cover a default, but, if it is unable to do so, Contribution Notices will be sent.

For worked examples of the contribution arrangements, see page [28] of this Appendix 1.

Prepayment

Prepayment of a loan from the UK MBA to a local authority (the "**Loan**") may occur under the following circumstances:

Illegality Prepayment

If, in any applicable jurisdiction, it becomes unlawful for the UK MBA to perform any of its obligations as contemplated by the loan agreement or to fund or maintain the Loan:

1. the UK MBA shall promptly notify the relevant local authority upon becoming aware of that event whereupon the facility will be immediately cancelled; and
2. the relevant local authority shall repay the Loan on the interest payment date (as specified in the relevant loan confirmation) immediately following the date on which the UK MBA has notified such local authority, or if earlier, the date specified by the UK MBA in the notice delivered to such local authority, together with interest accrued (if any).

Mandatory prepayment of funding arrangements

If the UK MBA is required to prepay any funding which the UK MBA entered into in order to fund the making of the Loan, the UK MBA shall promptly notify the relevant local authority of such requirement and such local authority shall repay the Loan on the interest payment date (as specified in the relevant loan confirmation) immediately following the date on which the UK MBA has notified such local authority, or if earlier, the date specified by the UK MBA in the notice delivered to such local authority, together with interest accrued (if any).

Voluntary Prepayment for Tax

If a local authority is required to pay any additional amounts pursuant to clause 9 (Tax Gross Up) of the loan standard terms, the local authority may elect to prepay the Loan in whole on any interest payment date (as specified in the relevant loan confirmation) at the prepayment amount specified in the loan confirmation on such local authority giving not less than 60 days' notice to the UK MBA (which notice shall be irrevocable and shall oblige such local authority to prepay the Loan in whole plus accrued interest (if any) to such date).

Change of Status

If at any time a local authority ceases to be treated as a “local authority” within the meaning of the Local Government Act 2003 and the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 or equivalent legislation due to legislative amendment (a “**Change of Status**”), the UK MBA may by notice to the local authority require it to prepay the Loan on the interest payment date (as specified in the relevant loan confirmation) immediately following the date of such notice, together with interest accrued (if any).

Voluntary Prepayment

Unless otherwise specified in the relevant loan confirmation, the Loan may be prepaid at the option of the relevant local authority in whole or in part on any voluntary prepayment date at the prepayment amount (both as specified in the relevant loan confirmation) on such local authority giving not less than 60 days' notice to the UK MBA, or such other period(s) as may be specified in the relevant loan confirmation (which notice shall be irrevocable and shall oblige such local authority to prepay the Loan in whole or, as the case may be, in part, as specified in such notice on the relevant voluntary prepayment date at the prepayment amount plus accrued interest (if any) to such date), provided that the Loan may not be voluntarily prepaid prior to the date falling 12 months after the utilisation date or following the date falling 12 months prior to the final repayment date (both as specified in the relevant loan confirmation).

No other prepayment

No local authority shall, without the prior written consent of the UK MBA, be entitled to prepay the Loan otherwise than as provided in clauses 6.1 to 6.5 of the loan standard terms.

Default by a local authority

Default by a local authority is likely to result in material reputational damage to that authority. The UK MBA is required to notify participating local authorities of the relevant default.

In addition, the Framework Agreement requires the UK MBA to promptly take action to recover any defaulted amounts, which may involve an application to the High Court.

Any costs related to pursuit of a default, including administration costs and interest on contributions, would be a cost to the defaulting local authority, which the UK MBA would pursue. The UK MBA has no authorisation, from participating authorities or shareholders, to negotiate forgiveness of either the outstanding debts or costs.

An event of default is primarily a failure by that local authority to meet a payment, when due, but will also include (amongst other things):

- the appointment of a receiver by the High Court under Section 13(5) of the Local Government Act 2013 in respect of that local authority; and
- the dissolution of that local authority, other than in the creation of a statutory successor.

In order to access borrowing from the UK MBA, local authorities will need to be able to demonstrate that those signing the guarantee and related documents have the appropriate authorisation. This protects both the UK MBA and other participating local authorities. To facilitate this, the UK MBA requires a certificate of approval to be signed by both the S151 officer and the monitoring officer, which identifies the chain of authority from the local authority to the relevant signatories and demonstrates that the local authority has appropriate approval to enter into the Framework Agreement and the relevant guarantee.

Concentration limits

Concentration limits restrict the UK MBA's ability to become over-exposed to a single local authority, thus ensuring that, in the event of a default, contributions to that default will be spread amongst a wide group of local authorities. These concentration limits are detailed in section 5.2 of the Framework Agreement. It should be noted that concentration limits are tested at the point in time that a local authority borrows, i.e. if local authorities merge to become combined authorities, those limits may be breached. However, as per section 5.2 of the Framework Agreement, in the event of any reorganisation of local authorities, the UK MBA may propose amendments to the concentration limits for approval by 85% of participating authorities.

Matched Financing Arrangements

The UK MBA shall only borrow funds (i) intended to be on-lent to the local authorities (and in any event amounts borrowed by the UK MBA shall at no time be more than 105% of the total outstanding loans it has made to local authorities), where the

interest rates on the on-loans will be at least equal to the rate paid by the UK MBA, or (ii) to meet payment obligations in the event of a default by any local authority.

Power of LAs to restrict UK MBA borrowing

Participating local authorities may instruct the UK MBA not to enter into any further borrowing commitments, either under any finance documents or through the issuance of bonds, provided that the number of such local authorities is more than 50% of the number of all participating local authorities and the outstanding loans of such local authorities amount to more than 50% by value of the total outstanding loans. This shall not restrict the ability of the UK MBA to borrow further amounts under any finance document (including under any liquidity facility) or contribution loan to meet a payment obligation under a finance document.

This may occur, for example, if local authorities become concerned about the credit standards of the UK MBA or there is a fundamental change in the statutory or prudential framework.

Loan standard terms

Loan standard terms protect both the UK MBA and the local authorities borrowing from the UK MBA. Any amendments to the standard terms must be agreed between both the UK MBA and the relevant borrowing local authority. Each loan agreement with a local authority will consist of the standard terms as supplemented by a loan confirmation specifying specific details for that particular loan.

Increased Costs Where the UK MBA has made a Loan to a local authority, the relevant local authority shall, within three business days of a demand by the UK MBA, pay for the account of the UK MBA the amount of any Increased Costs (as described below) incurred by the UK MBA as a result of:

- the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of the loan agreement; or
- compliance with any law or regulation made after the date of the loan agreement.

Increased Costs include: (i) a reduction in the rate of return from the Loan or on the UK MBA's overall capital, (ii) an additional or increased cost, or (iii) a reduction of any amount due and payable under the loan agreement, in each case which is incurred or suffered by the UK MBA to the extent that it is attributable to the UK MBA

having entered into a commitment or funding or performing its obligations under the loan agreement.

The obligation on the relevant local authority to pay any Increased Costs does not apply to the extent that such Increased Cost is:

- attributable to a deduction or withholding for or on account of UK taxes required by law to be made by the relevant local authority; or
- attributable to the wilful breach by the UK MBA of any law or regulation.

Confidential information

Much of the information which the UK MBA uses is available from public sources. Nevertheless on occasions, as part of the UK MBA's credit assessments, the UK MBA may receive information which is not available publicly.

The UK MBA shall assume that any information that it has received which is not in the public domain is the confidential information of the provider. This does not include information which is required to be disclosed to the UK MBA under section 6.2 of the Framework Agreement (see "*Information Requirements*" below, where the UK MBA may disclose the information to legitimately interested parties, at its discretion).

Similarly, the UK MBA will be providing local authorities with confidential information. For example, the UK MBA views its credit assessments, along with the underlying models, as being confidential. Any confidential information provided to an authority by the UK MBA will be identified as such.

The UK MBA needs to comply with the Market Abuse Directive in relation to the treatment of material price sensitive information. For such information, the UK MBA needs to ensure it is held confidential until it is appropriately communicated to the market. In addition to the credit assessments, such information may include details of authorities granting, or terminating, their guarantee.

Information Requirements

A local authority is required to notify the UK MBA, in writing, where there are indications that such local authority's financial or operational performance may give rise to concerns over its ability to meet its obligations under any lending arrangements. In particular, the local authority shall notify the UK MBA:

- if it is unable to pay its debts as they fall due;

- of any report issued in respect of it under Section 114 of the Local Government Finance Act 1988 (or any replacement or equivalent provision);
- of any failure to comply with the prudential framework established by Part 1 of the Local Government Act 2003 and related regulations, including the Prudential Code for Capital Finance in Local Authorities published by CIPFA, as amended or reissued from time to time;
- of any failure to set a balanced budget in accordance with Section 31A and Section 42A of the Local Government Finance Act 1992;
- if the chief finance officer's report on robustness of budget estimates and adequacy of reserves under section 25 of the Local Government Act 2003 states either that the estimates are not robust and/or the reserves are inadequate, and such local authority passes that budget without action to remedy those deficiencies;
- if external auditors issue a qualified audit opinion in respect of such local authority's accounts;
- if such local authority is or will be unable to publish audited accounts by the statutory deadline;
- of any Change of Status of such local authority;
- promptly upon becoming aware that any representation or statement made or deemed to be made by it in the Framework Agreement, any loan agreement or any other document delivered by or on behalf of it in relation to such documents was incorrect or misleading when made or deemed to be made;
- promptly upon becoming aware of them, the status and description of any dispute, litigation, arbitration, expert determination or administrative proceedings which are current, threatened or pending against such local authority, which is reasonably likely to be adversely determined, and which, if adversely determined either individually or taken as a whole, are reasonably likely to have a material adverse effect on the status or governance of the local authority, its assets, its operations, its condition (financial or otherwise), its prospects, or its ability to comply with the finance documents;
- promptly upon becoming aware of them, any event or circumstance which such local authority reasonably believes might have a material adverse effect on the status or governance of the local authority, its assets, its operations, its condition (financial or otherwise), its prospects, or its ability to comply with the finance documents; or
- promptly on request, such additional information as may be reasonably requested by the UK MBA from time to time,

and, in each case, the local authority shall set out in such notice reasonable details associated therewith, the effects of such an event or occurrence and any actions being undertaken to mitigate or remedy such event or occurrence.

Modification

Any modification to the Framework Agreement requires an agreement between the UK MBA and (unless otherwise specifically provided in the Framework Agreement) local authorities being more than 85% of the number of all participating local authorities and where the value of outstanding loans of such local authorities is greater than 85% of the total outstanding loans, provided that no modification to the Framework Agreement which imposes additional obligations on a particular local authority will be made without the consent of that local authority.

Resignation of LAs and termination of guarantees

A local authority may terminate its joint and several guarantee by giving written notice to the UK MBA. In order to terminate the joint and several guarantee, the local authority must have repaid all its outstanding loans from the UK MBA.

If a local authority terminates its joint and several guarantee, it shall no longer be eligible to borrow from the UK MBA, unless it repeats the accession process.

Upon termination, a local authority will continue to guarantee the UK MBA's borrowings which were in place at the time of termination until they are fully repaid.

Enforcement and application of proceeds

The UK MBA is obliged under the Framework Agreement to pursue any defaulting authority for full recovery, using whatever means available.

In particular, the UK MBA may:

- declare such local authority's liabilities to the UK MBA to be immediately due and payable;
- sue for, commence or join any legal or arbitration proceedings against the defaulting local authority;
- exercise any rights of set off;
- exercise any rights it may have under Section 13(3) of the Local Government Act 2013; or
- apply to the High Court to have a receiver appointed under Section 13(5) of the Local Government Act 2013.

If the UK MBA does not take steps to recover any defaulted amounts within 90 days of the relevant failure to pay, the UK MBA shall take such action as is reasonably required by the majority of local authorities (where the majority in such case will be met if the number of such local authorities is more than 50% of

the number of all participating local authorities and the value of outstanding loans of such local authorities is greater than 50% of the total outstanding loans).

Any amounts recovered by the UK MBA shall be applied in the following order of priority:

- in discharging any amounts owing to the UK MBA's creditors;
- in payment to the local authorities which have made a payment under their guarantee; and
- in payment to the local authorities which have made a contribution, with prioritisation based on the basis for the contributions, i.e. Individual Authority Contribution Notice, Further Contribution Notice and Contribution Notice.

Any amounts payable to local authorities shall be pro-rata to the total amounts of contributions in the relevant category made by such local authorities.

Worked examples

In the following worked examples assume the following:

- Minimum diversification: The UK MBA's total loan book is split between local authorities in such a manner as will meet its minimum requirements in terms of the total number of authorities and the amounts owing by any individual authority.
- Single name limit: The maximum amount which can be owed by any individual authority within a total loan book banding.

Single bond in issue, £250:

Summary of exposures: 2 authorities owe £37.5 million (Authority A & B), 7 authorities owe £25million.

If authority A fails to pay a principal repayment, the following contributions will be required:

Authority B £6.6 million, remaining authorities £4.4million

Should Authority B fail to pay the contribution, the remaining authorities will be asked to contribute an additional £0.9million, i.e. a total contribution of £5.4

Portfolio of loans at £1 Billion

Summary of exposures: 2 authorities owe £125 million (Authority A & B), 7 authorities owe £107million

If authority A fails to pay a principal repayment, the following contributions will be required:

Authority B £17.9 million, remaining authorities £15.3million

Should Authority B fail to pay the contribution, the remaining authorities will be asked to contribute an additional £2.6million, i.e. a total of £17.9 million

Portfolio of loans at £2 Billion

Summary of exposures: 2 authorities owe £250 million (Authority A & B), 7 authorities owe £210million

If authority A fails to pay a principal repayment, the following contributions will be required:

Authority B £36.3million, remaining authorities £30.5million

Should Authority B fail to pay the contribution, the remaining authorities will be asked to contribute an additional £5.2million, i.e. a total of £35.7million

Note: These examples are illustrative. The UK MBA would expect the level of diversification, as the portfolio expands, to increase rather than effectively remain static.

DOCUMENT THREE

**FRAMEWORK AGREEMENT – FINAL DRAFT
DATED 18 DECEMBER, 2015
(prepared by Clifford Chance)**

Draft Date: 18 December 2015

DATED [●]

UK MUNICIPAL BONDS AGENCY PLC
LOCAL AUTHORITIES

LOCAL AUTHORITY FINANCING
FRAMEWORK AGREEMENT

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THIS AGREEMENT is dated [•] and made between:

- (1) **UK MUNICIPAL BONDS AGENCY PLC** (the "**Company**"); and
- (2) **THE ENTITIES** named on the signing pages as Authorities (the "**Original Authorities**").

RECITALS

- (A) The Company has been established to borrow funds and to lend such funds to certain UK local authorities participating in these arrangements.
- (B) The Company will establish a Medium Term Note Programme (the "**Programme**") for the issuance of notes, in connection with which it will enter into a trust deed (the "**Trust Deed**") with HSBC Corporate Trustee Company (UK) Limited (the "**Trustee**"), a dealer agreement and an issue and paying agency agreement.
- (C) The Notes may be admitted to listing on the Official List of the United Kingdom Financial Conduct Authority and to trading on the Regulated Market of the London Stock Exchange plc. Notes may also be issued on the basis that they will not be admitted to listing, trading and/or quotation by any competent authority, stock exchange and/or quotation system or that they will be admitted to listing, trading and/or quotation by such other or further competent authorities, stock exchanges and/or quotation systems as may be agreed with the Company.
- (D) Notes issued under the Programme may be issued pursuant to the terms and conditions as set out in the Trust Deed (the "**Conditions**") and a pricing supplement describing the final terms of a particular tranche of Notes.
- (E) The Company may also enter into borrowing arrangements, from time to time, with lenders and/or investors, which may include the European Investment Bank, UK local authorities and other entities.
- (F) To facilitate the issuance of Notes by the Company and borrowing from other lenders and/or investors, the Authorities have agreed to guarantee the payment of all sums expressed to be payable from time to time by the Company in respect of the Notes, the Trust Deed and certain other loan agreements or other borrowing arrangements that the Company may enter into from time to time.
- (G) This Agreement sets out the arrangements between the Company and the Authorities in respect of borrowing from the Company, the issuance of the Guarantees and contribution arrangements relating to any demands in respect of debt which has the benefit of the Guarantees.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Authority**" means each Original Authority and any person which becomes a Party as an Authority in accordance with the terms of Clause 2.2 (*Accession of Authorities*).

"**Authority Contribution**" means, in relation to an Authority, the Authority Proportion relating to such Authority multiplied by the Shortfall Amount.

"**Authority Document**" means this Agreement, each Authority Accession Deed, each Guarantee, the Loan Standard Terms, each Loan Confirmation and any document under which the Company lends an Authority Loan to an Authority.

"**Authority Accession Deed**" means a deed substantially in the form set out in Schedule 1 (*Form of Authority Accession Deed*).

"**Authority Loan**" means a loan from the Company (as lender) to an Authority (as borrower), either (i) having the Loan Standard Terms, as modified and supplemented by the relevant Loan Confirmation or (ii) in such other form as may be agreed between the Company and an Authority.

"**Authority Proportion**" means, in relation to any Authority that is not a Defaulting Authority, the proportion (expressed as a percentage) borne by that Authority's Outstanding Loan Amount to the Total Performing Outstanding Loan Amount as at the date of the relevant Contribution Notice.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"**Cancellation Notice**" shall have the meaning given to such term in Clause 3.8.

"**Certificate of Approval**" means, in respect of each Authority, a certificate signed by each of the monitoring officer (appointed pursuant to section 5 of the Local Government and Housing Act 1992, as amended by Schedule 5 paragraph 24 of the Local Government Act 2000, or any replacement or equivalent provision) and the chief finance officer (appointed pursuant to section 151 of the Local Government Act 1972, or any replacement or equivalent provision) in respect of such Authority, confirming that:

- (a) the Authority has the necessary power to enable it to enter into this Agreement and the Guarantee, and perform its obligations thereunder;
- (b) the Authority has approved the entering into of this Agreement and the Guarantee;

- (c) all necessary authorisations have been obtained, and all appropriate and applicable decision-making procedures have been followed and completed, to enable it to enter into this Agreement and the Guarantee,

and identifying in the certificate, by way of attaching copies or by the inclusion of weblinks to specified and publically available copies, all documentation required to evidence the chain of authority from the council to the relevant signatories on behalf of such Authority, in each case in a form satisfactory to the Company (in its absolute discretion).

"Confidential Information" means all information relating to any Authority, the Company, this Agreement or the Finance Documents of which a Party becomes aware in its capacity as, or for the purpose of becoming, a Party or which is received by a Party in relation to, or for the purpose of becoming a Party under this Agreement from any Authority or the Company or any of their respective advisers in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is required to be posted on the public website of the Company in accordance with Clause 5.6.1
- (b) is or becomes public information other than as a direct or indirect result of any breach by an Authority of Clause 9 (*Confidentiality*); or
- (c) is identified in writing at the time of delivery as non-confidential by the Party delivering the information; or
- (d) is known by the relevant Party before the date the information is disclosed to it in connection with this Agreement or is lawfully obtained by the relevant Party after that date, from a source which is, as far as such Party is aware, unconnected with any Party and which, in either case, as far as such Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"Contribution Interest" shall have the meaning given to such term in Clause 3.4.

"Contribution Loan" means a contribution by an Authority to the Company pursuant to Clause 3 (*Default and Contributions*) of an amount in respect of the Authority Contribution for such Authority specified in a Contribution Notice, a Further Contribution Notice or an Individual Authority Contribution Notice.

"Contribution Notice" shall have the meaning given to such term in Clause 3.3.3.

"Creditor" means:

- (a) the Trustee for itself in respect of the Trust Deed and on behalf of the Noteholders in respect of the Notes;
- (b) the European Investment Bank in respect of any EIB Loan Document;

- (c) each Liquidity Facility Provider in respect of any Liquidity Facility Agreement;
- (d) each Lending Authority; and
- (e) each lender or other provider of credit or financial accommodation to the Company pursuant to a Finance Document.

"Defaulting Authority" means a Failed Contribution Authority and any other Authority:

- (a) which has failed to make a payment when due under an Authority Document, which shall include any failure to pay on the relevant Funding Date (or has notified the Company that it will not make a payment when due under an Authority Document);
- (b) which has otherwise rescinded or repudiated an Authority Document;
- (c) which is dissolved or otherwise ceases to exist (other than as a result of the enactment of legislation creating a statutory successor to such Authority which becomes responsible for substantially all of the Authority's obligations, including hereunder); or
- (d) in respect of which the High Court has appointed a receiver under Section 13(5) of the Local Government Act 2003.

"Directing Authorities" means any group of Authorities where both (i) the number of such Authorities is more than 85 per cent. of the number of all Authorities, and (ii) the aggregate Outstanding Loan Amounts of such Authorities is greater than 85 per cent. of the Total Outstanding Loan Amount at the relevant time.

"Effective Date" in respect of each Authority means the date of the first agreement between such Authority and the Company pursuant to which the Company agrees (subject to the terms of that agreement) to make an Authority Loan to such Authority.

"EIB Loan Document" means each facility agreement entered into between the Company (as borrower) and the European Investment Bank (as lender).

"Failed Contribution Authority" shall have the meaning given to such term in Clause 3.3.5.

"Finance Document" means each of the Note Documents, the EIB Loan Documents, each Liquidity Facility Agreement and any facility, agreement or other instrument entered into by the Company for any credit or other financial accommodation and designated in the relevant facility, agreement or other instrument as a Finance Document.

"Further Contribution Notice" shall have the meaning given to such term in Clause 3.3.5.

"Guarantee" means each guarantee executed by an Authority in the form set out in Schedule 2 (*Form of Guarantee*).

"Guaranteed Liabilities" has the meaning given to that term in Clause 2.3.1.

"Individual Authority Contribution Notice" shall have the meaning given to such term in Clause 3.3.5(b).

"Lending Authority" means any local authority that provides a loan or other financial accommodation to the Company pursuant to a Finance Document.

"Liabilities" means, in relation to a party, all present and future liabilities and obligations at any time of such party, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by any party of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

"Liquidity Facility Agreement" means each liquidity facility agreement or working capital facility agreement entered into by the Company (as borrower) and designated in the relevant facility agreement as a "Liquidity Facility Agreement", as the same may be amended from time to time.

"Liquidity Facility Provider" means each lender under a Liquidity Facility Agreement.

"Loan Confirmation" means a loan confirmation substantially in the form set out in Schedule 4 (*Loan Confirmation*), as modified with the agreement of the relevant Authority and the Company.

"Loan Standard Terms" means the standard terms set out in Schedule 3 (*Loan Standard Terms*).

"Maximum Individual Authority Contribution Amount" shall have the meaning given to such term in Clause 3.3.5(b).

"Note" shall have the meaning given to such term in the Trust Deed.

"Note Documents" means the Trust Deed and any Notes.

"**Noteholders**" shall have the meaning given to such term in the Trust Deed.

"**Outstanding Loan Amount**" means, in relation to an Authority and at any time, the aggregate principal amount outstanding (or in relation to any index-linked Authority Loan, the nominal amount outstanding) at that time under all Authority Loans between the Company and the relevant Authority.

"**Party**" means a party to this Agreement.

"**Payment**" means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations).

"**Recoveries**" has the meaning given to that term in Clause 3.9 (*Order of Application*).

"**Shortfall Amount**" means the amount of any actual or expected payment shortfall in respect of amounts falling due under the Finance Documents (or, in the case of Clause 3.3.3(c), the amount unpaid by such Authority), calculated as follows:

- (a) for the purpose of determining the Authority Contribution of any Authority to whom a Contribution Notice is to be sent under Clause 3.3.3, calculated at the time of such determination; and
- (b) for the purpose of determining the Authority Contribution of any Authority to whom a Further Contribution Notice or an Individual Authority Contribution Notice is to be sent under Clause 3.3.5, calculated at the time of such determination after taking into account any amounts received by the Company in respect of Authority Contributions.

"**Total Outstanding Loan Amount**" means, at any time, the aggregate of each Authority's Outstanding Loan Amount at that time.

"**Total Performing Outstanding Loan Amount**" means, at any time, the Total Outstanding Loan Amount at that time, less the aggregate Outstanding Loan Amount of each Defaulting Authority.

1.2 Construction

1.2.1 Unless a contrary indication appears, a reference in this Agreement to:

- (a) any person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under this Agreement;
- (b) any agreement or instrument is a reference to that agreement or instrument as amended, novated, supplemented, extended or restated in accordance with its terms;
- (c) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (d) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (e) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
- (f) a provision of law is a reference to that provision as amended or re-enacted.

1.2.2 Clause and Schedule headings are for ease of reference only.

1.3 **Third party rights**

1.3.1 Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

1.3.2 Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

1.4 **Effectiveness**

This Agreement shall become effective in relation to an Original Authority only on and from the relevant Effective Date in respect of such Authority. For the avoidance of doubt, this Agreement will become effective as between the Company and each Original Authority in respect of which an Effective Date has occurred, notwithstanding that an Effective Date may not have occurred in respect of all Original Authorities.

2. **PARTICIPATING AUTHORITIES**

2.1 **Participation required to borrow**

2.1.1 The Company shall not, as lender, enter into any financing arrangement with a local authority or any other person unless such person is an Authority under this Agreement and has issued a Guarantee which has not been terminated.

2.1.2 Each Original Authority shall deliver to the Company on the date hereof:

- (a) a Guarantee duly executed by such Authority; and
- (b) an original Certificate of Approval.

2.1.3 The Parties acknowledge that the Company is not obliged to enter into any financing arrangement with any Authority, and it retains an absolute discretion to reject any request for finance.

- 2.1.4 The Parties acknowledge that it is the intention of the Company that all Authorities are or become shareholders of the Company, and the Company may in future (in its absolute discretion) determine that all new lending to be provided by it to Authorities will only be provided to Authorities which are shareholders of the Company, or add a premium to interest rates on all Authority Loans to Authorities which are not shareholders of the Company (where such premium is to be determined by the Company in its absolute discretion from time to time).

2.2 Accession of Authorities

- 2.2.1 If the Company and a local authority so agree, such local authority may accede to this Agreement by delivery to the Company of:

- (a) an Authority Accession Deed duly executed by the Company and the new Authority;
- (b) a Guarantee duly executed by such Authority; and
- (c) an original Certificate of Approval.

Provided all parties thereto have executed the Authority Accession Deed, on the Effective Date in respect of the relevant new Authority such new Authority shall assume the same obligations and become entitled to the same rights as if it had been an original Party as an Authority.

- 2.2.2 Each of the Parties appoints the Company to receive on its behalf each Authority Accession Deed delivered to the Company.

2.3 Extent of Guarantee

- 2.3.1 Upon the Effective Date of a Guarantee duly executed by an Authority, any and all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of the Company to Creditors arising under each Finance Document or, in the case of the Note Documents, arising in respect of Notes issued, prior to or following the Effective Date of such Guarantee and on or prior to the date of termination of such Guarantee in accordance with 2.4.1 below (the "**Guaranteed Liabilities**") shall be guaranteed by that Authority. Any termination of a Guarantee will not affect the validity of such Guarantee in respect of Guaranteed Liabilities, but any further amounts borrowed under each existing Finance Document, any Finance Documents entered into, and any Notes issued (including any Notes issued following such termination date which are intended to be fungible with Notes issued on or prior to such date) following the date of such termination of a Guarantee in accordance with Clause 2.4.1 below shall not benefit from such Guarantee.

- 2.3.2 For the avoidance of doubt, the obligations of an Authority under a Guarantee shall not be discharged, impaired or otherwise affected by any amendment, novation, supplement, extension, (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature) or

replacement, waiver or release of, any of the Guaranteed Liabilities including without limitation any change in the purposes for which the proceeds of the issue of any Note or other credit obtained pursuant to a Finance Document are to be applied and any extension of or any increase of the obligations of the Company under any Finance Documents on or prior to the date of termination of such Guarantee in accordance with 2.4.1 below or the addition of any new obligations for the Company under the Finance Documents.

2.3.3 Each Finance Document shall include a list of the Authorities in respect of which the liabilities under such Finance Document are Guaranteed Liabilities at the time of entry into such Finance Document.

2.3.4 Any payments made by any Authority under a Guarantee shall be subject to contribution arrangements as set out in Clause 3 (*Default and Contributions*).

2.4 **Resignation of an Authority**

2.4.1 No Authority may terminate its Guarantee unless:

- (a) any and all Liabilities of the relevant Authority to the Company have been fully and finally discharged to the satisfaction of the Company; and
- (b) the Company is under no further obligation to provide financial accommodation (including, without limitation, any Authority Loan) to the relevant Authority.

If an Authority notifies the Company in writing that it wishes to terminate its Guarantee, and requests that the Company confirm the above conditions to be satisfied, if such conditions are satisfied, the Company shall provide such confirmation within 10 Business Days of such request. Following such confirmation (or, if the Company fails to respond within 10 Business Days of the request), the Authority may terminate its Guarantee by notice to the Company in accordance with clause 7 (*Determination of Guarantee*) of the Guarantee. On receipt of such notice, the Company shall promptly notify each other Party that the relevant Authority has terminated its Guarantee.

2.4.2 No Authority may cease to be party to this Agreement unless:

- (a) the Guarantee from the relevant Authority has been terminated in accordance with Clause 2.4.1 above; and
- (b) the relevant Authority has no Guaranteed Liabilities in respect of its Guarantee (which shall be the case where no liabilities of the Company have the benefit of the Guarantee from the relevant Authority, as any liabilities which did so benefit from such Guarantee have been repaid or otherwise satisfied by the Company).

2.4.3 If an Authority notifies the Company in writing that it wishes to be released from its obligations under this Agreement, and requests that the Company confirm the above conditions to be satisfied, if such conditions are satisfied the Company shall confirm the same in writing within 10 Business Days of

such request, and shall promptly notify each other Party that it has accepted the resignation of that Authority. Following such confirmation (or, if the Company fails to respond within 10 Business Days of the request), the relevant Authority shall cease to be an Authority and shall have no further rights or obligations under this Agreement as an Authority.

3. **DEFAULT AND CONTRIBUTIONS**

3.1 **Notification of default by Authority**

If an Authority becomes aware that it will be unable to make any payment when due under an Authority Document, or otherwise becomes a Defaulting Authority, it will immediately notify the Company of the same.

3.2 **Notification by the Company of a Defaulting Authority**

If the Company becomes aware that an Authority is a Defaulting Authority, whether pursuant to a notice received from the Authority or otherwise, the Company shall notify the other Authorities thereof as soon as reasonably practicable thereafter, provided that whether the Authority is a Defaulting Authority due to a failure to pay (as set out in paragraph (a) of the definition of Defaulting Authority), the Company may elect not to notify the other Authorities until the date set out in Clause 3.3.3(a) below as the date on which it would be required to issue Contribution Notices if it had been unable to obtain funds as set out in such Clause.

3.3 **Contribution Notices**

3.3.1 In order for the Company to ensure that it has sufficient funds available to meet any payments due under the Finance Documents, the terms of each Authority Loan shall require the relevant Authority to fund all payments due to the Company by transferring the relevant amounts to an account nominated by the Company by no later than 11 a.m. on the fifth Business Day (or, in respect of principal and unless otherwise agreed between the Company and the relevant Authority, the tenth Business Day) prior to the due date of such amount under the Authority Loan (the required date for transfer in respect of each payment being the "**Funding Date**").

3.3.2 If the Authority fails to transfer such amount by 5 p.m. London time on the Funding Date the Company shall promptly demand immediate payment from such Authority of the unpaid amount.

3.3.3 If:

- (a) at 11 a.m. on the date falling 4 Business Days (or, in respect of principal and unless otherwise agreed between the Company and the relevant Authority, 8 Business Days) prior to a day on which a payment is due under the Finance Documents, the Company has been unable to obtain sufficient funds from (i) one or more Liquidity Facility Providers under Liquidity Facility Agreement(s) or (ii) one or more Lending Authorities or lenders or other providers of financial accommodation, in each case, under Finance Document(s), in each

case to enable it to pay such amounts falling due under the Finance Documents, the Company shall; or

- (b) at any other time the Company expects to be unable to pay, or does fail to pay, any amount when due under the Finance Documents, the Company shall; or
- (c) on any date after the Funding Date on which an amount due by an Authority pursuant to Clause 3.3.1 above remains unpaid by the relevant Authority (notwithstanding that the Company has sufficient funds to enable it to make all payments of amounts due under the Finance Documents), the Company may,

notify each Authority (other than any Defaulting Authority) thereof as soon as reasonably practicable (or, in the case of paragraph (a) above, by 5 p.m. on such date). Such notice (a "**Contribution Notice**") shall specify the Shortfall Amount and shall set out the Authority Contribution required from each Authority which is not a Defaulting Authority (including specifying where, in relation to any Authority, the Authority Contribution is zero).

If the Company does so issue Contribution Notices, it may also initiate discussions with any Authority which is not a Defaulting Authority with a view to such Authority agreeing to be issued with an Individual Authority Contribution Notice pursuant to Clause 3.3.5(b).

3.3.4 Each Authority shall ensure that it pays an amount equal to its Authority Contribution to the Company no later than 11 a.m. on the date specified in the Contribution Notice, such date to be at least 2 Business Days (or, in respect of principal and unless otherwise agreed between the Company and the relevant Authority, 4 Business Days) after the date of the Contribution Notice.

3.3.5 In the event that any Authority fails to pay an amount equal to its Authority Contribution (including any further Authority Contribution pursuant to this Clause 3.3.5) by 11 a.m. on the date such amount is due under this Agreement, that Authority shall be a "**Failed Contribution Authority**" and, unless the Company elects otherwise, which it shall only be entitled to do if it has obtained other funds (from (i) one or more Liquidity Facility Providers under Liquidity Facility Agreement(s) or (ii) one or more Lending Authorities or lenders or other providers of financial accommodation, in each case, under Finance Document(s)) to enable it to meet its obligations under the Finance Documents, the Company:

- (a) shall calculate the further Authority Contribution required from each Authority which is still not a Defaulting Authority taking into account any amounts received in respect of Authority Contributions which have been made and issue a notice (a "**Further Contribution Notice**") to each such Authority, which shall set out the amount of the further Authority Contribution for such Authority (as well as the amount of any sums already paid by the relevant Authority) which amount shall be paid to the Company by such Authority by no later than 11 a.m. on the Business Day (or, in respect of principal and unless otherwise

agreed between the Company and the relevant Authority, the second Business Day) after the date of such Further Contribution Notice; and

- (b) may, by agreement with one or more Authorities which are not Defaulting Authorities, issue a notice or notices (each, an "**Individual Authority Contribution Notice**") to each such Authority which has agreed to the service of an Individual Authority Contribution Notice, requiring such Authorities to pay to the Company in aggregate an amount of up to the Shortfall Amount less the aggregate of the Authority Contributions which have been paid by the date such amounts are due under this Agreement (the "**Maximum Individual Authority Contribution Amount**"), and identifying the Maximum Individual Authority Contribution Amount for each such Authority and all such Authorities.

- 3.3.6 The issue of an Individual Authority Contribution Notice to an Authority which is not a Defaulting Authority shall oblige that Authority to pay by no later than 11 a.m. on (or, in respect of principal and unless otherwise agreed between the Company and the relevant Authority, the Business Day preceding) the day on which the amount is due under the Finance Documents, an amount equal to the lesser of (i) the Maximum Individual Authority Contribution Amount for such Authority; and (ii) the amount notified to the relevant Authority by the Company by no later than 3 p.m. on the Business Day (or, in respect of principal and unless otherwise agreed between the Company and the relevant Authority, the second Business Day) preceding the day on which the amount is due under the Finance Documents.
- 3.3.7 For the avoidance of doubt, nothing in this Clause 3.3 limits the power of the Company to borrow amounts, including from any Lending Authority or under any Liquidity Facility Agreement or by agreement with any Authority which is not a Defaulting Authority under an Individual Authority Contribution Notice, to enable it to meet its obligations under the Finance Documents.
- 3.3.8 If at any time the Company determines that there no longer is or will be a Shortfall Amount, disregarding for the purposes of such calculation any Authority Contribution, or that the Company otherwise has sufficient funds to enable it to make all payments of amounts due under the Finance Documents, it may cancel a Contribution Notice, a Further Contribution Notice or an Individual Authority Contribution Notice by sending a notice (a "**Cancellation Notice**") to each relevant Authority. The effect of a Cancellation Notice shall be that no Authority is obliged to pay any Authority Contribution pursuant to the cancelled Contribution Notice or any amounts payable under the cancelled Further Contribution Notice or Individual Authority Contribution Notice and any amounts already paid to the Company pursuant to the cancelled Contribution Notice, Further Contribution Notice or Individual Authority Contribution Notice shall be reimbursed by the Company to the relevant Authority (without interest or penalty).

3.4 Contribution Loans

All amounts received by the Company from an Authority pursuant to a Contribution Notice, Further Contribution Notice or Individual Authority Contribution Notice shall be treated as Contribution Loans made by the relevant Authority to the Company, the repayment of which, and the payment of any interest thereon, shall be made in accordance with Clause 3.9 (*Order of application of proceeds*) and shall be due and payable only at the times and to the extent that the Company has funds available to make such payments in accordance with Clause 3.9 (*Order of application of proceeds*). Interest on Contribution Loans ("**Contribution Interest**") shall accrue at an interest rate equal to the higher of (i) the interest rate payable by the Defaulting Authority under the relevant Authority Loan, and (ii) the prevailing rate offered by the Public Works Loan Board (or any replacement agency) in respect of loans having the same maturity and interest basis under the relevant Authority Loan (and to the extent (ii) applies, the relevant Defaulting Authority shall be required to indemnify the Company in respect of such cost pursuant to the Loan Standard Terms). Such interest, if unpaid, will be compounded with the amount due under the relevant Contribution Loan on the date falling 6 months after the relevant Contribution Loan is made and at 6-monthly intervals thereafter, but will remain immediately due and payable subject to availability of funds to make such payments in accordance with Clause 3.9 (*Order of application of proceeds*).

3.5 Indemnity in respect of unpaid Authority Contributions

3.5.1 Each Defaulting Authority which fails to pay an amount equal to its Authority Contribution as specified in a Contribution Notice or any amounts payable under a Further Contribution Notice or an Individual Authority Contribution Notice on the date such amount was due under this Agreement shall indemnify the Company, within three Business Days of demand, against any cost, loss or liability incurred by it as a result of such non-payment.

3.5.2 Any amount payable to the Company under Clause 3.5.1 above shall include the cost of utilising the Company's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Company may notify to such Defaulting Authority.

3.6 Application of Contribution Loans

The Company will apply all Contribution Loans towards discharging any sums owing by the Company to any Creditor as and when such amounts fall due or otherwise in accordance with Clause 3.9 (*Order of application of proceeds*).

3.7 Enforcement by the Company

If an Authority becomes a Defaulting Authority, the Company will promptly exercise its rights and take action to recover all sums owing from the Defaulting Authority to the Company. Such action may include (without limitation) exercising any right to:

3.7.1 declare its Liabilities to be immediately due and payable;

3.7.2 sue for, commence or join any legal or arbitration proceedings against the Defaulting Authority to recover any Liabilities;

- 3.7.3 exercise any right of set-off;
- 3.7.4 exercise any rights it may have under Section 13(3) of the Local Government Act 2003; or
- 3.7.5 apply to the High Court to have a receiver appointed under Section 13(5) of the Local Government Act 2003.

3.8 **Action to recover debt through Company only**

- 3.8.1 The Authorities shall not have any independent power to take action against a Defaulting Authority. However, in the event that the Company has failed to take any steps towards recovery of amounts owing to it by a Defaulting Authority within 90 days of the relevant failure to pay by a Defaulting Authority, the Company shall take such action as the Directing Authorities may reasonably require (provided that for these purposes only, the references in the definition of Directing Authorities to 85 per cent. shall be deemed to refer to 50 per cent.).
- 3.8.2 Without prejudice to the right of an Authority to enforce the other obligations of the Company under this Agreement, each Authority agrees that, to the extent that it has made a payment in respect of its Guarantee, it will not exercise any rights it may have against the Company to require repayment or reimbursement in respect of such payment (whether by way of subrogation, indemnification or otherwise), but shall be entitled to recover such amounts in accordance with Clause 3.9 (*Order of application of proceeds*) (and shall notify the Company of the relevant amount on request), provided that such amounts are deemed to become due and payable only at the times and to the extent that the Company has funds available to make such payments in accordance with Clause 3.9 (*Order of application of proceeds*).

3.9 **Order of application of proceeds**

All amounts from time to time received or recovered by the Company from a Defaulting Authority or otherwise identified by the Company as being available for distribution (for the purposes of this Clause 3.9, the "**Recoveries**"), shall be applied by the Company at any time as the Company (acting reasonably) sees fit, to the extent permitted by applicable law, in the following order of priority:

- 3.9.1 in discharging any sums owing by the Company to any Creditor which are due or overdue on such date;
- 3.9.2 pro rata and *pari passu* in payment or distribution to any Authority which has been required to make a payment in respect of its Guarantee, for application towards the discharge of the sums due from the Company to each relevant Authority in respect of such Authority's right of subrogation;
- 3.9.3 pro rata and *pari passu* in payment or distribution to the Authorities which made Contribution Loans pursuant to an Individual Authority Contribution Notice, in proportion to the amounts of such Contribution Loans, for application towards the discharge of the sums due from the Company to the

relevant Authorities in respect of such Contribution Loans and any Contribution Interest thereon;

3.9.4 pro rata and *pari passu* in payment or distribution to the Authorities which made Contribution Loans pursuant to a Further Contribution Notice, in proportion to the amounts of such Contribution Loans, for application towards the discharge of the sums due from the Company to the relevant Authorities in respect of such Contribution Loans and any Contribution Interest thereon;

3.9.5 pro rata and *pari passu* in payment or distribution to the Authorities which made Contribution Loans pursuant to a Contribution Notice, in proportion to the amounts of such Contribution Loans, for application towards the discharge of the sums due from the Company to the relevant Authorities in respect of such Contribution Loans and any Contribution Interest thereon;

3.9.6 the balance, if any, to be held by the Company.

3.10 **Payment obligations continue**

Nothing in this Agreement shall release any Authority from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Authority Loan.

3.11 **Guiding principle**

In addition to the specific obligations of the Company set out in this Agreement (including the obligation to issue Contribution Notices as set out in Clauses 3.3.3(a) and 3.3.3(b)):

3.11.1 in exercising any of its rights under this Agreement, the Company shall, where practicable, act with the aim of avoiding any demand on a Guarantee ever being made; and

3.11.2 the Company shall issue such Contribution Notices in accordance with Clause 3.3 as will ensure (provided the relevant Authorities comply with such Contribution Notices) that it has sufficient funds to enable it to pay amounts falling due under the Finance Documents and thus prevent any demands being made under any Guarantee.

4. **BORROWING**

The Company and any Authority may from time to time agree terms upon which the Company will make an Authority Loan to such Authority. The Company and such Authority will either (i) execute a Loan Confirmation in order to document such terms, which shall incorporate the Loan Standard Terms, save as modified or supplemented by the relevant Loan Confirmation or (ii) execute an agreement in such other form as may be agreed between the Company and such Authority.

5. **UNDERTAKINGS OF THE COMPANY**

The Company undertakes to the Authorities as follows:

5.1 Credit assessments

The Company will carry out a credit assessment of each Authority:

5.1.1 at the time of accession;

5.1.2 at the time of entry into an Authority Loan;

5.1.3 in any event, not less than once per year whilst Authority Loans to that Authority are outstanding,

and will perform ongoing monitoring. The Company will undertake an external review of its credit assessment process by an appropriately qualified adviser not less than once every five years.

5.2 Concentration Limits

The Company will not enter into any agreement as contemplated by Clause 4 (*Borrowing*) if, as a result of doing so and making the relevant Authority Loan, the applicable limits on the Outstanding Loan Amount of any one Authority and of the three highest borrowing Authorities as set out below would be breached (where the limits which apply shall be determined by the Total Outstanding Loan Amount at such time assuming the relevant Authority Loan and all other Authority Loans committed to be made on the same date are made):

Total Outstanding Loan Amount	Outstanding Loan Amount of any one Authority to be no greater than the lower of:	Outstanding Loan Amount of the three highest borrowing Authorities to be no greater than:
Less than £1billion	(i) 15 per cent. of the Total Outstanding Loan Amount and (ii) £125million	40 per cent. of the Total Outstanding Loan Amount
From and including £1billion up to and excluding £2billion	(i) 12.5 per cent. of the Total Outstanding Loan Amount and (ii) £200million	35 per cent. of the Total Outstanding Loan Amount
From and including £2billion up to and excluding £5billion	(i) 10 per cent. of the Total Outstanding Loan Amount and (ii) £375million	30 per cent. of the Total Outstanding Loan Amount
From and including £5billion up to and excluding £10billion	(i) 7.5 per cent. of the Total Outstanding Loan Amount and (ii) £500million	22 per cent. of the Total Outstanding Loan Amount
£10billion and above	5 per cent. of the Total Outstanding Loan Amount	15 per cent. of the Total Outstanding Loan Amount

In the event of any reorganisation of UK local authorities, the Company may propose amendments to the concentration limits set out in this Clause, and such amendments shall be effective if approved by the Directing Authorities.

5.3 Matched financing arrangements

5.3.1 The Company shall only designate documents as Finance Documents if such documents are entered into for the purpose of obtaining funds to be on-lent to one or more Authorities as Authority Loans or otherwise to provide liquidity or other support in respect of payments under the Finance Documents. The Company shall not designate any hedging arrangements as Finance Documents.

5.3.2 The Company shall only borrow amounts under Finance Documents where the funds are borrowed in order to on-lend such funds to one or more Authorities as Authority Loans and:

- (a) at the time of such borrowing, the amount borrowed under the Finance Documents will be no more than 105 per cent. of the Total Outstanding Loan Amount at such time; and
- (b) the interest payable in respect of amounts drawn under the relevant Finance Document is and can be no more than the interest payable under the Authority Loans to be funded by such drawdown,

provided that this Clause shall not restrict the Company from borrowing amounts under any Finance Document (including any Liquidity Facility Agreement) to make a payment when due under a Finance Document where a Defaulting Authority fails to make a payment to the Company which would otherwise fund such payment falling due under the original Finance Document, and, for the avoidance of doubt, this Clause shall not restrict the Company from borrowing under any Contribution Loan nor shall it restrict the entry into by the Company of Finance Documents which provide for commitments by lenders in excess of the borrowing limit above (but rather shall only restrict the actual borrowing of funds under such Finance Documents).

5.3.3 If an Authority elects to prepay an Authority Loan, the Company shall apply the proceeds of such prepayment within 10 Business Days of receipt to repay principal under the relevant Finance Document pursuant to which funds were borrowed by the Company to fund the Authority Loan or, where Notes were issued to fund the relevant Authority Loan, to either redeem or purchase and cancel such Notes, in each case in a principal amount at least equal to the principal amount of the Authority Loan being repaid.

5.3.4 The Company shall ensure that each Finance Document provides for a grace period of at least 5 Business Days from a failure to pay before an event of default (howsoever worded) will occur.

5.3.5 The Company shall not borrow amounts under Finance Documents where the term of such borrowing exceeds 50 years.

5.4 Restriction of borrowing

The Company will not enter into or borrow any sums under any Finance Documents, or issue any further Notes, if instructed not to do so by Authorities where both (i) the number of such Authorities is more than 50 per cent. of the number of all Authorities, and (ii) the aggregate Outstanding Loan Amounts of such Authorities is greater than 50 per cent. of the Total Outstanding Loan Amount at the relevant time, provided that this shall not restrict the Company from borrowing further amounts under any Finance Document (including any Liquidity Facility Agreement) to make a payment when due under a Finance Document where another Defaulting Authority fails to make a payment to the Company which would otherwise fund such payment falling due under the original Finance Document, nor (for the avoidance of doubt) shall it restrict the Company from borrowing under any Contribution Loan.

5.5 Record-keeping

The Company shall maintain proper books, accounts, records and procedures in relation to its business and undertaking sufficient to record and monitor its borrowings and Authority Loans, and the amounts guaranteed by each Authority.

5.6 Reporting

5.6.1 The Company shall establish and maintain a public, freely accessible, electronic website, on which it shall post (with signatures redacted, where relevant):

- (a) copies of all executed Guarantees, and notices of termination of any Guarantee in accordance with Clause 2.4.1;
- (b) a copy of each Certificate of Approval (without attachments); and
- (c) a monthly report setting out the borrowings of each Authority and the liabilities of the Company under the Finance Documents as at the end of each calendar month, to be posted within 10 Business Days of the relevant month-end.

5.6.2 The Company shall notify each Authority promptly if any Authority gives the Company notice that it intends to prepay all of its Authority Loans.

5.6.3 The Company shall notify each Authority promptly of any event or circumstance which the Company reasonably believes might have a material adverse effect on the Company's assets, operations, condition (financial or otherwise), prospects, or its ability to comply with the Finance Documents.

5.7 Business of the Company

The Company shall not carry on any business other than as contemplated herein and ancillary thereto, and provided that the Company shall be permitted to incorporate subsidiaries which may carry out other business.

6. GENERAL

6.1 Representations

Each Party represents and warrants to each other Party that:

- 6.1.1 the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations; and
- 6.1.2 the entry into and performance by it of this Agreement does not and will not:
 - (a) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or
 - (b) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets.

6.2 Information: Miscellaneous

- 6.2.1 Each Authority shall notify the Company in writing (forthwith upon becoming aware of the same):
 - (a) if such Authority is unable to pay its debts as they fall due;
 - (b) of any report issued in respect of it under Section 114 of the Local Government Finance Act 1988 (or any replacement or equivalent provision);
 - (c) of any failure to comply with the prudential framework established by Part 1 of the Local Government Act 2003 and related regulations, including the Prudential Code for Capital Finance in Local Authorities published by CIPFA, as amended or reissued from time to time;
 - (d) of any failure to set a balanced budget in accordance with Section 31A and Section 42A of the Local Government Finance Act 1992;
 - (e) if the chief finance officer's report on robustness of budget estimates and adequacy of reserves under section 25 of the Local Government Act 2003 states either that the estimates are not robust and/or the reserves are inadequate, and the Authority passes that budget without action to remedy those deficiencies;
 - (f) if external auditors issue a qualified audit opinion in respect of such Authority's accounts;
 - (g) if the Authority is or will be unable to publish audited accounts by the statutory deadline;
 - (h) any Change of Status of the Authority (as defined in the Loan Standard Terms;

- (i) promptly upon becoming aware that any representation or statement made or deemed to be made by it in this Agreement, any Authority Loan or any other document delivered by or on behalf of it in relation to such documents was incorrect or misleading when made or deemed to be made;
- (j) promptly upon becoming aware of them, the status and description of any dispute, litigation, arbitration, expert determination or administrative proceedings which are current, threatened or pending against it, which is reasonably likely to be adversely determined, and which, if adversely determined either individually or taken as a whole, are reasonably likely to have a material adverse effect on the status or governance of the Authority, its assets, its operations, its condition (financial or otherwise), its prospects, or its ability to comply with the Finance Documents;
- (k) promptly upon becoming aware of them, any event or circumstance which the Authority reasonably believes might have a material adverse effect on the status or governance of the Authority, its assets, its operations, its condition (financial or otherwise), its prospects, or its ability to comply with the Finance Documents; or
- (l) promptly on request, such additional information as may be reasonably requested by the Company from time to time.

and, in each case, the Authority shall set out in such notice reasonable details associated therewith, the effects of such an event or occurrence and any actions being undertaken to mitigate or remedy such event or occurrence.

- 6.2.2 Each Authority acknowledges that the Company may provide any information provided to it under this Clause 6.2 to any Authority, rating agency or other person the Company reasonably believes to have a legitimate interest in such information.

6.3 **Amendments**

The Company may agree with the Directing Authorities to amend or waive any provision of this Agreement, provided that unless specific provisions relating to amendments are included in any particular clause (in which case such provisions shall apply), no amendment or waiver which imposes additional obligations on an Authority may be made without the consent of that Authority.

6.4 **Assignments and transfers**

- 6.4.1 The Company may not assign any of its rights or transfer any of its rights and obligations in respect of this Agreement.
- 6.4.2 No Authority may assign any of its rights or transfer any of its rights and obligations in respect of this Agreement, other than pursuant to Clause 6.5 below.

6.5 **Statutory Successor to an Authority**

Any statutory successor to an Authority shall, on the date on which the relevant amending legislation is enacted and to the extent permitted by such amending legislation or any other applicable laws, become a successor Authority under this Agreement without the execution or filing of any paper or any further act of either an Authority or the Company and, from such date, all references in this Agreement to an Authority shall be construed accordingly. Each such successor Authority shall execute all such further documents and do all such further acts and things as may be necessary at any time or times in the opinion of the Company to give effect to the provisions of this Agreement.

6.6 **Payments**

6.6.1 On each date on which an Authority is required to make a payment under this Agreement, that Authority shall make the same available to the Company for value on the due date by no later than 11 a.m. London time.

6.6.2 Payment shall be made to such account in London as the Company may specify by written notice.

7. **NOTICES**

7.1 **Communications in writing**

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by letter sent by registered post or electronic mail. All communications made by electronic mail shall be followed with a letter sent by registered post, and such letter will be the effective communication for the purposes of this Agreement, save that all communications under Clauses 3.2 (*Notification by the Company of a Defaulting Authority*) and 3.3 (*Contribution Notices*) shall be sent by electronic mail only and such communication shall be effective for the purposes of this Agreement.

7.2 **Addresses**

The address and electronic mail address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is identified with its name below or will be set out in the relevant Authority Accession Deed, or any substitute address, email address or department or officer which that Party may notify to the Company (or the Company may notify to the other Parties, if a change is made by the Company) by not less than five Business Days' notice.

7.3 **Delivery**

Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

1.1.1 if by way of letter, three Business Days after being sent by registered post to the relevant address; or

1.1.2 if by way of electronic mail, when actually received in readable form, and, if a particular department or officer is specified as part of its address details provided under Clause 7.2 (*Addresses*), if addressed to that department or officer.

7.4 English language

Any notice and all other documents provided under or in connection with this Agreement must be in English.

8. PRESERVATION

8.1 Partial invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision under the law of any other jurisdiction will in any way be affected or impaired.

8.2 No impairment

If, at any time after its date, any provision of this Agreement is not binding on or enforceable in accordance with its terms against a person expressed to be a party to it, neither the binding nature nor the enforceability of that provision or any other provision of this Agreement will be impaired as against the other parties to this Agreement.

8.3 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under this Agreement shall operate as a waiver of any such right or remedy or constitute an election to affirm this Agreement. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

8.4 Waiver of defences

The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this Clause 8.4, would reduce, release or prejudice the provisions of this Agreement including (without limitation and whether or not known to any Party):

8.4.1 any time, waiver or consent granted to, or composition with, any Authority or other person;

8.4.2 the release of any Authority or any other person under the terms of any composition or arrangement with any creditor of the Company;

8.4.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over

assets of, any Authority or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument;

- 8.4.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the status of any Authority or other person;
- 8.4.5 any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of this Agreement or any other document;
- 8.4.6 any unenforceability, illegality or invalidity of any obligation of any person under this Agreement or any other document or security;
- 8.4.7 any intermediate Payment of any of the Liabilities owing by the Company in whole or in part; or
- 8.4.8 any insolvency or similar proceedings.

9. **CONFIDENTIALITY**

9.1 **Disclosure of Information**

Each Authority acknowledges that the Company will post information as regards such Authority onto its public website, as set out in Clause 5.6.1, and may provide copies of each Guarantee to various persons, including any Creditor.

9.2 **Confidentiality**

Each Authority and the Company agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 9.3 (*Disclosure of Confidential Information*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

9.3 **Disclosure of Confidential Information**

Each Party may disclose:

- 9.3.1 to any of its subsidiaries and any of its or their officers, directors, employees, professional advisers, auditors, partners and representatives such Confidential Information as such Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this Clause 9.3.1 is informed in writing of its confidential nature and that some or all of such Confidential Information may be commercially sensitive and/or price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- 9.3.2 to any person:

- (a) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (b) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes; or
- (c) with the consent of the relevant Party;

in each case, such Confidential Information as the Party shall consider appropriate if in relation to paragraphs 9.3.2(a) and 9.3.2(b) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be commercially sensitive and/or price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the relevant Party, it is not practicable so to do in the circumstances; and

- 9.3.3 to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to such Party if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be commercially sensitive and/or price-sensitive information.

9.4 Inside information

Each Party acknowledges that some or all of the Confidential Information is or may be commercially sensitive and/or price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each Party undertakes not to use any Confidential Information for any unlawful purpose.

9.5 Notification of disclosure

Each Authority and the Company agrees (to the extent permitted by law and regulation) to inform the Company or the relevant Authority (as relevant):

- 9.5.1 of the circumstances of any disclosure of Confidential Information made pursuant to Clause 9.3.2(a) (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory function; and
- 9.5.2 upon becoming aware that Confidential Information has been disclosed in breach of this Clause 9.

9.6 Continuing obligations

The obligations in this Clause 9 are continuing and, in particular, shall survive and remain binding on each Party following termination of this Agreement.

10. COUNTERPARTS

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

11. WAIVER OF IMMUNITY

To the extent that an Authority may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgement or otherwise) or other legal process and to the extent that such immunity (whether or not claimed) may be attributed in any such jurisdiction to the Authority or its assets or revenues, the Authority agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

12. GOVERNING LAW AND JURISDICTION

12.1 Governing Law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

12.2 Jurisdiction

12.2.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").

12.2.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Parties and is intended to be and is delivered by them as a deed on the date specified above.

**SCHEDULE 1
FORM OF AUTHORITY ACCESSION DEED**

THIS AGREEMENT is made on [•] and made between:

- (1) [Insert name of New Authority] (the "**Acceding Authority**"); and
- (2) **UK Municipal Bonds Agency PLC** (the "**Company**"), for itself and on behalf of the other Authorities which are currently parties to the framework agreement referred to below.

This Agreement is made on [date] by the Acceding Authority in relation to a local authority financing framework agreement (the "**Framework Agreement**") dated [•] between, amongst others, UK Municipal Bonds Agency PLC and the other Authorities (as defined in the Framework Agreement).

IT IS AGREED as follows:

- 1. Terms defined in the Framework Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.
- 2. The Acceding Authority confirms that it intends to be party to the Framework Agreement as an Authority, undertakes to perform all the obligations expressed to be assumed by an Authority under the Framework Agreement and agrees that it shall be bound by all the provisions of the Framework Agreement as if it had been an original party to the Framework Agreement.
- 3. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

THIS AGREEMENT has been executed as a deed by the Company and the Acceding Authority and is delivered on the date stated above.

The Acceding Authority

EXECUTED AS A DEED)
by [Name of Acceding Authority])

.....
.....

Address:

Email:

Attention:

The Company

EXECUTED AS A DEED)
by UK Municipal Bonds Agency PLC)

[..... Director

..... Director/Secretary]

SCHEDULE 2 FORM OF GUARANTEE

THIS GUARANTEE is made on [date] by [AUTHORITY] (the "**Guarantor**") of [address] in favour of each "**Beneficiary**" (as defined below) and shall be effective on and from the Effective Date.

1. DEFINITIONS

1.1 In this Guarantee:

"**Beneficiary**" means each and every Creditor under each Finance Document.

"**Company**" means UK Municipal Bonds Agency PLC of Local Government House, Smith Square, London SW1P 3H2.

"**Creditor**" means:

- (a) the Trustee for itself in respect of the Trust Deed and on behalf of the Noteholders in respect of the Notes;
- (b) the European Investment Bank in respect of any EIB Loan Document;
- (c) each Liquidity Facility Provider in respect of any Liquidity Facility Agreement;
- (d) each Lending Authority; and
- (e) each lender or other provider of credit or financial accommodation to the Company pursuant to a Finance Document.

"**EIB Loan Document**" means each facility agreement entered into between the Company (as borrower) and the European Investment Bank (as lender), as the same may be amended from time to time.

"**Effective Date**" means the date of the first agreement between the Guarantor and the Company pursuant to which the Company (as lender) agrees (subject to the terms of that agreement) to make a loan to the Guarantor (as borrower), which may be documented by way of a loan confirmation modifying and supplementing standard terms, or by any other documentation as may be agreed between the Company and the Guarantor.

"**Finance Document**" means each of the Note Documents, the EIB Loan Documents, each Liquidity Facility Agreement and any facility, agreement or other instrument entered into by the Company for any credit or other financial accommodation and designated in the relevant facility, agreement or other instrument as a "Finance Document" for the purposes of this Guarantee, as the same may be amended from time to time.

"**Guaranteed Liabilities**" means any and all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of the Company to any Beneficiary arising under each

Finance Document or, in the case of the Note Documents, arising in respect of Notes issued, prior to or following the Effective Date of this Guarantee and on or prior to the date of termination of this Guarantee in accordance with Clause 7 (*Determination of Guarantee*) but, for the avoidance of doubt, excluding any further amounts borrowed under each existing Finance Document, any Finance Documents entered into, and any Notes issued (including any Notes issued following such termination date which are intended to be fungible with Notes issued on or prior to such date) following the date of termination of this Guarantee in accordance with Clause 7 (*Determination of Guarantee*).

"Lending Authority" means any local authority that provides a loan or other financial accommodation to the Company pursuant to a Finance Document.

"Liquidity Facility Agreement" means each liquidity facility agreement or working capital facility agreement entered into by the Company (as borrower) and designated in the relevant facility agreement as a "Liquidity Facility Agreement" for the purposes of this Guarantee, as the same may be amended from time to time.

"Liquidity Facility Provider" means each lender under a Liquidity Facility Agreement.

"Note" shall have the meaning given to such term in the Trust Deed.

"Note Documents" means the Trust Deed and any Notes.

"Noteholders" shall have the meaning given to such term in the Trust Deed.

"Trust Deed" means the trust deed dated [•] between the Company and [•] as Trustee, as the same may be supplemented and amended from time to time.¹

2. GUARANTEE

2.1 With effect from the Effective Date, the Guarantor irrevocably and unconditionally:

2.1.1 guarantees to each Beneficiary each and every obligation and liability the Company may now or hereafter have to such Beneficiary (whether solely or jointly with one or more persons and whether as principal or as surety or in some other capacity) in respect of the Guaranteed Liabilities and promises to pay to each Beneficiary from time to time on demand the unpaid balance of every sum (of principal, interest or otherwise) now or hereafter owing, due or payable (following the expiry of any grace period provided for) by the Company to any such Beneficiary in respect of any such Guaranteed Liability; and

2.1.2 agrees as a primary obligation to indemnify each Beneficiary from time to time on demand from and against any loss incurred by such Beneficiary as a result of any such Guaranteed Liability being or becoming void, voidable, unenforceable or ineffective as against the Company for any reason whatsoever, whether or not known to such Beneficiary, the amount of such

¹ May require amendment for initial guarantees.

loss being the amount which such Beneficiary would otherwise have been entitled to recover from the Company.

3. **PRESERVATION OF RIGHTS**

- 3.1 The obligations of the Guarantor contained in this Guarantee shall be in addition to and independent of every other security which any Beneficiary may at any time hold in relation to any of the Guaranteed Liabilities.
- 3.2 Neither the obligations of the Guarantor contained in this Guarantee nor the rights, powers and remedies conferred in respect of the Guarantor upon the Beneficiaries by this Guarantee or by law shall be discharged, impaired or otherwise affected by:
- 3.2.1 the winding-up, dissolution, administration or reorganisation of the Company or any other person or any change in its status, function, control or ownership;
 - 3.2.2 any of the Guaranteed Liabilities or any of the obligations of the Company or any other person under any security relating to any of the Guaranteed Liabilities being or becoming illegal, invalid, unenforceable or ineffective in any respect;
 - 3.2.3 any time or other indulgence being granted or agreed to be granted to the Company or any other person in respect of any of the Guaranteed Liabilities or under any other security;
 - 3.2.4 any amendment, novation, supplement, extension, (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature) or replacement, waiver or release of, any of the Guaranteed Liabilities or any obligation of any person under any other security or other guarantee or indemnity in respect thereof including without limitation any change in the purposes for which the proceeds of the issue of any Note or other credit obtained pursuant to a Finance Document are to be applied and any extension of or any increase of the obligations of the Company under any Finance Documents or the addition of any new obligations for the Company under the Finance Documents;
 - 3.2.5 any increase in the Guaranteed Liabilities;
 - 3.2.6 any failure to take, or fully to take, any security agreed to be taken in relation to any of the Guaranteed Liabilities;
 - 3.2.7 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution of, any security taken in respect of any of the Guaranteed Liabilities; or
 - 3.2.8 any other act, event or omission which, but for this Clause 3.2, might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor contained in this Guarantee or any of the rights, powers or remedies conferred upon any Beneficiary by this Guarantee or by law.
- 3.3 Any settlement or discharge given by any Beneficiary to the Guarantor in respect of the Guarantor's obligations under this Guarantee or any other agreement reached

between any Beneficiary and the Guarantor in relation to it shall be, and be deemed always to have been, void if any act on the faith of which the relevant Beneficiary gave the Guarantor that settlement or discharge or entered into that agreement is subsequently avoided by or in pursuance of any provision of law.

3.4 The Beneficiaries shall not be obliged before exercising any of the rights, powers or remedies conferred upon them in respect of the Guarantor by this Guarantee or by law:

3.4.1 to make any demand of the Company, save for the presentation of the relevant Note (as relevant);

3.4.2 to take any action or obtain judgment in any court against the Company;

3.4.3 to make or file any claim or proof in a winding-up or dissolution of the Company; or

3.4.4 to enforce or seek to enforce any security taken in respect of any of the obligations of the Company in respect of the Guaranteed Liabilities,

and (save as aforesaid) the Guarantor hereby expressly waives presentment, demand, protest and notice of dishonour in respect of any Note.

3.5 The Guarantor agrees that, so long as an amount owing by the Company in respect of any of the Guaranteed Liabilities is overdue, the Guarantor shall not exercise any rights which the Guarantor may at any time have by reason of performance by it of its obligations under this Guarantee:

3.5.1 to be indemnified by the Company or to receive any collateral from the Company;

3.5.2 to claim any contribution from any other guarantor of any of the Guaranteed Liabilities; and/or

3.5.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of a Beneficiary in respect of any of the Guaranteed Liabilities or of any other security taken pursuant to, or in connection with, any of the Guaranteed Liabilities by any Beneficiary.

4. **REPRESENTATIONS AND WARRANTIES**

The Guarantor represents that:

4.1.1 it has and will have the necessary power to enable it to enter into and perform its obligations under this Guarantee;

4.1.2 this Guarantee constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;

4.1.3 all necessary authorisations to enable it to enter into this Guarantee have been obtained and are and will remain in full force and effect; and

4.1.4 the execution, delivery and performance of this Guarantee will not conflict with (a) any agreement binding on it or any of its assets; (b) its constitutive documents; or (c) any applicable law.

5. PAYMENTS

All payments to be made by the Guarantor to a Beneficiary under this Guarantee shall be made without set-off or counterclaim and without any deduction or withholding whatsoever. If the Guarantor is obliged by law to make any deduction or withholding from any such payment, the amount due from the Guarantor in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Beneficiary receives a net amount equal to the amount the Beneficiary would have received had no such deduction or withholding been required to be made.

6. CONTINUING SECURITY

The obligations of the Guarantor contained in this Guarantee shall constitute and be continuing obligations notwithstanding any settlement of account or other matter or thing whatsoever, and shall not be considered satisfied by any intermediate payment or satisfaction of all or any of the obligations of the Company in relation to any of the Guaranteed Liabilities and shall continue in full force and effect until final payment in full of all amounts owing by the Company in respect of the Guaranteed Liabilities and total satisfaction of all the Company's actual and contingent obligations in relation to the Guaranteed Liabilities. If for any reason this Guarantee ceases to be a continuing security, any Beneficiary may either continue any then existing account(s) or open new account(s) for the Company, but in any case the Guarantor's obligations under this Guarantee shall be unaffected by, and shall be calculated without regard to, any payment into or out of any such account after this Guarantee has ceased to be a continuing security.

7. DETERMINATION OF GUARANTEE

The Guarantor may terminate this Guarantee as a continuing security by notice to the Company, and following the date of such termination the Guaranteed Liabilities of the Company covered by this Guarantee shall not include any further amounts borrowed under each existing Finance Document, any Finance Documents entered into, and any Notes issued (including any Notes issued following such termination date which are intended to be fungible with Notes issued on or prior to such date) following the date of termination of this Guarantee in accordance with this Clause.

8. SUSPENSE ACCOUNT

All monies received, recovered or realised by any Beneficiary under or pursuant to this Guarantee (including the proceeds of any conversion of currency) may in its discretion be credited to and held in any suspense or impersonal account pending their application from time to time in or towards the discharge of this Guarantee.

9. **DEMANDS**

The Company shall act as agent of the Guarantor in relation to receipt of any demands under this Guarantee. Any demand made on the Guarantor in respect of this Guarantee shall be served by leaving it at the address of the Company specified above (or such other address as the Company may previously have specified by notice to each Creditor provided in accordance with the relevant Finance Document) or by letter posted by prepaid first-class post to such address (which shall be deemed to have been served on the tenth day following the date of posting), in each case with a copy to the Guarantor at the address specified above (or such other address as the Guarantor may previously have specified and the Company has notified to each Creditor in accordance with the relevant Finance Document).

10. **ASSIGNMENTS AND SUCCESSORS**

10.1 Each Beneficiary may at any time assign all or any of its rights and benefits under this Guarantee and this Guarantee shall remain in effect despite any amalgamation or merger (however effected) relating to any Beneficiary. References to a Beneficiary or the Beneficiaries shall be deemed to include any assignee or successor in title of a Beneficiary and any person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of a Beneficiary under this Guarantee or to which under such laws the same have been transferred.

10.2 Any statutory successor to the Guarantor shall, on the date on which the relevant amending legislation is enacted and to the extent permitted by such amending legislation or any other applicable laws, become a successor Guarantor under this Guarantee without the execution or filing of any paper or any further act of either a Guarantor or a Beneficiary and, from such date, all references in this Guarantee to the Guarantor shall be construed accordingly. Each such successor Guarantor shall execute all such further documents and do all such further acts and things as may be necessary at any time or times to give effect to the provisions of this Guarantee.

11. **PARTIAL INVALIDITY**

If at any time, any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Guarantee nor of such provisions under the law of any other jurisdiction shall in any way be affected or impaired thereby.

12. **WAIVER OF IMMUNITY**

To the extent that the Guarantor may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgement or otherwise) or other legal process and to the extent that such immunity (whether or not claimed) may be attributed in any such jurisdiction to the Guarantor or its assets or revenues, the Guarantor agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

13. **LAW AND JURISDICTION**

This Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by English law and the English courts shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Guarantee (including a dispute relating to the existence, validity or termination of this Guarantee or the consequences of its nullity or any non-contractual obligation arising out of or in connection with this Guarantee).

IN WITNESS WHEREOF this Guarantee has been executed as a deed by the Guarantor and is intended to be and is hereby delivered by it as a deed on the date specified above.

EXECUTED as a DEED

by [AUTHORITY]

SCHEDULE 3 LOAN STANDARD TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Standard Terms:

"Agreement" means these Standard Terms as supplemented, amended and/or replaced by the relevant Loan Confirmation.

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"Change of Status" means any legislative amendment which results in the Authority ceasing to be treated as a "local authority" within the meaning of the Local Government Act 2003 and the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003, or in each case, any re enactment or amendment thereof, or any other legislation which regulates capital finance in connection with local authorities.

"Day Count Fraction" means, in respect of the calculation of an amount for any period of time, the actual number of days in such period divided by 360.

"Default" means an Event of Default or any event or circumstance specified in Clause 13 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing) be an Event of Default.

"Determination Date" means:

- (a) in the case of a prepayment under Clause 6.3 (*Voluntary Prepayment*), be a date selected by the Company falling after delivery of the notice of prepayment by the Authority to the Company but before the date falling 30 days prior to the date of prepayment; or
- (b) in the case of a prepayment following an Event of Default, any date selected by the Company falling on or after the occurrence of the Event of Default.

"Event of Default" has the meaning given to such term in Clause 13.

"Final Repayment Date" means the date specified as such in the relevant Loan Confirmation.

"Fixed Interest Amount" has the meaning given in the relevant Loan Confirmation.

"Framework Agreement" means the local authority financing framework agreement dated [•] between, amongst others, the Company and the Authority.

"Gross Redemption Yield" means a yield calculated in accordance with principles consistent with those used in the United Kingdom Debt Management Office notice *"Formulae for Calculating Gilt Prices from Yields"* page 5, Section One: Price/Yield Formulae *"Conventional Gilts; Double-dated and Undated Gilts with Assumed (or Actual) Redemption on a Quasi-Coupon Date"* published on 8 June 1998 and updated on 15 January 2002 and 16 March 2005 (and as further updated, supplemented, amended or replaced from time to time).

"Increased Costs" means:

- (a) a reduction in the rate of return from the Loan or on the Company's overall capital;
- (b) an additional or increased cost; or
- (c) a reduction of any amount due and payable under the Agreement,

which is incurred or suffered by the Company to the extent that it is attributable to the Company having entered into a commitment or funding or performing its obligations under the Agreement.

"Interest Payment Date" has the meaning given in the relevant Loan Confirmation.

"Interest Period" means each period beginning on (and including) the Utilisation Date (in respect of the first Interest Period) or any Interest Payment Date and ending on (but excluding) the next Interest Payment Date.

"Interest Rate" has the meaning given in the relevant Loan Confirmation.

"Loan" has the meaning given to such term in Clause 2.

"Loan Confirmation" means a loan confirmation in the form set out in Schedule 4 to the Framework Agreement, with such terms as may be agreed between the Company and the Authority.

"Material Adverse Effect" means a material adverse effect on the status or governance of the Authority, its assets, its operations, its condition (financial or otherwise), its prospects or its ability to comply with the Agreement.

"Prepayment Amount" means an amount equal to the principal amount outstanding of the Loans to be prepaid multiplied by the higher of:

- (a) 1; and
- (b) the price (as reported to the Company by a leading broker and/or primary dealer operating in the gilt-edged market selected by the Company) expressed as a percentage and rounded up to four decimal places at which the Gross Redemption Yield on the Loan (if the Loan was to remain outstanding to its original Repayment Date(s)), on the Determination Date would be equal to the sum of the Gross Redemption Yield on the Determination Date of the Reference Gilt and the Prepayment Margin.

"**Prepayment Margin**" has the meaning given in the relevant Loan Confirmation.

"**Principal Amount**" has the meaning given in the relevant Loan Confirmation.

"**Reference Gilt**" has the meaning given in the relevant Loan Confirmation.

"**Representations**" means the representations set out in Clause 12 (*Representations*) or specified as additional Representations in the relevant Loan Confirmation.

"**Taxes**" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"**Tax Deduction**" means a deduction or withholding for or on account of Tax from a payment under the Agreement.

"**Utilisation Date**" has the meaning given in the relevant Loan Confirmation.

"**Voluntary Prepayment Date(s)**" has the meaning given in the relevant Loan Confirmation.

1.2 Construction

1.2.1 Terms used in these Standard Terms have the meanings given to such terms in the Framework Agreement, unless otherwise specified herein.

1.2.2 Unless a contrary indication appears, a reference in these Standard Terms to:

- (a) any person shall be construed so as to include its successors in title permitted assigns and permitted transferees to, or of, its rights and/or obligations under these Standard Terms;
- (b) any agreement or instrument is a reference to that agreement or instrument as amended, novated, supplemented, extended or restated in accordance with its terms;
- (c) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (d) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (e) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and

- (f) a provision of law is a reference to that provision as amended or re-enacted.

1.2.3 Clause and Schedule headings are for ease of reference only.

2. **THE FACILITY**

Subject to the terms of the Agreement, the Company makes available to the Authority on the Utilisation Date a sterling term loan facility (the "**Loan**") in an amount equal to the Principal Amount.

3. **CONDITIONS PRECEDENT**

The Company will only be obliged to make the Loan available to the Authority if:

- 3.1 it has received prior to the Utilisation Date, in form and substance satisfactory to it:
 - 3.1.1 evidence of the authority of a specified person or persons, on behalf of the Authority, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Loan, and a specimen of the signature of each person so authorised;
 - 3.1.2 a copy of the Loan Confirmation in the form agreed between the Company and the Authority executed by the Company and the Authority; and
 - 3.1.3 any other conditions precedent set out in the relevant Loan Confirmation;
- 3.2 on the Utilisation Date no Event of Default is continuing or would result from the proposed Loan and the Representations are true in all material respects and the Authority provides the Company with a certificate dated the Utilisation Date confirming the same; and
- 3.3 on or prior to the Utilisation Date, the Company has received the funds it expects to receive on or by such date pursuant to any funding arrangements which the Company entered into in order to fund the making of the Loan.

4. **UTILISATION**

If the conditions set out in Clause 3 have been met, the Company shall make the Loan to the Authority on the Utilisation Date.

5. **REPAYMENT**

- 5.1 The Authority shall repay the Loan on the Repayment Date(s) and in the amounts set out in the relevant Loan Confirmation.
- 5.2 The Authority may not reborrow any part of the Loan which is repaid.

6. **PREPAYMENT**

6.1 **Illegality Prepayment**

If, in any applicable jurisdiction, it becomes unlawful for the Company to perform any of its obligations as contemplated by the Agreement or to fund or maintain the Loan:

- 6.1.1 the Company shall promptly notify the Authority upon becoming aware of that event whereupon the facility will be immediately cancelled; and
- 6.1.2 the Authority shall repay the Loan on the Interest Payment Date immediately following the date on which the Company has notified the Authority, or if earlier, the date specified by the Company in the notice delivered to the Authority, together with interest accrued (if any).

6.2 **Mandatory prepayment of funding arrangements**

If the Company is required to prepay any funding which the Company entered into in order to fund the making of the Loan, the Company shall promptly notify the Authority of such requirement and the Authority shall repay the Loan on the Interest Payment Date immediately following the date on which the Company has notified the Authority, or if earlier, the date specified by the Company in the notice delivered to the Authority, together with interest accrued (if any).

6.3 **Voluntary Prepayment for Tax**

If the Authority is required to pay any additional amounts pursuant to Clause 9 (*Tax Gross Up*), the Authority may elect to prepay the Loan in whole on any Interest Payment Date at the relevant Prepayment Amount on the Authority giving not less than 60 days' notice to the Company (which notice shall be irrevocable and shall oblige the Authority to prepay the Loan in whole plus accrued interest (if any) to such date).

6.4 **Change of Status**

If at any time a Change of Status occurs then the Company may by notice to the Authority require it to prepay the Loan on the Interest Payment Date immediately following the date of such notice, together with interest accrued (if any).

6.5 **Voluntary Prepayment**

Unless otherwise specified in the relevant Loan Confirmation, the Loan may be prepaid at the option of the Authority in whole or in part on any Voluntary Prepayment Date at the relevant Prepayment Amount on the Authority giving not less than 60 days' notice to the Company, or such other period(s) as may be specified in the relevant Loan Confirmation (which notice shall be irrevocable and shall oblige the Authority to prepay the Loan in whole or, as the case may be, in part, as specified in such notice on the relevant Voluntary Prepayment Date at the Prepayment Amount plus accrued interest (if any) to such date), provided that the Loan may not be prepaid pursuant this Clause prior to the date falling 12 months after the Utilisation Date or following the date falling 12 months prior to the Final Repayment Date.

6.6 **No other prepayment**

The Authority shall not, without the prior written consent of the Company, be entitled to prepay the Loan otherwise than as provided in Clauses 6.1 to 6.5 above.

7. **INTEREST**

7.1 **Calculation of interest**

7.1.1 Interest shall accrue on the Loan at the Interest Rate, and shall be payable in arrear on each Interest Payment Date (subject as provided in Clause 8 (*Payments*)).

7.1.2 For so long as the full Principal Amount of the Loan is outstanding, the amount of interest payable on each Interest Payment Date shall be the Fixed Interest Amount.

7.1.3 The amount of interest payable in respect of the Loan for any period for which a Fixed Interest Amount is not specified or does not apply shall be calculated by applying the Interest Rate to the principal amount of the Loan, and multiplying the product by the Day Count Fraction, rounding the resulting figure to the nearest penny (half a penny being rounded upwards).

7.2 **Default Interest**

7.2.1 If the Authority fails to pay any amount payable by it under the Agreement on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is two per cent. per annum above the Interest Rate.

7.2.2 Any interest accruing under this Clause 7.2 shall be immediately payable by the Authority on demand by the Company.

7.2.3 Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period but will remain immediately due and payable.

8. **PAYMENTS**

8.1 If any sum falls due on a day that is not a Business Day, payment will be postponed to the next Business Day or, if such day would fall in the next succeeding calendar month, the immediately preceding Business Day.

8.2 The Authority shall fund all payments due to the Company under the Agreement by transferring the relevant amounts to an account nominated by the Company by no later than 11 a.m. on the tenth Business Day in respect of principal, or the fifth Business Day in respect of any other amounts, prior to the due date of such amount (the required date for transfer in respect of each payment being the "**Funding Date**").

8.3 Any adjustment to the date of payment as a result of this Clause 8 shall not result in a corresponding adjustment in the amount payable on such date.

8.4 In respect of payments of principal only, any amount of interest which the Company actually obtains by placing the amounts received by it from the Authority pursuant to Clause 8.2 in an interest-bearing account or on deposit with a bank following receipt of such amounts up until no later than the due date of such amounts shall, to the extent reasonably practicable, be for the account of the Authority, **provided that** nothing in this Clause 8.4 shall oblige the Company to place such amounts in an interest-bearing account or on deposit.

9. TAX GROSS UP

9.1 The Authority shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

9.2 If a Tax Deduction is required by law to be made by the Authority, the amount of the payment due from the Authority shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

9.3 If the Company is required to make a Tax Deduction in respect of any funding arrangement which the Company entered into in order to fund the making of the Loan, the Company shall promptly notify the Authority of such requirement and the Authority shall pay such amount as the Company certifies to the Authority as being the amount required to meet its obligations.

9.4 The Company confirms that it is a company resident in the United Kingdom for United Kingdom tax purposes.

10. INCREASED COSTS

10.1 Increased costs

Subject to Clause 10.3 (*Exceptions*) the Authority shall, within three Business Days of a demand by the Company, pay for the account of the Company the amount of any Increased Costs incurred by the Company as a result of:

10.1.1 the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of the Agreement; or

10.1.2 compliance with any law or regulation made after the date of the Agreement.

10.2 Increased cost claims

If the Company intends to make a claim pursuant to Clause 10.1 (*Increased costs*), the Company shall promptly notify the Authority.

10.3 Exceptions

Clause 10.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

10.3.1 attributable to a deduction or withholding for or on account of UK Taxes required by law to be made by the Authority; or

10.3.2 attributable to the wilful breach by the Company of any law or regulation.

11. INDEMNITY

11.1 Indemnity

11.1.1 The Authority shall, within three Business Days of demand, indemnify the Company against any cost, loss or liability incurred by the Company as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by the Authority to pay any amount due under the Agreement on its due date or otherwise to comply with Clause 8.2 (*Payments*);
- (c) funding, or making arrangements to fund, the Loan where the Loan is not made by reason of the operation of any one or more of the provisions of the Agreement (other than by reason of default or negligence by the Company); or
- (d) the Loan not being prepaid in accordance with a notice of prepayment given by the Authority.

11.1.2 The Authority shall promptly indemnify the Company against any cost, loss or liability incurred by the Company (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default; or
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

11.2 Enforcement costs

The Authority shall, within three Business Days of demand, pay to the Company the amount of all costs and expenses (including legal fees) incurred by the Company in connection with the enforcement of, or the preservation of any rights under, the Agreement.

12. REPRESENTATIONS

The Authority makes the representations and warranties set out in this Clause 12 on the date of the Agreement.

12.1 Binding Obligations

The obligations expressed to be assumed by it in the Agreement are legal, valid, binding and enforceable obligations.

12.2 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Agreement do not and will not conflict with:

- 12.2.1 any law or regulation applicable to it;
- 12.2.2 its constitutional documents; or
- 12.2.3 any agreement or instrument binding upon it or any of its assets.

12.3 Power and authority

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Agreement and the transactions contemplated by the Agreement.

12.4 Compliance with statutory requirements

In entering into the Agreement and borrowing thereunder, it is acting in compliance with all statutory requirements relating to borrowing which are applicable to it, including (without limitation) the prudential framework established by Part 1 of the Local Government Act 2003 and related regulations, including the Prudential Code for Capital Finance in Local Authorities published by CIPFA, as amended or reissued from time to time.

12.5 Validity and admissibility in evidence

All Authorisations required or desirable:

- 12.5.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Agreement; and
 - 12.5.2 to make the Agreement admissible in evidence,
- have been obtained or effected and are in full force and effect.

12.6 Pari passu ranking

Its obligations in respect of the Loan will be secured by a statutory charge under Section 13(3) of the Local Government Act 2003 and such obligations and charge will rank at least pari passu with all its obligations to other lenders.

12.7 No proceedings

- 12.7.1 No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has or have (to the best of its knowledge and belief) been started or threatened against it.
- 12.7.2 No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it or its assets.

12.8 **Repetition**

The foregoing Representations, and any additional Representations specified in the relevant Loan Confirmation, are deemed to be repeated by the Authority by reference to the facts and circumstances then existing, on the date of the relevant Loan Confirmation, on the Utilisation Date and on each Interest Payment Date.

13. **EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 13 is an Event of Default (save for Clause 13.10):

- 13.1 The Authority is a Failed Contribution Authority or otherwise fails to pay any amount due under the Agreement on its due date or to comply with Clause 8.2 (*Payments*);
- 13.2 The Authority is in breach of any other obligation under the Agreement and has failed to remedy same within 15 days of being requested to do so;
- 13.3 The Authority is unable to pay its debts as they fall due;
- 13.4 The Authority enters into any composition with its creditors;
- 13.5 The High Court has appointed a receiver under Section 13(5) of the Local Government Act 2003 in respect of the Authority;
- 13.6 The Authority is dissolved or otherwise ceases to exist (other than as a result of the enactment of legislation creating a statutory successor to the Authority which becomes responsible for substantially all of the Authority's obligations, including hereunder);
- 13.7 The Authority fails to pay on its due date any amount due under the Framework Agreement;
- 13.8 An event of default (howsoever described) occurs under any other loan agreement, Loan Confirmation or other instrument evidencing indebtedness of the Authority to the Company; or
- 13.9 The occurrence of any additional Event of Default specified in the relevant Loan Confirmation.
- 13.10 On, or at any time after the occurrence of an Event of Default, the Company may, by notice to the Authority declare that the Loan, together with accrued interest be immediately due and payable, at which time they shall become immediately due and payable at the Prepayment Amount.

14. **CHANGES TO THE COMPANY AND AUTHORITY**

14.1 **Transferability of the Company's rights and obligations**

The Company may not assign any of its rights or transfer any of its rights and obligations in respect of the Agreement, other than following the occurrence of an Event of Default which is continuing. The Authority may not assign or transfer any

of its rights or obligations under the Agreement, other than pursuant to Clause 14.2 below.

14.2 Statutory Successor to the Authority

Any statutory successor to the Authority shall, on the date on which the relevant amending legislation is enacted and to the extent permitted by such amending legislation or any other applicable laws, become the successor Authority under the Agreement without the execution or filing of any paper or any further act of either the Authority or the Company and, from such date, all references in the Agreement to the Authority shall be construed accordingly. Each such successor Authority shall execute all such further documents and do all such further acts and things as may be necessary at any time or times in the opinion of the Company to give effect to the provisions of the Agreement.

15. MISCELLANEOUS

15.1 Account details

All payments to the Company in respect of the Loan should be made to the account specified in the relevant Loan Confirmation.

15.2 Third Party Rights

A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of the Agreement.

15.3 Notices

15.3.1 Any communication to be made under or in connection with the Agreement shall be made in writing and, unless otherwise stated, may be made by letter sent by registered post or electronic mail. All communications made by electronic mail shall be followed with a letter sent by registered post, and such letter will be the effective communication for the purposes of the Agreement.

15.3.2 The address and electronic mail address (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with the Agreement shall be as specified in the Loan Confirmation, or any substitute address, email address or department or officer which that party may notify to the other party by not less than five Business Days' notice.

15.3.3 Any such communication will only be effective:

(a) if by way of letter, three Business Days after being sent by registered post to the relevant address; or

(b) if by way of electronic mail, when actually received in readable form,

and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer.

15.3.4 Any notice and all other documents provided under or in connection with this Agreement must be in English.

16. **GOVERNING LAW AND JURISDICTION**

16.1 **Governing Law**

The Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

16.2 **Jurisdiction**

The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with the Agreement (including a dispute relating to the existence, validity or termination of the Agreement or the consequences of its nullity or any non-contractual obligations arising out of or in connection with the Agreement).

**SCHEDULE 4
FORM OF LOAN CONFIRMATION**

Date:

This Loan Confirmation is entered into between [*Insert name of Authority*] (the **Authority**) and UK Municipal Bonds Agency PLC (the "**Company**"). The parties hereto acknowledge that, in connection with the provision of funds to the Authority, payments and repayments are due from it in accordance with the standard terms set out in Schedule 3 (*Loan Standard Terms*) to the local authority financing framework agreement dated [•] between, amongst others, the Company and the Authority (the "**Standard Terms**"), as supplemented, amended and/or replaced by this Loan Confirmation. Terms used in this Loan Confirmation have the meanings given to such terms in the Standard Terms, unless otherwise specified herein.

PRINCIPAL AMOUNT	GBP [•]								
UTILISATION DATE	[•]								
ADDITIONAL CONDITIONS PRECEDENT (IF ANY)	[•] / [Not applicable]								
REPAYMENT DATE[S] AND AMOUNT OF PRINCIPAL TO BE REPAYED ON SUCH REPAYMENT DATE[S]	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 60%;">Repayment Date</th> <th style="text-align: left;">Repayment Amount</th> </tr> </thead> <tbody> <tr> <td>[•]</td> <td>GBP [•]</td> </tr> <tr> <td>[•]</td> <td>GBP [•]</td> </tr> <tr> <td>[•] (the "Final Repayment Date")</td> <td>GBP [•]</td> </tr> </tbody> </table>	Repayment Date	Repayment Amount	[•]	GBP [•]	[•]	GBP [•]	[•] (the " Final Repayment Date ")	GBP [•]
Repayment Date	Repayment Amount								
[•]	GBP [•]								
[•]	GBP [•]								
[•] (the " Final Repayment Date ")	GBP [•]								
ADDITIONAL PREPAYMENT PROVISIONS (IF ANY)	[•] / [Not applicable]								
PREPAYMENT AMOUNT	[•] / REFERENCE GILT: [•] PREPAYMENT MARGIN: [•]								
VOLUNTARY PREPAYMENT DATE(S)	[•] / [Any date prior to the Final Maturity Date.]								
INTEREST PAYMENT DATES	[•] [and [•]] in each year								
INTEREST RATE	[•]								
FIXED INTEREST AMOUNT	[•]								
ADDITIONAL REPRESENTATIONS (IF ANY)	[•] / [Not applicable]								

ADDITIONAL EVENTS OF DEFAULT (IF ANY)	[•] / [Not applicable]
ACCOUNT DETAILS	Company: [•] Authority: [•]
ADDRESS DETAILS	Company: [•] Authority: [•]
OTHER	<i>[Insert any other amendments or additions to the Standard Terms, including any provisions relating to indexation if applicable]</i>

By: _____
[Authority]

By: _____
UK MUNICIPAL BONDS AGENCY PLC

SIGNATURES

The Company

EXECUTED AS A DEED
by **UK MUNICIPAL BONDS AGENCY PLC**

[..... Director
..... Director/Secretary]

Address:

Email:

Attention:

Original Authorities

EXECUTED AS A DEED
by [*insert name of Authority*]

.....
.....

Address:

Email:

Attention:

DOCUMENT FOUR

FOLLOW-UP MEMORANDUM
(prepared by Allen & Overy)

Allen & Overy LLP

MEMORANDUM

To Birmingham City Council
Reading Borough Council
Southwark Borough Council

From Allen & Overy LLP

Our ref GWF/0115333-0000001 ICM:22664913.9

Date 21 December, 2015

Subject **UK Municipal Bonds Agency PLC : Local Authority Financing Framework Agreement**

1. INTRODUCTION

- 1.1 You have asked us to consider the terms of a draft Local Authority Financing Framework Agreement dated 18 December, 2015 (the **Final Framework Agreement**) which is proposed to be entered into by UK Municipal Bonds Agency PLC (**UK MBA**) and each English Local Authority (**LA**) wishing to borrow from UK MBA. We have, at your request, agreed to provide advice to LAs as to the matters, and to the extent, set out in this memorandum and the Executive Summary preceding this memorandum (the **Executive Summary**) (the **Advice**). The scope of the Advice is limited to those matters: however, we are able to provide further advice to any LA on the documents or transactions referred to therein, which can be arranged separately and to which separate fee arrangements will apply.
- 1.2 You are acting as an informal working group to assist UK MBA in developing the Final Framework Agreement and related arrangements to a form which addresses concerns (including in relation to potential financial exposure, vires issues and *Wednesbury* reasonableness issues) which LAs may

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have in deciding whether to enter into the Final Framework Agreement, whilst still leaving UK MBA able to achieve its commercial objective of providing LAs with finance on cheaper terms than would otherwise be available to them. Your role has not been to negotiate terms on behalf of LAs, merely to identify issues and areas of concern that LAs may have and to assist UK MBA in addressing them (with the decision whether to enter into the Final Framework Agreement being for each individual LA to make). This memorandum accordingly reflects that approach.

- 1.3 Individual LAs will, as part of their decision-making process, need to demonstrate that they have understood the structure and the risks to which they will be exposed. For this purpose, we envisage that one of the documents that they should review and fully consider will be an analysis of their contractual risks and protections under the Final Framework Agreement. That is the purpose of this memorandum. This memorandum therefore (other than where indicated):
- (a) records in outline the areas of risk that we identified in our memorandum dated 17 July, 2015 (the **Original Memorandum**) in relation to the Original Framework Agreement (as defined below) that may make it problematic for LAs to agree to enter into the Final Framework Agreement;
 - (b) records in outline the suggested amendments proposed in the Original Memorandum as to how our concerns in (a) above might be addressed;
 - (c) records in outline the suggested amendments to the Revised Framework Agreement (as defined below) proposed by Jonathan Swift QC during the process of preparing the final form of his opinion (**Counsel's Opinion**);
 - (d) records UK MBA's responses, by way of (amongst other things) a memorandum from Clifford Chance LLP dated 4 August, 2015 (the **CC Memorandum**), on the matters raised in the Original Memorandum and by Jonathan Swift QC and the extent to which those matters have been dealt with in the Final Framework Agreement; and
 - (e) identifies any residual risks which, in our opinion, are or may be relevant for LAs' consideration before entering into the Final Framework Agreement.

However, each LA should consider for itself (i) the risks which we have identified as being, in our opinion, relevant and (ii) whether there are any other risks which it should take into account.

1.4 For the purpose of this memorandum, we have reviewed:

- (a) a draft of the Local Authority Financing Framework Agreement dated 10 April, 2015 (the **Original Framework Agreement**);

- (b) a draft of the Local Authority Financing Framework Agreement dated 2 September, 2015;
 - (c) a draft of the Local Authority Financing Framework Agreement dated 9 September, 2015;
 - (d) a draft of the Local Authority Financing Framework Agreement dated 16 September, 2015 (the **Revised Framework Agreement**);
 - (e) a draft of the Local Authority Financing Framework Agreement dated 14 December, 2015; and
 - (f) the Final Framework Agreement.
- 1.5 Each LA which originally enters into the Final Framework Agreement or subsequently accedes to it is referred to in this memorandum as a **Participating LA**.
- 1.6 For the purposes of this memorandum, we have replicated in outline the risks and corresponding suggested amendments highlighted by us in the Original Memorandum. This is for ease of reference only and priority should be given to the Original Memorandum in this regard.
- 1.7 Unless otherwise defined in this memorandum, words and expressions used in this memorandum shall have the meaning given to them in the Final Framework Agreement.
- 1.8 As with the Original Memorandum, we have divided our review of the Final Framework Agreement (and UK MBA's responses) into seven categories, namely:
- (a) accession of Participating LAs (section 2);
 - (b) scope of the Guarantees (section 3);
 - (c) scope of liabilities under the contribution arrangements (section 4);
 - (d) recovery of contribution amounts (section 5);
 - (e) loan terms (section 6);
 - (f) failure by UK MBA (section 7); and
 - (g) additional amendments to the Final Framework Agreement (section 8).

In addition, we discuss (in section 9) the possibility of a Participating LA committee, (in section 10) the possibility that two or more Participating LAs may join to form a "combined authority" and any implications this may have, and (in section 11) any mitigation arising by operation of law which is available to Participating LAs and the extent to which such mitigation is or is not precluded by virtue of the Final Framework Agreement.

2. ACCESSION OF PARTICIPATING LAS

2.1 *Risks to Participating LAs identified in the Original Framework Agreement*

In the Original Memorandum, we identified that there was no express provision in the Original Framework Agreement requiring UK MBA to undertake any form of due diligence as to compliance by each LA of its relevant internal procedures, including that each LA should evidence that:

- (a) its constitution and internal governance arrangements have been complied with;
- (b) it has been satisfied as to the prudence and reasonableness of the arrangements from its perspective; and
- (c) appropriate decision-making procedures have been followed and completed.

Although we would expect UK MBA to request evidence of the above as part of its due diligence of LAs that wish to become Participating LAs or wish to borrow, there was nothing in the Original Framework Agreement requiring it to do so. Given that, as a consequence of the Guarantee and contribution arrangements, each Participating LA will take credit risk against each other Participating LA, it will be important for each Participating LA to know that each other Participating LA has validly authorised its entry into, or accession to, both the Final Framework Agreement as a whole and each individual borrowing thereunder.

2.2 *Suggested amendments to the Original Framework Agreement*

In the Original Memorandum, we suggested the following amendments to remedy or mitigate the risk identified above:

- (a) evidence (satisfactory to UK MBA) of the matters referred to in 2.1 above be included as a condition precedent to any LA becoming a Participating LA and that such evidence should be available for inspection by other Participating LAs at their request (with the possibility that the Participating LAs may have a right to veto the accession of an LA on the basis that such evidence provided by the relevant LA is not satisfactory to the Participating LAs);
- (b) that the obligation to provide evidence to UK MBA of the satisfaction of governance requirements should extend throughout the life of each Participating LA's participation in the structure (and in particular in relation to any new borrowing by a Participating LA), and that there should be an obligation on UK MBA's part to perform robust checks on the Participating LAs' compliance with governance requirements; and

- (c) a procedural checklist of points for each LA considering becoming a Participating LA to consider, which could either form part of the Final Framework Agreement or be set out separately as guidance.

2.3 ***UK MBA response and current position in the Final Framework Agreement***

- (a) Pursuant to the Final Framework Agreement, each Participating LA will be expected to deliver a Certificate of Approval to UK MBA, such certificate to be delivered by an original Participating LA in accordance with clause 2.1.2 (*Participation required to borrow*) of the Final Framework Agreement and an acceding Participating LA in accordance with clause 2.2.1 (*Accession of Authorities*) of the Final Framework Agreement. The definition of Certificate of Approval is purposely broad in nature, presumably to address UK MBA's concern that flexibility would be required (bearing in mind the different internal requirements and processes applicable across the various Participating LAs). UK MBA is now also obliged to carry out credit assessments on each Participating LA at the time of their accession to the Final Framework Agreement (and at other prescribed times) and to monitor each Participating LA on an on-going basis (see clause 5.1 (*Credit Assessments*) of the Final Framework Agreement).
- (b) UK MBA has included an obligation in clause 5.6 (*Reporting*) of the Final Framework Agreement whereby it shall establish and maintain a public, freely accessible electronic website upon which it shall post each Certificate of Approval received from any Participating LA (as outlined in 2.3(a) above), therefore making it possible for all Participating LAs to have access to each other Participating LA's Certificate of Approval. UK MBA has not, however, added a right for Participating LAs to veto the accession of an LA. This is explained in the CC Memorandum on the basis that Participating LAs should be able to take comfort from the independence of UK MBA and of its governing body and decision making processes, this being a key benefit of the proposed structure.
- (c) In relation to the satisfaction of on-going governance requirements throughout the life of each Participating LA's participation in the structure, UK MBA (correctly) notes that representations as to status (contained in the standard loan terms) are repeated throughout the period of any borrowing under the structure. It has additionally included an obligation (see clause 6.2.1(i) (*Information: Miscellaneous*) of the Final Framework Agreement) on the Participating LAs to notify UK MBA in the event that any representation within the Final Framework Agreement or any loan agreement is breached at any time or there is a change of status of the Participating LA. UK MBA acknowledges the importance of on-going monitoring of Participating LAs (and cites, for example, the watch list provisions in the credit policy) but has otherwise pushed back on further surveillance requirements being embedded in the Final Framework Agreement (other than the broad undertaking to "perform on-going monitoring" in clause 5.1 (*Credit Assessments*) of the Final Framework Agreement) to

avoid administrative and financial burden. For additional comfort, UK MBA has agreed in the Final Framework Agreement to obtain an external review of its credit assessment process every five years. It has also agreed to refresh credit assessments of Participating LAs every year.

2.4 *Residual risks/concerns*

- (a) The suggestion in the Original Memorandum that Participating LAs might be given a right of veto in respect of acceding Participating LAs has not been taken. Instead, the intention is that Participating LAs should rely upon UK MBA's due diligence processes. UK MBA's obligations in this area have been made considerably more robust, not least through the requirement of the Certificate of Approval and also UK MBA's undertaking to carry out credit assessments on each acceding Participating LA (and also at other prescribed times). This is especially so given that Participating LAs have been granted visibility to an extent in this process through UK MBA's reporting requirements (as discussed in 2.3(b) above). We note that each of the Certificates of Approval that will be available on the freely accessible website will not include the relevant attachments (i.e. copies of all documentation required to evidence the chain of authority from the council to the relevant signatories), but presumably this will be satisfactory to Participating LAs to avoid any concerns surrounding confidentiality.
- (b) The structure of the Final Framework Agreement is designed such that a Guarantee would only need to be called upon where the contribution arrangements have failed to fill any shortfall under UK MBA's underlying borrowing facilities. However, where more than one LA has defaulted under its obligations under the Final Framework Agreement (which may be, in part, because UK MBA has not pursued its due diligence processes in a diligent manner, as described above) and the contribution arrangements are insufficient to cover the shortfall, the remaining Non-Defaulting LAs shall be liable to make payments under the Guarantees. Participating LAs therefore should consider whether they are comfortable with relying on UK MBA to exercise its discretion (in relation to its due diligence processes and governance) prudently and reasonably and in accordance with the terms of the Final Framework Agreement.

3. **SCOPE OF THE GUARANTEES**

3.1 *Risks to Participating LAs identified in the Original Framework Agreement*

In the Original Memorandum, we identified the following potential risks to Participating LAs:

- (a) the possibility of each Guarantee being called independently of any other Guarantee and for the full amount owing by UK MBA under any financing document which is covered by it (and consequently, each Participating LA being jointly and severally liable for all amounts owing by UK

MBA in respect of financing arrangements entered into by UK MBA during the term of the Guarantee);

- (b) the operative provisions of the Guarantee referring to liabilities which UK MBA may "now or hereinafter have" and the possibility that this could therefore be construed as including all existing debts of UK MBA;
- (c) the concept of "Creditors" being very broad and defined by reference to the various financing documents they may enter into with UK MBA. These documents are themselves defined (and do exclude hedging arrangements). However, the Original Framework Agreement did not set out a pro forma of terms or describe the core terms/any limitations on the scope of the terms of such documents;
- (d) the lack of any requirement to seek the consent of any Participating LA prior to UK MBA entering into any such financing document and the resulting lack of control over the terms on which UK MBA may enter into financing arrangements, Participating LAs therefore being subject to the risk that:
 - (i) UK MBA may enter into borrowings on terms which are not matched by the terms of loans to Participating LAs; and/or
 - (ii) UK MBA may enter into borrowings at a high rate of interest for the purpose of funding one or more loans to Participating LAs which are considered to be a higher credit risk than the other Participating LAs.

The extent of the Participating LAs' overall risk could not therefore be quantified or properly considered for the purpose of assessing the reasonableness of the Participating LA entering into its Guarantee; and

- (e) after its termination, a Guarantee would continue to be binding on a Participating LA in respect of further issues of bonds which are issued after the date of such termination but which are intended to be fungible with bonds issued during the term of the Guarantee and there being no consent requirements in respect of any such further issues and no restrictions on UK MBA in respect of the amount of any such further bonds (the Guarantee therefore potentially remaining uncapped).

3.2 *Suggested amendments to the Original Framework Agreement*

- (a) In the Original Memorandum we suggested that each Participating LA only guarantees financing documents which were entered into for the purpose of funding its borrowings from UK MBA.

However, we recognised that this approach may not be acceptable to UK MBA (and indeed would undermine the efficacy of the structure).

- (b) We therefore suggested the following amendments/additional provisions to remedy or mitigate the risks identified above (particularly to give comfort as to the potential extent of each Participating LA's liability under their respective Guarantees):
- (i) a covenant that UK MBA will only enter into matched funding arrangements (i.e. will only incur borrowings where the proceeds thereof will be on-lent to Participating LAs which will repay interest and principal in corresponding amounts and on corresponding dates (subject to the requirement to actually pay a specified number of dates earlier) and will pay an additional amount in respect of the expected fees and expenses of UK MBA);
 - (ii) (notwithstanding the prohibition on UK MBA designating any hedging arrangements as Finance Documents) an explicit restriction on UK MBA entering into any hedging arrangements;
 - (iii) a restriction on any further borrowing by UK MBA if a specified proportion (perhaps 75 per cent.) of Participating LAs so required;
 - (iv) a covenant as to the maximum amount of outstanding borrowings UK MBA could incur at any time without specifically seeking the consent of Participating LAs;
 - (v) a set of framework terms on which UK MBA is permitted to borrow without specifically seeking the consent of Participating LAs;
 - (vi) limitations on the amount that any single Participating LA may borrow from UK MBA at any time;
 - (vii) limitations on the early repayment of borrowings by Participating LAs where this would result in the borrowings of any remaining Participating LAs exceeding an agreed threshold (as a percentage of the aggregate borrowings of all Participating LAs);
 - (viii) subject to an initial "ramp-up" period, a requirement that there be a minimum number of Participating LAs at any time with outstanding borrowings (accompanied by either (i) restrictions on early repayments, (ii) increased control rights of the remaining Participating LAs and/or (iii) a restriction on entering into new borrowings, in the event that it is breached);

- (ix) either (i) a prohibition on UK MBA issuing bonds which will be fungible with bonds issued previously where a Guarantee that covers the original issue of bonds has since been terminated or (ii) where a Participating LA will continue to be liable under its Guarantee in respect of bonds issued after the term of the Guarantee which will be fungible with bonds issued during the term of the Guarantee, limitations on the amount by which UK MBA may increase the nominal amount of such bonds (either in monetary terms and/or as a percentage of the nominal amount of such bonds as at the date the relevant Participating LA terminates its Guarantee);
- (x) a requirement to maintain records of, amongst other things, the amount of borrowings by UK MBA, the number of Participating LAs and the amount of borrowings by each and the amount of each Participating LA's exposure under its Guarantee and the contribution arrangements, and either to deliver copies of such records to each Participating LA periodically or to make such records available for inspection by Participating LAs at their request; and
- (xi) a requirement to hold an annual meeting to discuss the financial position of UK MBA and to answer any questions that Participating LAs may have in respect of its governance, credit exposure etc.

3.3 ***Suggested amendments to the Revised Framework Agreement***

As a result of discussions with Jonathan Swift QC in the course of obtaining the Counsel's Opinion, further amendments were also suggested, as follows:

- (a) that references in clause 2, clause 3.5, clause 3.6 and clause 6 of the standard guarantee (contained at Schedule 2 to the Revised Framework Agreement) should refer to the "Relevant Liabilities" (as opposed to the "Liabilities", as drafted);
- (b) it was queried whether clause 3.6 of the standard guarantee (contained at Schedule 2 to the Revised Framework Agreement) may have the effect of "cutting away" the provisions of clause 3.9.2 (*Order of application of proceeds*) of the Framework Agreement (given the reference to "contingent obligations" which includes all future payments) and so it was suggested that clause 3.6 of the standard guarantee (contained at Schedule 2 to the Revised Framework Agreement) be amended so as to apply only where the "Relevant Liabilities" are overdue;
- (c) that the obligations under a Guarantee should only commence once funds have been lent by UK MBA to a Participating LA (rather than upon acceding to the Framework Agreement as was the position in the Revised Framework Agreement); and

- (d) that the obligations to which a Guarantee is subject should be subject to some form of longstop, i.e. that a borrowing limit be imposed on UK MBA's borrowings. 25 years was suggested as a possible limit.

3.4 ***UK MBA response and current position in the Final Framework Agreement***

- (a) As anticipated at 3.2(a) above, UK MBA stresses the importance of all Participating LAs guaranteeing all debt obligations of UK MBA to avoid its investors/lenders wishing to conduct due diligence on each individual Participating LA (and negating some of the key benefits of the structure) as opposed to relying on the support of the LA sector as a whole. Such a structure is a necessity in order to allow UK MBA to provide LAs with finance on cheaper terms than would otherwise be possible. Participating LAs can take comfort from the additional protections included in the Final Framework Agreement and the basic aim of the structure that the Guarantees should never need to be called upon (the achievement of which has been enhanced by the additional measures included in the Final Framework Agreement).
- (b) In relation to our proposed amendment at 3.2(b)(i) above, pursuant to the new clause 5.3 (*Matched financing arrangements*) of the Final Framework Agreement, UK MBA can only designate documents as "Finance Documents" (and therefore make them subject to a Participating LA's Guarantee) where such documents are entered into for the purpose of obtaining funds to be on-lent as loans to Participating LAs. Furthermore, UK MBA may only borrow amounts under "Finance Documents" (i) where the funds borrowed are for the purposes of on-lending to Participating LAs and (ii) where the interest payable in respect of such amounts is no more than the interest payable by Participating LAs under any loan to such Participating LA.
- (c) In response to our proposed amendment at 3.2(b)(ii) above, an explicit restriction has been included on UK MBA designating any hedging arrangement as a "Finance Document" (see clause 5.3.1 (*Matched Funding Arrangements*) of the Final Framework Agreement).
- (d) UK MBA has included a restriction (in line with our proposed amendment at 3.2(b)(iii) above) precluding it from borrowing any further sums (see clause 5.4 (*Restriction of borrowing*) of the Final Framework Agreement) where instructed to do so by both (i) more than 50 per cent. of Participating LAs and (ii) where the outstanding loan amounts attributable to such Participating LAs is greater than 50 per cent. of the total outstanding loan amounts attributable to all Participating LAs. Note that this provision does not preclude UK MBA (a) from borrowing further amounts under any Finance Document to make a payment when due under a Finance Document where a Defaulting LA has failed to make such payment and (b) from borrowing under any Contribution Loan.

- (e) UK MBA has not included a covenant as to the maximum amount of outstanding borrowings it can incur without seeking the consent of Participating LAs (as per our suggestion at 3.2(b)(iv)). UK MBA explain that this is to avoid the administrative burden of obtaining consents from each Participating LA when the reason for exceeding the limit may be that UK MBA has been successful and the demand from LAs to borrow is great. However, Participating LAs now have the power to restrict UK MBA from entering into or borrowing any sums due under any Finance Documents (see 3.4(d) above) which would effectively preclude UK MBA from borrowing more than Participating LAs are comfortable with and Participating LAs potentially becoming over exposed on their Guarantees.
- (f) Similarly, UK MBA has not included restrictions on the terms upon which it can borrow from lenders under any Finance Document (pursuant to our suggestion at 3.2(b)(v) above) on the basis that Participating LAs should be able to rely on UK MBA's governance policies and the fact that it is obliged to on-lend such funds received to the Participating LAs. Our concerns have been partially addressed by virtue of the restriction placed on UK MBA to only borrow amounts under Finance Documents where the interest payable thereon is no more than the interest payable under the relevant Participating LA loan.
- (g) In response to our proposed amendment at 3.2(b)(vi), UK MBA has incorporated concentration limits (previously contained in the credit policy) into the Final Framework Agreement (see clause 5.2 (*Concentration Limits*) of the Final Framework Agreement). However, the proposed amendment at 3.2(b)(vii) (i.e. the suggestion that early repayments by one Participating LA are restricted where such a repayment would lead to another Participating LA's borrowings breaching the concentration limit) has not been adopted in order to protect Participating LA's right to pre-pay their loans (and potentially exit the structure) and to avoid placing any restrictions on this autonomy throughout the life of the structure.
- (h) We suggested at 3.2(b)(viii) above that, subject to an initial "ramp-up" period, there should be a minimum number of Participating LAs at any one time with outstanding borrowings. The Final Framework Agreement has not been amended to reflect this concern, presumably for the same reasons as above (i.e. to avoid restricting the autonomy of Participating LAs prepaying their loans and leaving the structure). We note, however, that, pursuant to clause 5.6.2 (Reporting) of the Final Framework Agreement, UK MBA is now obliged to notify each Participating LA promptly if any Participating LA gives UK MBA notice that it intends to prepay all of its loans.
- (i) UK MBA has amended the Final Framework Agreement so that, where a Guarantee is terminated, it will not apply to any subsequent fungible issue of bonds (and therefore, in effect, no tap issuance will be possible without a release of the terminated guarantee by the existing bondholders).

- (j) Our proposal at 3.2(b)(x) above, in relation to the record keeping of UK MBA, has been addressed by the inclusion of clause 5.5 (*Record-keeping*) of the Final Framework Agreement, requiring UK MBA to maintain robust record keeping policies sufficient to record and monitor its borrowings and loans made to Participating LAs, as well as the amounts guaranteed by each Participating LA. UK MBA has not included the proposal of an annual meeting (allowing Participating LAs to discuss its financial position and to answer any questions posed by them) as it anticipates that the shareholder AGM will perform this function.
- (k) The suggested amendments at 3.3(a) above have been incorporated in the Final Framework Agreement, but by using a new term "Guaranteed Liabilities" rather than "Relevant Liabilities" as previously.
- (l) The suggested amendment at 3.3(b) above has been incorporated in the Final Framework Agreement. However, UK MBA was concerned to prevent Participating LAs that had paid out under their Guarantees from taking action against UK MBA to recover sums when UK MBA had not recovered from the relevant Defaulting Authority, and thereby potentially making UK MBA insolvent. Consequently, it has inserted a new clause 3.8.2 in the Final Framework Agreement to make it clear that Participating LAs cannot do that (but still leaving them able to pursue other claims, eg for breach of covenant etc) - which we regard as a satisfactory solution.
- (m) The suggested amendment at 3.3(c) above has been incorporated in the Final Framework Agreement.
- (n) The suggested amendment at 3.3(d) above has been incorporated in the Final Framework Agreement and a limit of 50 years has been included.

3.5 ***Residual risks/concerns***

- (a) In relation to 3.4(d) above, and the requirement that UK MBA be instructed in these circumstances by *both* (i) more than 50 per cent. of Participating LAs and (ii) where the outstanding loan amounts attributable to such Participating LAs is greater than 50 per cent. of the total outstanding loan amounts attributable to all Participating LAs, Participating LAs should consider whether they are comfortable with this.
- (b) As discussed at 3.4(f) above, UK MBA still has autonomy (to an extent) to agree to borrow funds under Finance Documents on terms it chooses (other than with the limitations identified above). This therefore, theoretically, still leaves Participating LAs with exposure to the risk that UK MBA may enter into borrowings at a high rate of interest for the purpose of funding loans to Participating LAs which are deemed to be a higher credit risk. The extent to which Participating LAs can quantify or properly consider their exposure and risk to the structure (and the reasonableness of the Participating LA entering into the Guarantee) is therefore potentially restricted. Participating LAs therefore should

consider whether they are comfortable with relying on UK MBA to exercise its discretion (in relation to the terms upon which it borrows) prudently and reasonably and in accordance with the terms of the Final Framework Agreement.

- (c) We note above that UK MBA considers that the annual AGM will be the platform upon which Participating LAs can participate in the governance and running of the structure. We note that the intention of UK MBA is that all Participating LAs become shareholders in UK MBA, however, in the interim, there will potentially be Participating LAs without recourse to such annual AGM and therefore without direct access to UK MBA and its governance processes.
- (d) However, we note that, by operation of law, where a Participating LA has paid more than its rateable proportion of any debt under its Guarantee, such Participating LA shall have the right to seek rateable contributions from the other Participating LAs (as further described in 11.2(b) below).

4. SCOPE OF LIABILITIES UNDER CONTRIBUTION ARRANGEMENTS

4.1 *Risks to Participating LAs identified in the Original Framework Agreement*

In the Original Memorandum, we identified the following potential risks to Participating LAs:

- (a) unlike the terms of each Participating LA's Guarantee, the contribution provisions set out in the Original Framework Agreement:
 - (i) apply in respect of any defaults occurring for so long as an LA is a Participating LA and not by reference to when the original borrowing was entered into; and
 - (ii) cease to apply (by virtue of how the proportionate shares are calculated) upon a Participating LA having repaid its borrowings from UK MBA in full.

This therefore created a potential mismatch in respect of the amounts for which an LA could be liable under its Guarantee and amounts for which an LA could be liable under the contribution provisions;

- (b) as mentioned above, the contribution amounts required of each Non-Defaulting LA are calculated by reference to the outstanding loan amount of such Non-Defaulting LA as a proportion of the aggregate outstanding loan amount of all Non-Defaulting LAs. Therefore, once a Participating LA has repaid its borrowings from UK MBA in full, its proportionate share of any shortfall will be zero. Consequently, the repayment of borrowings by one or more Participating LAs will result in the proportionate level of exposure of the remaining Participating LAs, in the event of a default by a Defaulting LA, increasing. This will be the case even where a Participating LA has purposely repaid

its borrowings in full to reduce its obligations under the contribution arrangements after becoming aware, or anticipating, that another Participating LA will become a Defaulting LA;

- (c) the contribution amounts which may be required of any Participating LA at any time will therefore be subject to:
 - (i) the number of Participating LAs with outstanding borrowings from UK MBA at such time; and
 - (ii) the amount of outstanding borrowings from UK MBA which each Participating LA may incur,

and the Original Framework Agreement did not envisage any limitations on the above, nor did the Participating LAs have any controls over these; and

- (d) the Original Framework Agreement provided that contribution loans bear interest at a rate equal to the rate payable by the Defaulting LA under its loan minus a certain number of basis points, “or otherwise at 2 per cent per annum”. A Non-Defaulting LA that makes a contribution loan may have to borrow at short notice, or divert funds from other sources, to fund the contribution loan, and the interest rate provided for under the Original Framework Agreement may not adequately compensate it for its actual funding costs. In addition, it was not clear what the reference to “or otherwise” means (and, in particular, whether it is meant to be a minimum or a maximum).

4.2 *Suggested amendments to the Original Framework Agreement*

In the Original Memorandum, we suggested the following amendments to remedy or mitigate the risks identified above:

- (a) the additional provisions suggested in 3.2(b) above which would also give Participating LAs some comfort as to the potential extent of their liability under the contribution provisions;
- (b) to address the concern that some Participating LAs may (upon believing that another Participating LA is likely to become a Defaulting LA) side-step the obligation to make contribution amounts by repaying their outstanding borrowings to UK MBA (and thereby increasing the potential obligations of other Participating LAs), building in a provision requiring that each Participating LA fund a specified minimum amount of any such request (for example, the lower of a specified monetary amount and a percentage of the shortfall) for so long as it would otherwise be required to make payment under its Guarantee;

- (c) providing for a minimum interest rate on a contribution loan at least equal to the relevant Non-Defaulting LA's actual funding cost (with an appropriate adjustment to the interest rate owing by the Defaulting LA to match this) and that the reference to "or otherwise at 2 per cent per annum" be clarified; and
- (d) for UK MBA to explore and model the effects of providing for LAs' contribution obligations to be capped, for example at various percentage levels above the amounts of their borrowings, and to confirm whether, if such caps were built in, the contribution arrangements would still be robust enough to ensure that, in practice, the Guarantees would be unlikely to be called.

4.3 *Suggested amendments to the Revised Framework Agreement*

As a result of discussions with Jonathan Swift QC for the purposes of producing the Counsel's Opinion, it was also proposed that, to prevent a situation whereby a Participating LA makes prepayments under its loan in order to limit its exposure to the contribution arrangements (for example, to address a concern as to the financial health of another Participating LA), contributions under the contribution arrangements be calculated by reference to outstanding borrowings, disregarding any early repayments that a Participating LA may have made, whether for valid commercial reasons or otherwise.

4.4 *UK MBA response and current position in the Final Framework Agreement*

- (a) In relation to the potential mismatch in respect of amounts for which a Participating LA could be liable under its Guarantee and amounts for which a Participating LA could be liable under the contribution provisions, UK MBA acknowledge this mismatch but note that the structure is designed to operate in this way. UK MBA notes that clearly it is of importance to allocate any default amongst Participating LAs and that using outstanding loans as the criteria upon which to do this was selected as (i) it links the risks with those taking the benefits of using the Final Framework Agreement and the UK MBA structure to borrow funds and (ii) it permits Participating LAs to exit the UK MBA structure (even though they may still remain liable under their Guarantee).
- (b) UK MBA has not included any requirement for each Participating LA to fund a specified minimum amount of any contribution request (as suggested at 4.2(b) above). This is on the basis that such a concept would (i) undermine the intention that Participating LAs are able to achieve a "clean exit" (as discussed above) and (ii) would make the structure unduly complex.
- (c) UK MBA has also not included a mechanism whereby any contribution is calculated on the basis of outstanding borrowings (disregarding any early repayment) (as suggested at 4.3 above). This is on the basis that, to prohibit a Participating LA from making early prepayments and releasing itself

from its obligations under the contribution arrangements would unfairly penalise those Participating LAs legitimately making prepayments for valid commercial reasons (eg the ability to source funding on cheaper terms elsewhere).

- (d) Similarly, UK MBA has not included a cap on contribution obligations in the Final Framework Agreement on the basis that this could result in a shortfall and eventually a call on one or more of the Participating LAs' Guarantee, being the worst case scenario for the structure for both UK MBA and the Participating LAs.
- (e) Clause 3.4 (*Contribution Loans*) of the Final Framework Agreement has been amended to reflect the amendment suggested at 4.2(c) above. Interest on Contribution Loans will (as amended) accrue at a rate equal to the higher of (i) the interest rate payable by the Defaulting LA under the relevant Participating LA loan and (ii) the prevailing rate offered by the Public Works Loan Board (**PWLB**) in respect of loans having the same maturity and interest basis as the relevant Participating LA loan.

4.5 *Residual risks/concerns*

As described above, UK MBA has not accepted all of our suggested amendments in relation to the scope of a Participating LA's liabilities under the contribution arrangements (particularly those in 4.4(b), 4.4(c) and 4.4(d) above). Despite the fact that the points raised in our Original Memorandum and Counsel's Opinion do entail risks to an extent for the Participating LAs, in our opinion, it would be reasonable for Participating LAs to take the view that the benefit of Participating LAs being able to exit the structure cleanly (other than those liabilities remaining under Guarantees) without future potential liabilities of a nature that they cannot quantify outweigh those risks.

5. RECOVERY OF CONTRIBUTION AMOUNTS

5.1 *Risks to Participating LAs identified in the Original Framework Agreement*

In the Original Memorandum, we identified the following potential risks to Participating LAs:

- (a) the Original Framework Agreement does not permit any Non-Defaulting LA to take action against a Defaulting LA. While we recognise that it would be more efficient for UK MBA to do so (rather than individual Non-Defaulting LAs) and the directors of UK MBA will be incentivised to do so (to ensure that they recover amounts which will then be owing to the Non-Defaulting LAs under the contribution loans), the Original Framework Agreement does not include any covenant on UK MBA to do so nor does it contain any mechanics for the Non-Defaulting LAs to take action on its behalf if it fails to do so; and

- (b) upon recovering amounts from a Defaulting LA, the Original Framework Agreement provides that such amounts will be applied in the order set out therein, which is broadly as follows:
- (i) to pay amounts owing to Creditors;
 - (ii) to repay amounts owing to an LA under its Guarantee;
 - (iii) to repay contribution loans to Participating LAs which agreed to pay more than their required contribution amounts;
 - (iv) to repay contribution loans advanced following a Further Contribution Notice; and
 - (v) to repay contribution loans advanced following a Contribution Notice.

It may be possible that recovered amounts could be applied by refunding LAs which have paid under their Guarantees prior to repaying contribution loans. Given the potential mismatch described under 4.1(a) above, this could result in an LA being repaid under its Guarantee where it had not been obliged to make a contribution amount in respect of the relevant shortfall that is being repaid.

5.2 *Suggested amendments to the Original Framework Agreement*

In the Original Memorandum, we suggested the following amendments to remedy or mitigate the risks identified above:

- (a) requiring UK MBA to exercise all its rights (promptly) to recover all amounts owing by a Defaulting LA to UK MBA;
- (b) permitting Non-Defaulting LAs to take action in the name of UK MBA to recover amounts owing by a Defaulting LA in the event that UK MBA fails to do so within a specified period of time. This could be an ability for any individual Non-Defaulting LA to take action, but it is probably more practicable to provide for the formation of a steering committee by the Non-Defaulting LAs at the relevant time, with power for one Non-Defaulting LA to act on behalf of the others, on such terms as they may agree at the time, and with an obligation on UK MBA's part to give the Non-Defaulting LAs all relevant information to enable the formation of the committee and to enable the committee to perform its functions; and
- (c) amending the order of priorities in which recovered amounts are applied to ensure that these are applied in the repayment of contribution loans prior to amounts owing by UK MBA in respect of any Guarantee.

5.3 *UK MBA response and current position in the Final Framework Agreement*

- (a) In relation to the suggested amendment at 5.2(a) above, UK MBA has included an obligation to promptly exercise its rights and take action to recover all amounts owing to it by a Defaulting LA (see clause 3.7 (*Enforcement by the Company*) of the Final Framework Agreement). Further, in a situation where UK MBA fails to take such action within 90 days, pursuant to clause 3.8 (*Action to recover debt through Company only*) of the Final Framework Agreement, UK MBA will now be obliged to take such action as the "Directing Authorities" (i.e. both (i) 50 per cent. of the number of all Participating LAs and (ii) where the aggregate outstanding amount of loans extended to such Participating LAs is greater than 50 per cent. of the total outstanding loan amounts at that time extended to all Participating LAs) direct.
- (b) In relation to our suggested amendment at 5.2(c) above, UK MBA query why Participating LAs would prefer amounts payable under contribution loans to be paid prior to those amounts payable in respect of any Guarantee. This is on the basis that a call on a Guarantee means that one or more Participating LA is taking the burden of the default as opposed to the whole Participating LA group (in accordance with the principles of the Final Framework Agreement). In our opinion, this does seem a reasonable justification.

5.4 *Residual risks/concerns*

In relation to 5.3(a) above, and the requirement that UK MBA be instructed in these circumstances by *both* (i) more than 50 per cent. of Participating LAs and (ii) where the outstanding loan amounts attributable to such Participating LAs is greater than 50 per cent. of the total outstanding loan amounts attributable to all Participating LAs, Participating LAs should consider whether they are comfortable with this.

6. LOAN TERMS

6.1 *Risks to Participating LAs identified in the Original Framework Agreement*

In the Original Memorandum, we identified the following potential risks to Participating LAs:

- (a) the standard terms pursuant to which it is envisaged that Participating LAs will borrow from UK MBA which were set out in the Original Framework Agreement did not include any conditions precedent requiring the Participating LA to evidence, for example, the fact that it will be acting in compliance with the Prudential Code for Capital Finance in Local Authorities (the **Prudential Code**) or that it would otherwise be able to satisfy the additional checks which would be required if it were to seek to borrow from the PWLB;
- (b) the standard terms included provisions requiring the Participating LA to gross up amounts owing to UK MBA in the event of a withholding or deduction of tax which is required by law and to pay any

increased costs incurred by UK MBA as a result of a change of law or regulation. While these provisions are not unusual, they would typically be accompanied by a right of the borrower to repay the loan at par in such circumstances. The standard terms set out in the Original Framework Agreement did not include such a right;

- (c) the standard loan terms also did not address circumstances in which UK MBA may be required to redeem bonds it has issued (or repay loans it has entered into) early, for example where it is required to gross up amounts in respect of tax or where its obligations thereunder become illegal. In such circumstances, if there is no corresponding mandatory redemption of the loans to Participating LAs which were funded by such borrowings, either:
 - (i) UK MBA will need to draw on liquidity facilities to do so (where possible) which will increase costs payable by all Participating LAs;
 - (ii) UK MBA will need to rely on its paid up share capital (which would unfairly burden those Participating LAs which are also members of UK MBA); and/or
 - (iii) UK MBA will default and the bondholders/lenders will call on one or more of the Guarantees (as UK MBA would not have been able to make a prior claim for contribution amounts); and
- (d) the Original Framework Agreement envisaged that loans to Participating LAs could be made on terms other than the standard terms set out therein. The ability for UK MBA to agree different terms with one or more Participating LAs may be detrimental to the other Participating LAs, for example by increasing the likelihood that they will be required to fund contribution amounts or that their Guarantees will be called.

6.2 *Suggested amendments to the Original Framework Agreement*

In the Original Memorandum, we suggested the following amendments to remedy or mitigate the risks identified above:

- (a) that evidence (satisfactory to UK MBA) of a Participating LA's compliance with the Prudential Code and other checks similar to those that the PWLB would carry out be required as a condition precedent to any LA borrowing from UK MBA and that such evidence should be available for inspection by other Participating LAs at their request. As above in relation to the accession of Participating LAs, consideration may also be given as to whether the Participating LAs should have a right to veto any borrowing on the basis that such evidence provided by the relevant LA is not satisfactory to the Participating LAs; and

- (b) we suggested amending the standard loan terms to provide for:
 - (i) a right of repayment (at par) in the event that the Participating LA is required to gross up in respect of any withholding or deduction or to pay increased costs;
 - (ii) a mandatory repayment obligation in the event that UK MBA is required to redeem bonds it has issued (or to repay loans it has entered into) early and such bonds were issued (or such loan was entered into) for the purpose of funding the relevant loan to the Participating LA; and
 - (iii) either:
 - (A) removing the ability of UK MBA to on-lend to Participating LAs on terms other than the standard terms set out in the Original Framework Agreement; or
 - (B) providing a set of framework or core terms on which UK MBA is permitted to enter into such on-lending.

6.3 ***UK MBA response and current position in the Final Framework Agreement***

- (a) UK MBA has pushed back on imposing a requirement on Participating LAs to provide evidence of their compliance with the PWLB's checks as a condition precedent to any Participating LA borrowing from UK MBA. They have, however, included, at clause 12.4 (*Compliance with statutory requirements*) of the standard loan terms, a representation to be given by each Participating LA upon entering into a loan with UK MBA (and to be repeated upon the date of the relevant Loan Confirmation, the Utilisation Date and on each Interest Payment Date in relation to that loan) as to compliance with statutory requirements and related regulations (including, amongst other things, the Prudential Code), as proposed at 6.2(a) above.
- (b) For the reasons given at 2.3(b) above, UK MBA has not added a power of veto for Participating LAs where the evidence provided by other Participating LAs in relation to compliance with statutory requirements is not satisfactory.
- (c) In relation to our suggested amendment at 6.2(b)(i) above, UK MBA has included such right of repayment (see clause 6.3 (*Voluntary Prepayment for Tax*) of the standard loan terms), in relation to tax gross up but not in relation to increased costs, on the relevant Participating LA giving not less than 60 days' notice to UK MBA.
- (d) In relation to our suggested amendment at 6.2(b)(ii) above, UK MBA has included a mandatory prepayment provision (see clause 6.2 (*Mandatory prepayment of funding arrangements*) of the

standard loan terms) requiring Participating LAs to prepay their relevant loan where UK MBA is required to prepay any funding entered into in order to fund any loan to a Participating LA.

- (e) UK MBA has not included any amendments to address our concerns surrounding loans being made to individual Participating LAs on terms other than the standard terms set out in the Final Framework Agreement. UK MBA argue that the expectation is that all lending will be on the terms as set out in the Final Framework Agreement but that UK MBA prefers to retain flexibility to make amendments if it deems necessary or beneficial. UK MBA's intention is that its strict governance requirements should give Participating LAs the protection and comfort they need in this regard.

6.4 *Residual risks/concerns*

- (a) In relation to the absence of provisions providing a framework or core terms on which UK MBA is permitted to enter into on-lending to Participating LAs, Participating LAs should consider whether this is a concern to them or not. In our opinion, the extent to which Participating LAs can quantify or properly consider their exposure and risk to the structure (and the reasonableness of the Participating LA entering into the Guarantee) is potentially restricted as the potential for Participating LAs to be required to fund contribution amounts or for their Guarantees to be called is, at least theoretically, increased. Each Participating LA should assess for itself whether this is in practice a concern to it or not.
- (b) We believe that there is still a potential cost risk to Participating LAs in respect of the absence of any right of prepayment where UK MBA is subject to increased costs. Currently, Participating LAs (by virtue of clause 10 (*Increased Costs*) of the standard loan terms) are obliged to pay to UK MBA the amount of any such increased costs, without the power to prepay their loans at par (as we would expect to see in a standard bank loan agreement) other than by repayment on a Voluntary Prepayment Date at the (potentially costly) Prepayment Amount. We note that, to avoid any mismatch under the bonds, there could be an early redemption right inserted into the bonds. If this is not acceptable to UK MBA, we think that Participating LAs should consider whether to require that there be an obligation on UK MBA to pass through increased costs on a pro rata basis across all Participating LAs (or indeed that the right to charge increased costs be removed altogether).

7. **FAILURE BY UK MBA**

7.1 *Risks to Participating LAs identified in the Original Framework Agreement*

In the Original Memorandum, we identified the following potential risks to Participating LAs:

- (a) the Original Framework Agreement did not include any restrictions on the activities of UK MBA or include the ability of the Participating LAs to step in (or appoint another entity to take control of UK

MBA) in the event that it fails to comply with its obligations under the Original Framework Agreement. Although, in certain circumstances, an administrator may step in and enforce UK MBA's rights under the Original Framework Agreement, in practice this would take time to put in place; and

- (b) should UK MBA fail, for example, to issue Contribution Notices when required and have insufficient funds to pay its Creditors, the Creditors are likely to call the Guarantees, in which case, a Participating LA could be required to pay, under its respective Guarantee, an amount which would exceed the amount it would otherwise have been required to fund under the contribution arrangements.

7.2 *Suggested amendments to the Original Framework Agreement*

In the Original Memorandum, we suggested the following amendments to remedy or mitigate the risks identified above (whilst acknowledging that, as UK MBA is intended to be a financing vehicle, the risk of its default may be considered low):

- (a) restrictive covenants limiting the scope of its activities (including, for example, a restriction on the establishment of subsidiaries);
- (b) obligations on UK MBA's part to notify Participating LAs of any problems or material adverse developments (not only in relation to LAs but also in relation to UK MBA itself), in order to provide Participating LAs with an early warning of potential problems;
- (c) provisions relating to Participating LA representation on the board of UK MBA; and
- (d) the ability for individual Participating LAs to issue Contribution Notices where UK MBA is obliged to but fails to do so. It may also be helpful to provide for the ability to form a steering committee, on the basis described in 5.2(b) above.

7.3 *UK MBA response and current position in the Final Framework Agreement*

- (a) UK MBA has included a restrictive covenant limiting the scope of its activities (see clause 5.7 (*Business of the Company*) of the Final Framework Agreement). UK MBA notes that there are additionally restrictions on its activities in its constitutional documents. Reporting requirements have also been included (see clause 5.6.3 (*Reporting*) of the Final Framework Agreement) whereby UK MBA is obliged to notify all Participating LAs promptly of any event or circumstance which it believes might have a material adverse effect on UK MBA's assets, operations, condition (financial or otherwise), prospects, or its ability to comply with the Finance Documents.

- (b) Our proposal at 7.2(c) above in relation to representation of Participating LAs on the board of UK MBA has not been addressed. UK MBA explains that the Local Government Association currently has a right of veto over appointments to the board of UK MBA and that this should be considered as adequate protection for Participating LAs. UK MBA further argues that Participating LAs can also participate in governance matters in their capacity as shareholders.
- (c) We note that UK MBA has not included the ability for individual Participating LAs to issue Contribution Notices where UK MBA is obliged but fails to do so (as per our proposed amendment at 7.2(d) above).

7.4 *Residual risks/concerns*

- (a) The restrictive covenant as to activities that UK MBA can carry out (as discussed at 7.3(a) above) does not include a restriction on the establishment of subsidiaries (and indeed provides that UK MBA shall be permitted to incorporate subsidiaries which may carry out other business). Participating LAs should consider whether or not they should require some parameters as to what business any subsidiary may carry out or a total restriction on incorporating subsidiaries (as originally proposed).
- (b) In relation to UK MBA's suggestion that Participating LAs shall be able to participate in governance matters in their capacity as shareholders in UK MBA, we note that the intention of UK MBA is that all Participating LAs shall eventually become shareholders in UK MBA. However, in the interim, there will potentially be Participating LAs who are not shareholders and will therefore be excluded from any such participation.
- (c) A potential risk remains in relation to a scenario where UK MBA fails to issue Contribution Notices and, as a result, UK MBA's creditors resort to calling on the Participating LAs' Guarantees. In the Original Memorandum, we suggested for consideration whether individual Participating LAs should have the ability to issue Contribution Notices where UK MBA is obliged to but fails to do so. However, we note that, under clause 3.3 (*Contribution Notices*) of the Final Framework Agreement, UK MBA is obliged to issue Contribution Notices where it is unable to obtain funding from liquidity facilities or other sources of finance available to it, and it is stated as a general principle (see clause 3.11 (*Guiding principle*) of the Final Framework Agreement) that UK MBA should exercise its rights under the Final Framework Agreement such as to avoid Guarantees ever being called.
- (d) LAs are further subject to the potential risk that UK MBA fails to comply with its obligations under the Final Framework Agreement, either through (i) the failure to service (i.e. pass through funds received from LAs) its debt obligations (whether to LAs, or under bilateral borrowing facilities or bond issues), or (ii) failure on the part of UK MBA to sustain and police robust due diligence and

credit checks in relation to acceding LAs pursuant to its obligations under the Final Framework Agreement. Participating LAs should make their own assessment as to whether these potential risks are a concern to them or not.

8. ADDITIONAL AMENDMENTS TO THE FRAMEWORK AGREEMENT

8.1 *Suggested amendments to the Original Framework Agreement*

In the Original Memorandum, in addition to the points raised above, we also proposed the following amendments which are more general in nature:

(a) as the Original Framework Agreement did not include any express provisions for making amendments to it, if any amendments are required these would require the unanimous consent of all parties. Given the potential number of Participating LAs, this may be impractical. We therefore suggested that provisions are included whereby amendments could be made which require consent of, for example:

(i) only a certain percentage of Participating LAs (either by number or by reference to then outstanding borrowings, or both); or

(ii) a committee of the kind referred to in section 9 below,

which, in either case, could if thought appropriate, carve out a specified list of reserved matters for which unanimous consent of all Participating LA is required;

(b) if a Participating LA has repaid its borrowings and wishes to terminate its obligations under its Guarantee, the Original Framework Agreement provided that it must first request confirmation from UK MBA that the relevant conditions have been satisfied. Although UK MBA is required to give such confirmation within a specified time period, we queried the necessity of this, given that the relevant conditions can be objectively determined. To avoid any delay as a result of the need for UK MBA to give such confirmation (or where it fails to do so), we suggested that these provisions be amended to remove this requirement or to allow a Participating LA to give its termination notice if UK MBA fails to respond within a specified time limit;

(c) the Original Framework Agreement included obligations of confidentiality on Participating LAs. However, these obligations did not extend to UK MBA. We suggested that the Final Framework Agreement be amended to make these obligations reciprocal;

- (d) we suggested that both the events of default set out in the loan standard terms and the definition of Defaulting Authority be amended to remove reference to a report under section 114 of the Local Government Finance Act 1988; and
- (e) we understand that, for those Participating LAs that are also shareholders in UK MBA, the commercial intention is that there will be some mechanism for compensating them for the use of the money representing their share capital to cover UK MBA's initial costs. There was no such mechanism in the Original Framework Agreement, and we suggested that this be included. One possibility would be to provide that, in relation to those Participating LAs, the top-up element in the interest rate paid by them on loans to them (i.e. the top-up to cover UK MBA's costs) be lower than that payable by other Participating LAs that are not shareholders, until they have been sufficiently compensated.

8.2 ***Suggested amendments to the Revised Framework Agreement***

As a result of discussions with Jonathan Swift QC in the course of obtaining the Counsel's Opinion, the following further suggestions were also made:

- (a) that the drafting of clause 3.11 of the Revised Framework Agreement be amended so that UK MBA is *obliged* to resort in the first instance to the contribution arrangements, unless it was not reasonably practicable to do so;
- (b) that clause 5.1 of the Revised Framework Agreement be amended so as (a) to be more prescriptive as to what was required in terms of credit assessment and (b) to include a requirement to assess creditworthiness not only at the time of accession, but also at the time any decision is made to lend to a Participating LA, as well as periodically on other occasions; and
- (c) that clause 3.7 of the Revised Framework Agreement be amended to also refer to section 13(3) of the Local Government Act 2003.

8.3 ***UK MBA response and current position in the Final Framework Agreement***

- (a) In response to our proposed amendment at 8.1(a) above, UK MBA has included a provision allowing for amendments to the Final Framework Agreement (see clause 6.3 (*Amendments*) of the Final Framework Agreement) with the agreement of the "Directing Authorities" (i.e. both (i) 85 per cent. of the number of all Participating LAs and (ii) where the aggregate outstanding amount of loans extended to such Participating LAs is greater than 85 per cent. of the total outstanding loan amounts at that time extended to all Participating LAs), provided that no amendment or waiver which imposes additional obligations on any Participating LA may be made without the consent of that Participating LA.

- (b) In relation to our concerns as to the process for Participating LAs giving termination notices under the Original Framework Agreement (see 8.1(b) above), the relevant provision (see clause 2.4 (*Resignation of an Authority*) of the Final Framework Agreement) has been amended such that, where UK MBA has not provided confirmation that the relevant conditions have been fulfilled within 10 days, the relevant Participating LA shall be able to terminate its Guarantee by notice to UK MBA in accordance with clause 7 (*Determination of Guarantee*) of the Guarantee. The corresponding amendments have been made in respect of a Participating LA ceasing to be a party to the Final Framework Agreement (see clause 2.4.3 (*Resignation of an Authority*) of the Final Framework Agreement).
- (c) In relation to our concerns surrounding the confidentiality provisions of the Original Framework Agreement (see 8.1(c) above), clause 9 (*Confidentiality*) of the Final Framework Agreement has been amended to make such provisions reciprocal as between UK MBA and each Participating LA.
- (d) In relation to our suggestion at 8.1(d) above, references to a report under section 114 of the Local Government Finance Act 1988 have been removed from both the events of default set out in the loan standard terms and the definition of "Defaulting Authority" as requested.
- (e) No mechanism has been included to compensate Participating LAs who are also shareholders for using funds representing their share capital to cover UK MBA's initial costs. As noted in the CC Memorandum, this is a commercial point and we understand that discussions are taking place on this subject.
- (f) In relation to the suggestion at 8.2(a) above, clause 3.11 of the Revised Framework Agreement has been amended to make it clear that UK MBA is obliged to issue Contribution Notices so as to prevent demands being made under any Guarantee.
- (g) In relation to the suggestions at 8.2(b) above, UK MBA has not amended the Final Framework Agreement to provide more detail as to what is required in terms of a credit assessment. This is on the basis that, to do so, would be too restrictive and not practical given the various external factors dictating the process (e.g. credit rating agency criteria). UK MBA has, however, included in the Final Framework Agreement provision for an external review of the credit assessment process every five years. The Final Framework Agreement also now requires credit assessments to take place on accession of a Participating LA and at the point of lending to a Participating LA, and to be refreshed annually.
- (h) In relation to the suggestion at 8.2(c), UK MBA has included reference to section 13(3) of the Local Government Act 2003 in clause 3.7 (*Enforcement by the Company*) of the Final Framework Agreement.

8.4 *Residual risks/concerns*

Other than in the case of 8.1(e) above (which, as noted, is being discussed at a commercial level), all of the suggested amendments have been addressed.

9. **PARTICIPATING LA COMMITTEE**

9.1 *Suggested amendments to the Original Framework Agreement*

In the Original Memorandum, we also suggested that given a number of the suggestions referred to (and outlined above) will result in greater oversight of the Participating LAs in the running of UK MBA, it may be appropriate to provide for the establishment of a Participating LA committee which is required to act on behalf of all Participating LAs where any consents or approvals would be required. We suggested that this might be either a permanent committee (with provision for changes in membership over time) or provisions for ad hoc committees to be formed for particular purposes at relevant times. The appointment of any such committee (if required) could be incorporated within the Final Framework Agreement or separately agreed between the Participating LAs (though, in the case of the latter, each acceding LA would need to accede to (or be deemed (by virtue of the Final Framework Agreement) to accede to) such separate agreement, and could include such terms as to voting rights, meeting governance, etc. as the Participating LAs agree therein.

9.2 *UK MBA response and current position in the Final Framework Agreement*

UK MBA has considered this suggestion and notes that whilst it is not opposed to this as a concept, it does raise practical issues such as to how the committee is selected and how to establish its terms of reference. It suggests that such issues would be more appropriately dealt with and documented outside of the Final Framework Agreement. Alternatively, UK MBA propose that Participating LAs simply arrange ad-hoc committees to carry on negotiations on behalf of the Participating LA group as and when required (and that the extent to which binding powers are granted to such a committee are decided by the Participating LAs at that time).

10. **COMBINED AUTHORITIES**

10.1 *Background to combined authorities*

The Secretary of State may by order establish a "combined authority" consisting of two or more LAs (pursuant to section 103 of the Local Democracy, Economic Development and Construction Act 2009 (the **2009 Act**) (a **Combined Authority**). The order of the Secretary of State shall set out the constitution of the Combined Authority and provide details as to (amongst other things) membership, authority and remuneration. A Combined Authority is a body corporate, has its own legal personality and has general powers similar (but not as extensive) to those granted to LAs under

the general power of competence pursuant to the Localism Act. We note that, pursuant to section 113B(3) of the 2009 Act, the 2009 Act does not authorise a Combined Authority to borrow money (but the power to borrow or invest may be included in the order of the Secretary of State).

10.2 *Current position in the Final Framework Agreement and residual risks/concerns*

- (a) In our opinion, were Combined Authorities to have the vires to enter into loans under the Final Framework Agreement, the Final Framework Agreement (and the definition of Authority) is sufficiently wide to cater for a group of LAs combining to form a Combined Authority (as, pursuant to clause 1.2.1 (*Construction*) of the Final Framework Agreement, any person is construed so as to include its successors in title).
- (b) The Final Framework Agreement is also sufficiently flexible such that, were LAs to combine to form a single Combined Authority, UK MBA has the power, pursuant to clause 5.2 (*Concentration Limits*) of the Final Framework Agreement, to propose amendments to the concentration limits set out therein (such amendments to be effective if approved by the Directing Authorities (i.e. both (i) 85 per cent. of the number of all Participating LAs and (ii) where the aggregate outstanding amount of loans extended to such Participating LAs is greater than 85 per cent. of the total outstanding loan amounts at that time extended to all Participating LAs)).
- (c) Were Combined Authorities to have the vires to enter into loans under the Final Framework Agreement, in our opinion, the transfer of borrowing responsibilities from a group of Participating LAs to a Combined Authority would not make the original granting by the LAs of their Guarantee ultra vires given that vires is relevant as at the time the Guarantee was entered into (i.e. when the Participating LA acceded to the Final Framework Agreement). In relation to any further loans entered into by a Combined Authority under the Final Framework Agreement (i.e. a new transaction in the name of the Combined Authority), it is a condition precedent to any borrowing under the Final Framework Agreement (pursuant to clause 3.1.1 (*Conditions Precedent*) of the loan standard terms) to ensure that UK MBA receives evidence (to which it is satisfied) of the authority of persons on behalf of such Combined Authority (which in itself is evidence of vires).
- (d) Upon the occurrence of a Change of Status (as defined in the loan standard terms), UK MBA has the option (pursuant to clause 6.4 (*Change of Status*) of the loan standard terms) to require the Authority to prepay its relevant loan. It would therefore be important, upon the amalgamation of two or more Participating LAs to form a Combined Authority for the purposes of borrowing under the Final Framework Agreement, that Participating LAs consult UK MBA before any such decision is made (to ensure that such a decision to form a Combined Authority would not cause UK MBA to exercise its right of prepayment). In our opinion, Participating LAs could reasonably take the view that this prepayment provision provides a suitable balance as to (i) the need to protect other Participating LAs

who may be prejudiced by two or more Participating LAs forming a Combined Authority and (ii) the right of such Participating LAs to form a Combined Authority.

11. MITIGATION ARISING BY OPERATION OF LAW

11.1 *Background to such protections*

- (a) In the absence of contractual provisions to the contrary, a Participating LA who has issued a Guarantee that is outstanding (such Participating LA being referred to in this paragraph 11 as a **Guarantor**) would, by operation of law, have available to it a number of legal mitigants which may apply to reduce the ultimate loss to be suffered by way of making a payment under its Guarantee. These include (i) the right of indemnity (being the immediate right of the Guarantor to be indemnified by the principal debtor (being, in the case of a bond issue, the bond issuer)) where such Guarantor has made a payment in respect of any claim under its Guarantee, (ii) the right of subrogation (being the right of the Guarantor to, once it has paid all amounts due under the debt, (in the case of a bond issue) "step into the shoes" of the bondholders and assume all the rights the bondholders had in relation to the bond issuer), and (iii) the right of contribution (being the right to, once a Guarantor has paid more than its proportion of the debt, seek rateable contributions from the other Guarantors).
- (b) We would, however, note that it is common practice to contractually exclude the legal mitigants identified above. For further detail as to how the Final Framework Agreement excludes these legal mitigants, please see 11.2 below.

11.2 *Current position in the Final Framework Agreement*

- (a) Our view is that:
- (i) where a Participating LA has defaulted on its loan payments to UK MBA, clause 3.8 of the Final Framework Agreement has the effect that only UK MBA can pursue recovery rights against that Defaulting LA, and the Non-Defaulting LAs may not take direct action against the Defaulting LA; and
 - (ii) when amounts owing by UK MBA in respect of the Guaranteed Liabilities are overdue, clause 3.5 of the form of Guarantee precludes a Guarantor that has paid out under its guarantee from exercising any rights it has (x) to be indemnified by UK MBA and/or (y) to claim any contribution from any other Guarantor and/or (z) to exercise subrogation rights against UK MBA.
- (b) However, our view is that clause 3.5 of the Guarantee does not exclude the right of contribution arising by operation of law (see 11.1(a) above) where a Guarantor has paid out under its Guarantee

(such that none of the amounts owing by UK MBA in respect of the Guaranteed Liabilities are overdue). This right (which is not to be confused with the contractual contribution mechanism under the Final Framework Agreement (see paragraph 4 above)) entitles a Guarantor, once it has paid more than its rateable proportion of any debt under its Guarantee, to seek rateable contributions from the other Guarantors. The consequence of this right is that, if a Guarantee were to be called, there is a mechanism for ultimately spreading the cost rateably across all the Guarantors. This right, which is exercisable against all Guarantors, regardless of when they became a Guarantor, is therefore an additional element of mitigation (as well as the other contractual mitigations identified in this Memorandum) which Participating LAs should take into account when considering whether to enter into the Final Framework Agreement.

12. RELIANCE

- (a) Allen & Overy has agreed to provide the Advice to the LAs and, in providing the Advice, we have taken instructions solely from Birmingham City Council, Reading Borough Council and Southwark Borough Council. We have not advised any LA on the contents of any document or its rights and obligations thereunder except to the extent set out in the Executive Summary and the Documents Package (as defined in the Executive Summary). However, A&O is able to provide further advice to any LA on these matters should it wish. This can be arranged separately and separate fee arrangements will apply.
- (b) We accept a duty of care to LAs in relation to the Advice, but (subject to any separate arrangements agreed as envisaged in paragraph 12(a)) we do not owe, and the provision of the Advice is not to be taken as implying that we owe, LAs any wider duty of care in relation to the transactions envisaged by the Documents Package (as defined in the Executive Summary) (and in particular the Final Framework Agreement) or otherwise and/or their commercial or financial implications.
- (c) Any LA who is entitled to, and does, rely upon the Advice agrees, by so relying, that, to the fullest extent permitted by law and regulation (and except in the case of wilful misconduct and fraud) there is no assumption of personal duty of care by, and such person will not bring claim against, any individual who is a partner of, member of, employee of or consultant to Allen & Overy LLP or any other member of the group of Allen & Overy undertakings and that such person will instead confine any claim to Allen & Overy LLP (and for this purpose "claim" means (save only where law and regulation applied otherwise) any claim, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise).

DOCUMENT FIVE

**COUNSEL'S OPINION OF JONATHAN SWIFT QC
(and accompanying Instructions to Counsel, prepared by Allen & Overy)**

IN THE MATTER OF BIRMINGHAM CITY COUNCIL
IN THE MATTER OF READING BOROUGH COUNCIL
IN THE MATTER OF THE LONDON BOROUGH OF SOUTHWARK
AND IN THE MATTER OF A PROPOSED FRAMEWORK AGREEMENT

OPINION

A. Introduction

1. I am instructed to advise Birmingham City Council, Reading Borough Council, and the London Borough of Southwark (“the Councils”) in respect of a proposed decision to enter into arrangements with the UK Municipal Bonds Agency PLC (“UKMBA”)¹.
2. UKMBA was established by the Local Government Association and 56 local authorities², for the purpose of enabling local authorities to borrow on better rates of interest than would otherwise be available to

¹ I am instructed that the Councils are an informal working group, considering the provisions of the Framework Agreement on behalf of a group of local authorities. My Instructions state that other local authorities may also be shown the advice set out in this Opinion, because it will be provided with the pack of documents provided to each such authority, and I have no objection to this. However – as explained in the course of this Opinion – each local authority (whether within the group or outside it) will need to consider its own circumstances in order to satisfy itself that a decision to enter into the Framework Agreement would be a reasonable use of the powers available to it. This is particularly so for any authority which sees this Opinion, and which is not one of the Councils who instruct me.

² Each of those local authorities and the LGA is currently a shareholder in UKMBA.

the local authority. In order to be able to borrow from UKMBA a local authority must accept the terms of the Framework Agreement.

3. I am asked to advise on the following matters. *First*, whether in principle the Councils (each of which is an English local authority) have the power to enter into the Framework Agreement. I address this question by reference only to the powers of English local authorities. *Second* (assuming that in principle it is within the powers of the Councils to enter into the Framework Agreement), whether it would be likely that a decision to enter into the agreement would be a lawful use of the power available to the Councils. *Third*, what consequences might flow in the event that a participating authority became a combined authority, by order made pursuant to section 103 of the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act"). If this happened would it invalidate, retrospectively, the guarantee that is given pursuant to the Framework Agreement. *Fourth*, whether the "Guide to the Framework Agreement" document should be provided as part of the information given to local authorities who are considering entering into the Framework Agreement. *Fifth*, whether there are any evidential requirements that the Councils should satisfy in order to ensure that any decision to enter into the Framework Agreement is lawful. *Sixth*, whether before entering into the Framework Agreement, the Councils should take advice on the accounting implications of the contents of the Framework Agreement.

B. A summary of the provisions of the Framework Agreement

4. There is a detailed summary of the provisions of the Framework Agreement in my Instructions, there are further summaries of the agreement in the "Executive Summary" and "Introductory Guide"

documents that accompany my Instructions. There is commentary on the provisions of the Framework Agreement in the *“Follow-up Memorandum”* document that accompanies my Instructions.

5. By way of summary for present purposes, I note the following. As its name suggests the Framework Agreement is not itself a loan agreement; rather it provides a structure under which local authorities may enter into loan agreements with UKMBA. In this Opinion, simply for convenience, I will refer to authorities who have entered into the Framework Agreement as “participating authorities”. Where necessary I shall refer to participating authorities who have obtained loans from UKMBA under the Framework Agreement either as participating authorities who have borrowed, or if it is more convenient to do so, as “borrowing authorities”.
6. The structure provided is to the following effect: UKMBA will only lend to participating authorities (clause 2.1.1); UKMBA is not obliged to lend to any participating authority (clause 2.1.3); UKMBA lends on the basis of a matched transaction under which UKMBA borrows (from a third party) the amount that it is to lend to the relevant participating authority (clause 5.3); when UKMBA does lend it does so on the basis that re-payments from the borrowing authority are scheduled so as to mirror the requirements on UKMBA to repay under the matched transaction (clause 3.3.1); otherwise, the terms of lending are as agreed between UKMBA and the relevant participating authority (clause 4)³.

³ To the extent that terms on which UKMBA will borrow are prescribed by the Framework Agreement, the relevant provisions are at clause 5.3 of the Framework Agreement – see in particular at clause 5.3.1 and 5.3.2. Further statements on the “Pricing of the UK MBA’s loans” are contained in the Introductory Guide document. My assumption is that the statements in the Introductory Guide are not intended to comprise warranties or legally binding representations.

7. In addition to the costs associated with each loan it obtains under the Framework Agreement, the cost to each participating authority of the agreement arises from two matters. *First*, each participating authority is required to guarantee UKMBA's liabilities (referred to as "Guaranteed Liabilities", see clause 2.3; the form of the guarantee is set out at Schedule 2 to the agreement). Each participating authority guarantees all UKMBA's liabilities under agreements entered into by it before or following the date of the guarantee (clause 2.3.1); and the guarantee extends across all liabilities incurred by UKMBA up to the date on which the authority terminates the guarantee in accordance with clause 2.4.1. These liabilities incurred in this period are guaranteed until such time as UKMBA has discharged its obligations in respect of them (see further below at paragraph 10).
8. The *second* matter is the possibility of contribution payments in the event that any other participating authority defaults under its own loan obligations. Each participating authority can be liable to make payments to UKMBA in the event that another participating authority defaults on its obligations to UKMBA. In the event that any one participating authority defaults on its obligations, UKMBA may issue a contribution notice to each participating authority specifying the amount that each participating authority is required to pay (clause 3.3.3). The contribution will be calculated by reference to the proportion that each participating authority's current borrowing under the Framework Agreement bears to the then total amount of borrowing under the agreement: see the definitions, respectively of "Authority Contribution" and "Authority Proportion". Thus if, for example, at the date of the contribution notice a participating authority's current borrowing is zero, the amount that that authority is required to contribute will (according to the terms of the Framework Agreement) also be zero. It should also be noted that as the Framework Agreement

is presently drafted it appears possible for a participating authority to reduce its exposure under the contribution notice provisions by making early repayment of its loans. The contribution required of a participating authority can be increased if any of the other participating authorities issued with a contribution notice fails to pay the amount required of it (clause 3.3.5). Payments made by participating authorities under contribution notices are treated as loans, repayable by UKMBA (clause 3.4, and clause 3.9).

9. In practice, there is an expectation that obligations arising under the contribution notice provisions will be the primary source of exposure for participating authorities – i.e. that a contribution notice (rather than liability under the guarantee provisions) will be the option of first resort in the event of default by another participating authority. In some instances, UKMBA becomes subject to an obligation to issue contribution notices – see clause 3.3.3 of the Framework Agreement. Clause 3.11.1 states a “*guiding principle*” that UKMBA shall operate the Framework Agreement with the aim of avoiding any call being made on the guarantee. Clause 3.11.2 goes on to state “*the Company shall issue such Contribution Notices in accordance with Clause 3.3 as will ensure (provided the relevant Authorities comply with such Contribution Notices) that it has sufficient funds to enable it to pay amounts falling due under the Finance Documents and thus prevent any demands being made under any Guarantee*”. This seems to me to provide a reasonable level of comfort that liability under the guarantee ought to be an event of last resort.
10. No participating authority may exit the Framework Agreement until it has discharged all its liabilities to UKMBA, including any liabilities which have accrued under the guarantee (clause 2.4.2). Thus once an authority has become party to the Framework Agreement, the length of its exposure under the guarantee is likely to be significant. The

exposure will continue until such time as the “*Guaranteed Liabilities*” of UKMBA have been discharged by UKMBA. As to the duration of that exposure, note the modified meaning of “*Guaranteed Liabilities*” which applies once the guarantee has been terminated (standard form guarantee at clause 7)

11. The Framework Agreement does contain some provisions which will serve to mitigate the risks for participating authorities arising from the agreement. These provisions are generally within clause 5 of the Framework Agreement, and include the following.
 - (1) UKMBA is required to undertake credit assessment of each participating authority, both when it accedes to the Framework Agreement, and then periodically thereafter (clause 5.1)
 - (2) The Framework Agreement sets limits on the amount each participating authority may borrow from time to time (clause 5.2).
 - (3) The matched transaction basis on which UKMBA will itself borrow money (clause 5.3).
 - (4) UKMBA borrowing may not ordinarily exceed 105% of the amount it has lent to participating authorities (clause 5.3.2).
 - (5) Participating authorities may collectively instruct UKMBA not to undertake further borrowing. This power is exercisable at any time by 50% of the participating authorities provided that between them, they are responsible for more than 50% of the loans outstanding to UKMBA (clause 5.4).

- (6) There are obligations on participating authorities to report to UKMBA certain specified circumstances which may affect their ability to meet their obligations under the Framework Agreement, including any loans made to them under that agreement (clause 6.2).

C. Advice

(1) Power, in principle, to enter into the Framework Agreement

12. Local authorities have express general powers to borrow in Part 1 of the Local Government Act 2003 (“the 2003 Act”). These provisions provide an express power to borrow “(a) for any purpose relevant to its functions under any enactment, or (b) for the purposes of the prudent management of its financial affairs ...”: see section 1 of the 2003 Act. That broadly-framed power is then subject to the limitations at sections 2 – 5 of the 2003 Act.
13. The Framework Agreement is not itself a borrowing transaction. Rather it is a means to that end; it provides the terms on which local authorities may access the lending terms that UKMBA is able to offer⁴. The premise of the arrangements is that those lending terms will be preferable to the terms otherwise available to an authority that makes its own borrowing arrangements. Thus although when obtaining any specific loan under the Framework Agreement a local authority would most likely⁵ act in exercise of its powers under section 1 of the 2003 Act

⁴ The generic terms on which UKMBA will lend to participating authorities are at Schedule 3 to the Framework Agreement.

⁵ A local authority would on that occasion employ the section 1 of the 2003 Act power unless in the specific circumstances of the transaction a more specific power applied.

(and therefore, at that time would also have to act consistently with the restrictions on the general power, elsewhere within Part 1 of the 2003 Act), the 2003 Act powers may not themselves be most natural basis or comprehensive basis for entering into the Framework Agreement.

14. One obvious candidate as an additional in principle source of power is the general power of competence at section 1 of the Localism Act 2011 (“the 2011 Act”). To the extent that the Framework Agreement gives rise (as it does) to a more complicated set of obligations than would be necessary in the event of a more “straightforward” borrowing transaction (i.e. one in which the local authority borrower dealt directly and independently with the person providing the moneys to be borrowed), the section 1 general power of competence is in my opinion a suitable and available source of power. For the avoidance of doubt, I confirm that for this purpose there is no relevant limitation on the section 1 power pursuant to the provisions of section 2 of the 2011 Act.
15. Thus my view is that the Councils do have the power in principle to enter into the Framework Agreement, relying on the general power of competence at section 1 of the 2011 Act, together with the broadly-framed power to borrow at section 1 of the 2003 Act⁶.

(2) Lawful exercise of the in principle powers

16. It is trite law that public authorities must exercise the powers available to them in accordance with well-established *Wednesbury* principles –

⁶ For the avoidance of doubt, I do not disagree with the points set out at paragraphs 7 – 19 of the Opinion of James Goudie QC dated 10 February 2014. However, as explained above my preferred analysis is to find the power to enter into the Framework Agreement in the combination of section 1 of the 2011 Act with section 1 of the 2003 Act.

i.e. powers are to be used (a) within the terms of any express limitations applicable to them; (b) having regard only to relevant considerations, and disregarding all irrelevant considerations; (c) only for a proper purpose; and (d) only in a manner which, having regard to all material circumstances can be considered to be reasonable (in the now well-understood *Wednesbury* sense of the word).

17. In the context of financial transactions such as the Framework Agreement and the transactions envisaged under that agreement, it is also imperative that a local authority is able to demonstrate to a court (if called on to do so) that it has exercised its powers consistent with its fiduciary obligations to local tax payers. In practice this places a burden on local authorities to be able to demonstrate that financial transactions (including loans) are made on terms that are prudent, rather than (for example) unduly optimistic, (a) as to the level of risk that the local authority is undertaking (proportionate to its own resources), and (b) as to the local authority's ability to meet the obligations that might arise, from time to time, under the transaction.
18. Such matters need to be assessed taking into account the specific circumstances of the local authority at the time it enters into the relevant transaction, and by reference to the circumstances likely to affect the local authority during the lifetime of the transaction (e.g., if the transaction required payments by a local authority spread over a number of years, some form of assessment of the likely future capability of the authority to meet such obligations would be required).
19. Thus in the present case, each of the Councils (and any local authority considering becoming a participating authority) must assess for itself the relative advantages and disadvantages of the Framework Agreement.

- (1) As regards both the possible advantages and the possible disadvantages, a local authority is entitled to work from the premise that the Framework Agreement will operate in accordance with its terms.
 - (2) So far as concerns advantages, the authority will need to evaluate the extent to which it will obtain better borrowing terms under the Framework Agreement and, taking account of its likely borrowing requirements over the period it intends to make use of the opportunities provided by the Framework Agreement, the likely value to it of those better terms⁷.
 - (3) As to disadvantages, these will arise from the aspects of the Framework Agreement that put the local authority at risk of financial obligation because of the default of any other participating authority - i.e. the guarantee requirement under clause 2.3 of the Framework Agreement (taking into account all the terms of the guarantee set out in Schedule 2 to the Framework Agreement); and the contribution requirements under clause 3 of the Framework Agreement).
20. The consequence of the above is that it is not possible to state definitively that it is open to each of the Councils, lawfully to decide to enter into the Framework Agreement, regardless of its specific financial circumstances at the time it intends to do so⁸. The power in principle does exist (see above at paragraph 15). The question whether it is

⁷ As stated above, the generic terms on which UKMBA will lend to participating authorities are at Schedule 3 to the Framework Agreement. Obviously, these terms do not address the specific cost of borrowing to any specific authority on any specific occasion.

⁸ My Instructions do not contain any information on the present or likely future financial position of any of the Councils.

reasonable for each of the Councils, respectively, to use that power to enter into this Framework Agreement depends on the evaluation of the matters sketched at paragraphs 17 – 19 above.

21. In the absence of specific information covering the balance of likely advantage/possible disadvantage referred to above, the best that can be said is that I consider that it would be lawful for a reasonably (in financial terms) robust local authority to take on the obligations set out in the Framework Agreement. I assume for this purpose that the authority in question forms the opinion, on reasonable grounds, that the terms of borrowing likely to be available under the Framework Agreement will be advantageous to it (by contrast to the terms likely to be available absent the Framework Agreement). That being so, “reasonably robust” in this context refers to that local authority’s ability (a) to meet the possibility of having to make contribution payments under clause 3 of the Framework Agreement (which are required to be made at short notice, as short as 2 business days); and (b) to meet the obligations under the guarantee which will endure even after the termination of the guarantee, until such time as UKMBA has discharged every relevant liability. Yet that general conclusion will give way in the face of the local authority’s specific financial circumstances at the time it was deciding whether or not to enter into the agreement.
22. Thus the decision to enter into the Framework Agreement must be a reasonable use of the local authority’s powers not just by reference to the generic risks arising from the terms of the Framework Agreement itself, but also by reference to that generic risk taking into account the specific financial circumstances of the local authority concerned. The authority must have reasonable grounds for the conclusion that it will be likely to be able to meet the obligations under the Framework

Agreement (above and beyond the obligation to repay the moneys it is likely itself to borrow); and overall there must be a reasonable basis for an overall assessment that, taking into account the likely advantages and disadvantages for the authority, it would be to the authority's advantage to enter into the Framework Agreement⁹.

23. In undertaking this assessment, the local authority can (and in my opinion should) have regard to the specific risks that arise from the provisions that are integral to the nature of the Framework Agreement. It should also take into account the measures contained in the Framework Agreement with a view to mitigating those risks. I have already referred above (at paragraph 9) both to the intended effect of clause 3.11 and to the limitations of that provision as presently drafted, from the point of view of participating authorities. In addition, there are the provisions at clause 5 of the Framework Agreement which provide some limitations on the powers of UKMBA in respect of borrowing and lending. Yet the local authority should evaluate these matters from the starting point of its own financial position, and its likely financial position over the period that it envisages remaining a participating authority. All this entails assessment of likely future circumstances; this includes evaluation of the risk that other participating authorities may default. None of this is likely to be straightforward; careful judgement will be required. However the need for this exercise arises from the nature of the Framework Agreement, an agreement that seeks to secure the potential benefits of collective action by local authorities over an extended period of time.
24. Evaluation of this last mentioned risk will take account of the likely effectiveness of the steps taken by UKMBA pursuant to clause 5.1 of

⁹ These points (at paragraphs 16 – 22) would apply to any local authority which wished to enter into the Framework Agreement, not just the Councils.

the Framework Agreement, to assess the creditworthiness of participating authorities. Clause 5.1 prescribes the occasions on which those assessment will take place; and also provides for UKMBA, every 5 years, to take outside advice on its credit assessment procedures.

25. By reference to the provisions of the Framework Agreement, there are two general sources of risk to any participating authority. As already indicated, the *first* is the collective nature of the Framework Agreement. It is the collaboration of local authorities as participating authorities with the intention that this will permit UKMBA to borrow on better terms than would be available to many local authorities acting alone. The “price” of this is the extent to which the contribution notice provisions and the guarantee requirement impose responsibilities on all participating authorities that are capable of extending beyond the day to day costs of financing the borrowing each participating authority undertakes with UKMBA. This risk (and its possible extent) is evident from the terms of the Framework Agreement (although see below at paragraph 30 as to some specific points arising from the present drafting of the guarantee provisions).
26. The *second* source of risk for each participating authority arises from the role of UKMBA itself. Although local authorities are entitled to work from the premise that UKMBA will work in accordance with its obligations under the Framework Agreement, the terms of that agreement do leave a number of important matters largely within UKMBA’s control. UKMBA is responsible for determining the terms on which it borrows (and therefore the terms on which participating authorities borrow from UKMBA¹⁰); UKMBA is responsible for determining which local authorities are permitted to become participating authorities (no participating authority has a power of

¹⁰ In this regard, note the points at paragraph 6 and Footnote 3 above.

veto over the accession of any other local authority; and no participating authority is in a position to require any local authority to cease to be a participating authority); UKMBA is also responsible for operating the contribution notice provisions (both on their own terms, and for determining when those contribution notice provisions will be applied in preference to calls on the guarantee); and UKMBA's actions may bring the guarantee obligations into play, even long after the guarantee has been terminated. Here too this source of risk is part and parcel of the cost of obtaining access to the "better" borrowing terms to be available to participating authorities - for the model to work it is necessary that some entity such as UKMBA (with the role and powers that UKMBA has) is interposed between the lenders and the local authority borrowers.

27. In my opinion, the sources of risk are inherent in the scheme that the Framework Agreement establishes; if each source of risk were eliminated, it is unlikely that the benefits that the scheme is designed to secure could be achieved.

28. But quite apart from the source of the risk, is the way in which the terms of the Framework Agreement, as presently drafted, leave open the extent of the risk for participating authorities. The extent of the risk that does remain is analysed in the "*follow-up memorandum*" that is part of the documentation that accompanies the Framework Agreement. I agree with the assessments in that document: see specifically at paragraphs 2-3 - 2.4; 3.3 - 3.4 (the guarantee); 4.3 - 4.4, and 5.3 - 5.4 (the contribution notice arrangements, and arrangements for the recovery of the contribution payments); 6.3 - 6.4 (the loan terms available to participating authorities); and 7.3 - 7.4 (risks arising in the event of the failure of UKMBA). It is also my opinion that those risks

are as low as reasonably practicable given the nature of the Framework Agreement scheme.

29. The risks referred to in the “follow up memorandum”, together with the further matters referred to in this section of this Opinion are the matters I consider should be taken into account by the Councils (and also by any other local authority which is considering whether or not to enter into the Framework Agreement).

30. In addition, I also draw attention to the following matters.

(1) The contribution notice provisions contain no provision which prevents a participating authority from limiting its exposure by paying off loans early in response to any concern that it may have that other authorities may default triggering the contribution notice provisions. On one view it might be fairer if contributions are calculated by reference to outstanding borrowing disregarding any early repayment that may have been made. However, this is not a matter on which there is any “right” answer. The basis on which contributions are calculated is a matter to note; each authority will form its own view on the merits of the matter.

(2) The present drafting of clause 5.1 (see paragraph 24 above). Although this provision does prescribe when credit assessments are to be undertaken, it should be noted that this clause does not prescribe what is required in terms of those credit assessments.

(3) Clause 2 of the standard guarantee (at Schedule 2 to the Framework Agreement). This appears to be a guarantee in respect of all UKMBA’s “*Guaranteed Liabilities*” as defined. This

is mitigated by the modified definition of "*Guaranteed Liabilities*" which operates once an authority has terminated the guarantee (see clause 7 of the standard guarantee). Even so, the guarantee obligation will therefore continue to exist over an extended period.

- (4) Clause 3.5 of the standard guarantee (at Schedule 2 to the Framework Agreement). This delays any rights a participating authority may have as guarantor, against UKMBA, for so long as any amount owed by UKMBA under any of the *Guaranteed Liabilities* remains overdue. Given the definition of "*Guaranteed Liabilities*" (and notwithstanding the modified meaning given to "*Guaranteed Liabilities*" following the termination of the guarantee - see clause 7), this could be a very significant period. In this regard, the provisions of clause 3.8.2 of the Framework Agreement should also be noted - authorities may not take action against UKMBA to recover sums they have paid pursuant to the guarantee provisions, save to the extent necessary to give effect to the provisions of clause 3.9 of the Framework Agreement.
 - (5) Clause 6 of the standard guarantee (at Schedule 2 to the Framework Agreement). Note that this too is framed by reference to the notion of "*Guaranteed Liabilities*", and therefore also the modified definition of that term (see clause 7 of the standard guarantee) that applies when an authority has terminated the guarantee.
31. Drawing the points above together, my opinion is that the terms of the Framework Agreement are such that it would be open to a local authority that is reasonably financially robust to enter into them (see

above at paragraph 21). However, each local authority proposing to accede to the Framework Agreement (including each of the Councils, respectively) ought also to have particular regard to the following matters specific to its own position: (a) the likely benefit to it of borrowing under the terms obtainable under the Framework Agreement over borrowing on the terms otherwise available to it; (b) its own financial position – i.e. its ability, from time to time to meet the calls that might be made on it under the Framework Agreement other than those arising from its own borrowing commitments under that agreement, i.e. calls under the contribution notice, and guarantee provisions which will arise from failures by other participating authorities to meet their obligations under the Framework Agreement, and/or failures by UKMBA (see above, generally, from paragraph 16).

32. One specific point is raised (at §3.7 of my Instructions) as to whether the document “*Guide to the Framework Agreement*” should be included in the documentation available to local authorities who are considering whether or not to become participating authorities¹¹. The point made is that if the *Guide* is included, those authorities may look only (or primarily) to the contents of that document rather than scrutinising the terms of the Framework Agreement itself. I accept that such a risk does exist. However, the opening sentence of the *Guide* contains health warning (to the effect that the Agreement will take precedence over the *Guide* “in the event of a dispute”). I see no reason to remove the *Guide* from the documentation made available to local authorities, so long as it is understood by them (as I assume would be UKMBA’s intent) that the *Guide* should not be taken to include any representation that goes beyond the terms set out in the Framework Agreement. Ultimately it will be a matter for UKMBA to decide what documentation should be

¹¹ This is the document at Appendix 1 to the “Introductory Guide” at Appendix 3 to my Instructions.

provided to authorities who are considering whether or not to enter into the Framework Agreement, and what words by way of “health warnings” should be attached to such documentation.

(3) What consequences might flow in the event that a participating authority became a combined authority (by order made pursuant to section 103 of the Local Democracy, Economic Development and Construction Act 2009)?

33. The specific question raised in my Instructions (at §2.6) is whether if a participating authority became part of a combined authority (pursuant to an order under section 103 of the 2009 Act) that would render void, the guarantee given by the participating authority under clause 2.3 of the Framework Agreement¹². My view is that this ought not to be the consequence of a section 103 order. The provisions of the 2009 Act (taking account of the alterations now proposed by the Cities and Local Government Devolution Bill) do not make any specific provision either (a) affecting the legality of the past transactions of a local authority that becomes a part of a combined authority; or (b) permitting the terms of a section 103 order to have any such retrospective impact on existing rights and liabilities. It is to be expected that a section 103 order could make provision (if such were necessary) for a transfer of existing rights and liabilities to a new combined authority. In the event that a participating authority was a party to a section 103 order, and if at that time any doubt arose as to the position, for the future of rights and liabilities arising under the Framework Agreement, it might in such circumstances be prudent to see if specific provision should be made, for the avoidance of doubt. But this is a matter to be considered only

¹² I will address this issue on the basis of the provisions of the 2009 Act, as amended by the Cities and Local Government Devolution Bill.

when and if such a doubt were expressed; and it would be a step taken out of an abundance of caution.

(4) Are there evidential requirements that the Councils must meet in order, lawfully, to enter into the Framework Agreement?

34. There are no specific formal evidential requirements. However, a decision to accede to the Framework Agreement will be a significant practical step for any local authority. For this reason it would be prudent for any local authority to ensure that there is a clear record of its decision-making process - i.e. of what matters have been considered; or what evaluations have been made, and on what bases etc. In the event of any legal action arising out of a decision to accede to the Framework Agreement such an evidence base is likely to be invaluable. Moreover, the same evidence is likely to be of great practical benefit to any local authority called on to justify its decisions, in any context. Good record keeping in respect of such a decision is certainly a matter going to good public administration.

(5) Should local authorities take advice as to the accounting implications of the contents of the Framework Agreement?

35. This point is raised at paragraph 4.1 of my Instructions. In my opinion every local authority should ensure that it is properly informed as to how its participation in the Framework Agreement will impact upon its accounting obligations. It will be for the officers of each of the Councils to advise whether this requires advice from external advisers, or whether each Council itself has the experience and expertise required from amongst its own officers to address this issue. No doubt

the terms of reference within which such advice is obtained can be informed by the matters referred to in the Grant Thornton document (which is to accompany the Framework Agreement documentation), even though I note that the Councils may not themselves place specific reliance on the conclusions that Grant Thornton state.

D. Conclusions

36. In summary form, the primary conclusions arising from the above are as follows.
37. *First*, I consider that in principle the Councils (and for the same reasons, other English local authorities too) do have the power to enter into arrangements as set out in the Framework Agreement (see above at paragraphs 12 - 15).
38. *Second*, the final assessment of whether a decision to enter into the Framework Agreement will need to be made taking into account the specific financial position of each Council, respectively. See generally above at paragraphs 16 - 31. Thus unlike the issue as to the in principle power to enter into the Framework Agreement; the question as to whether a decision to enter into the Framework Agreement would be a reasonable use of the in principle power, is not an issue that can be answered either yes or no, in the abstract. The furthest that I think it is possible to go in the absence of consideration of the specific circumstances of each of the Councils is that it would be lawful for a reasonably financially robust local authority to enter into the commitments entailed in the Framework Agreement. See above at paragraph 21. Yet this conclusion must, if necessary, yield to the specific circumstances of each Council.

39. Paragraphs 32, 33, 34 and 35 above record my conclusions on the four other matters raised in my Instructions.

40. I hope that the above addresses the points raised in my Instructions. If there are any matters arising from the above, or if I can be of further assistance in respect of the Framework Agreement proposals, my Instructing Solicitor should not hesitate to contact me.

JONATHAN SWIFT QC

18 December 2015

11, King's Bench Walk,
Temple. EC4Y 7EQ.

IN THE MATTER OF
BIRMINGHAM CITY COUNCIL

IN THE MATTER OF READING
BOROUGH COUNCIL

IN THE MATTER OF THE LONDON
BOROUGH OF SOUTHWARK

AND IN THE MATTER OF A
PROPOSED FRAMEWORK
AGREEMENT

OPINION

BIRMINGHAM CITY COUNCIL
READING BOROUGH COUNCIL
and
SOUTHWARK BOROUGH COUNCIL

INSTRUCTIONS TO COUNSEL

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GWF/0115333-0000001 ICM:22398041.5

BIRMINGHAM CITY COUNCIL

READING BOROUGH COUNCIL

and

SOUTHWARK BOROUGH COUNCIL

INSTRUCTIONS TO COUNSEL

1. Introduction

- 1.1 Instructing Solicitors are acting on behalf of Birmingham City Council, Reading Borough Council and Southwark Borough Council as an informal working group on behalf of a number of local authorities (each, an **LA**) and are seeking advice from Counsel in relation to a Local Authority Financing Framework Agreement (the **Framework Agreement**) which is proposed to be entered into by UK Municipal Bonds Agency PLC (**UK MBA**) and each LA wishing to borrow from UK MBA.
- 1.2 UK MBA has been established by the Local Government Association with the objective of reducing LAs' financing costs by sourcing finance on behalf of LAs on more competitive terms than would be obtainable by individual LAs on their own behalf. UK MBA will borrow money from a variety of third parties and on-lend the proceeds, on a matched basis, to LAs.
- 1.3 In order to enable UK MBA to achieve competitive pricing, LAs that wish to borrow from UK MBA will guarantee, on a joint and several basis, UK MBA's payment obligations under all its borrowings from bilateral lenders and bonds issued by it in the capital markets (the **Guarantees**). UK MBA will lend the proceeds of each bilateral borrowing and bond issue to one or more of the LAs that have given Guarantees (the **Loans**).
- 1.4 The terms of the Loans will require that each payment of interest or principal by an LA borrower to UK MBA be made a specific number of days prior to the corresponding payment being due from UK MBA under its bilateral borrowing facility or bond issue.

- 1.5 If any LA borrower defaults in making one of these payments to UK MBA, UK MBA may require each other LA that is a party to the Framework Agreement to put UK MBA in funds to cover the shortfall (the **contribution arrangements**). The amount payable by each LA under the contribution arrangements will be the proportion of the shortfall equal to that LA's borrowings as a proportion of the borrowings of all LAs from UK MBA.
- 1.6 The intention behind the structure, therefore, is that:
- (a) the timing of payment dates under the Loans, combined with the contribution arrangements, should mean that the Guarantees should never need to be called, because UK MBA would have been put in funds before a default would occur under its bilateral borrowing facilities and bond issues; and
 - (b) therefore, the real exposure of the LAs, from a practical perspective, should be under the contribution arrangements rather than the Guarantees, and that the exposure of each LA (though necessarily greater than merely the amount borrowed by it) should nevertheless be calculated by reference to the amount borrowed by it as a proportion of all LA borrowings under the structure.
- 1.7 Instructing Solicitors are seeking advice from Counsel in relation to:
- (a) the vires of an English LA entering into the proposed Framework Agreement, executing a Guarantee, entering into Loans and providing contribution loans pursuant to the contribution arrangements;
 - (b) whether, upon receipt and diligent review of the final package of documents as further described at paragraph 1.3 of the Executive Summary (as defined in the Schedule to these instructions) (the **Documents Package**) (and assuming that all relevant appropriate procedural requirements are followed and that the relevant LA can demonstrate that it has read and understood the Documents Package), a court would agree that an LA has acted in accordance with requirements of *Wednesbury* reasonableness in entering into the transactions envisaged by the Documents Package;
 - (c) any other risks identified by Counsel in LAs entering into the transactions envisaged by the Documents Package;
 - (d) what matters LAs could or should take into account in their decision making process in order to demonstrate that they have reached a decision that will not be susceptible to successful legal challenge or fall foul of the requirements of *Wednesbury* reasonableness; and

(e) various associated specific queries as described further below.

1.8 Instructing Solicitors note that the documents that will form the Documents Package are currently in various stages of working draft form. Instructing Solicitors attach (as appendices to these instructions) current drafts of these documents for Counsel's information and review. A description of the key elements of the draft documents attached hereto (along with a description of Instructing Solicitors' view as to the finality of the draft documents) is contained at the Schedule to these instructions. Counsel may assume for the purposes of his Opinion that there will be no material changes to the documents attached hereto as against those forming the final Documents Package. Instructing Solicitors are proposing to give confirmation to LAs in the Executive Summary that, in their view, none of the changes to the documents are material for the purposes of assessing compliance with the requirements of *Wednesbury* reasonableness, if they feel able to do so upon review of the final Documents Package.

2. The general power of competence

2.1 Section 1(1) of the Localism Act 2011 (the **Localism Act**) gives LAs the power to "*do anything that individuals generally may do*" (the **General Power**).

2.2 Instructing Solicitors refer to the opinion of James Goudie QC dated 10 February, 2014 addressed to the Local Government Association (the **2014 Opinion**) (attached as Appendix 1 to these instructions). In the 2014 Opinion, Mr Goudie QC opines that, in the context of English LAs only, the General Power is available as a source of vires, subject to compliance with *Wednesbury* reasonableness requirements in relation to the exercise of that power. Mr Goudie QC also states that such power "*must be exercised in a lawful manner, including reasonably and properly*".

2.3 Instructing Solicitors note that the 2014 Opinion only considers whether English LAs granting guarantees falls within the General Power and does not extend to the broader circumstances and transactions considered in these instructions.

2.4 Instructing Solicitors' view is that Mr Goudie QC's analysis in the 2014 Opinion in relation to the vires of English LAs to provide guarantees is equally applicable to the broader transactions envisaged by the Documents Package.

2.5 Counsel is asked to confirm that the entry by an English LA into the transactions envisaged by the Documents Package (namely, entry into the Framework Agreement, execution of a Guarantee, entry into Loans under the Framework Agreement and the provision of contribution loans (if required) pursuant to the contribution arrangements) would, subject to compliance with the requirements of *Wednesbury* reasonableness (as to which, see section 3 below), fall within the General Power (and

not be subject to any limitations on the use of the General Power pursuant to the Localism Act or any public law limitations on the exercise of the General Power).

2.6 Instructing Solicitors refer to the first sentence of paragraph 10.2(c) of the Follow-up Memorandum (as defined in the Schedule to these instructions). Counsel is asked to confirm that he agrees with Instructing Solicitors' interpretation.

3. **Wednesbury reasonableness**

3.1 In entering into the Framework Agreement (and the related transactions envisaged by the Documents Package), LAs will need to be able to satisfy themselves that a court would not deem their decision to do so to be "*so unreasonable that no reasonable authority could ever have come to it*" (*Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223 at [230]) or that they acted with "*conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt*" (*Education Secretary v Tameside Council* [1977] AC 1014, at [1064]).

3.2 Instructing Solicitors note that recent judicial focus has been on whether "*the view or decision of the primary decision-maker was reasonably open to it on the material before it*" and that undue attention to the "*fair reading*" or "*proper interpretation*" of documents can be unhelpful (*The Queen (on the application of Drax Power Limited) v Secretary of State for Energy and Climate Change* [2014] EWCA Civ 1153 at [69]).

3.3 To enable LAs to reach a reasonable and well informed decision whether or not to enter into the Framework Agreement, each LA shall have access to the Documents Package containing, among other things, the Follow-up Memorandum (as defined in the Schedule to these instructions). This has been drafted by Instructing Solicitors and identifies the history of their review process of the Framework Agreement, the adequacy of how historical comments have been addressed in the Framework Agreement (if at all) and, in Instructing Solicitors' opinion, any residual risks for LAs to consider. Instructing Solicitors note that some level of risk to LAs is necessary to ensure the efficacy of the structure and to support UK MBA's overarching objective to obtain funding for LAs at cheaper rates than is otherwise available to them.

3.4 To assist LAs in reaching a decision as to whether to enter into the Framework Agreement, Instructing Solicitors have identified in the Follow-up Memorandum that the inherent risks associated with entry by LAs into the Framework Agreement can, in principle, be broken down into two key categories:

- (a) failure of UK MBA, for example, in the event that it fails to comply with its obligations under the Framework Agreement either through the failure to service (i.e. pass through funds

received from LAs) its debt obligations (whether to LAs or under bilateral borrowing facilities or bond issues), failure (or inability) to operate the contribution arrangements as envisaged under the Framework Agreement, or a failure on the part of UK MBA to sustain and police robust due diligence and credit checks in relation to acceding LAs pursuant to its obligations under the Framework Agreement; and

- (b) failure or default of one or more LA. The structure of the Framework Agreement is designed such that a Guarantee would only need to be called upon where the contribution arrangements have failed to fill any shortfall under UK MBA's underlying borrowing facilities. However, where more than one LA has defaulted under its obligations under the Framework Agreement and the contribution arrangements are insufficient to cover the shortfall, the remaining non-defaulting LAs shall be liable to make payments under the Guarantees.

3.5 Instructing Solicitors draw Counsel's attention to the following features of the Framework Agreement that (among others) mitigate the risks identified at 3.4 above:

- (a) UK MBA's robust credit checks carried out on acceding LAs and its internal due diligence policies, as well as the comprehensive representation and warranties packages contained within the Framework Agreement;
- (b) the maintenance of UK MBA's liquidity facilities and reserves;
- (c) diversification of borrowing through the imposition of concentration limits to ensure that LAs do not have to take credit risk against a small number of LAs with large outstanding borrowings;
- (d) the contractual timing for payment of amounts due under the Loans ensure that UK MBA are in funds before payment of amounts are due to underlying lenders (subject to any potential default by an LA); and
- (e) the power of at least 50 per cent. of LAs (both by number and also by reference to those LAs' borrowings from UK MBA against the total outstanding borrowings from UK MBA) to restrict UK MBA from borrowing further funds from underlying lenders.

3.6 Counsel is asked to confirm that an LA that decides to enter into the Framework Agreement and a Guarantee on the basis of the Documents Package (assuming that it has (i) properly read and understood its contents, (ii) duly evaluated the risks identified (including, but not limited to, those identified at 3.4 above) as well as the relevant mitigants thereto, and (iii) followed all appropriate

internal procedural requirements) would be acting in accordance with the requirements of *Wednesbury* reasonableness.

- 3.7 Instructing Solicitors refer to the "*Guide to the Framework Agreement*" contained at appendix 1 to the Introductory Guide (as defined in the Schedule to these instructions). It is Instructing Solicitors' view that this appendix (with a suitable disclaimer that precedence should be given to the Framework Agreement itself) is helpful for LAs in considering whether to enter into the Framework Agreement. However, a concern has been raised by UK MBA that this appendix may be counter-productive given that there is a risk that LA officers may place reliance on this summary as opposed to the detail of the Framework Agreement itself. Counsel is asked to confirm that he agrees with Instructing Solicitors' view on the merits of including the "*Guide to the Framework Agreement*" as an appendix to the Introductory Guide.

4. Other considerations

- 4.1 Instructing Solicitors note that the Follow-up Memorandum (as defined in the Schedule to these instructions) and Counsel's Opinion will be capable of being relied upon by individual LAs. However, individual LAs are not able to rely upon the provisions of the Accounting Report (as defined in the Schedule to these instructions), which is being provided to them for information purposes only. It is Instructing Solicitors' view that this in itself would not mean that an LA was not acting in accordance with *Wednesbury* reasonableness requirements, so long as it considered whether it should take its own accounting advice as to the accounting implications of the Guarantees and the Loans, separate to the Accounting Report. Does Counsel agree?
- 4.2 Counsel is asked to advise as to any further risks that should be taken into account by an LA considering entering into the Framework Agreement in its decision making process, other than those identified in the Documents Package.
- 4.3 Counsel is also asked to advise on any further evidential requirements that an LA considering entering into the Framework Agreement could or should impose upon itself in order to eliminate the risk of its decision to enter into the Framework Agreement being challenged, either in the context of its General Power to do so or on the basis that the decision was not made in accordance with the requirements of *Wednesbury* reasonableness.

Counsel is asked to provide his advice in writing addressed to Birmingham City Council, Reading Borough Council and Southwark Borough Council (with an acknowledgement that his opinion (a) will be included in the Documents Package and (b) may be relied upon by each LA wishing to enter into the Framework Agreement and borrow from UK MBA) and Instructing Solicitors by 23 October, 2015 and, in the meantime,

to contact Geoff Fuller (geoff.fuller@allenoverly.com) of Instructing Solicitors should he have any questions about these Instructions or require any clarifications.

Allen & Overy LLP

9 October, 2015

DOCUMENT SIX

ACCOUNTING ADVICE
(prepared by Grant Thornton)

Christian Wall
Portfolio Manager
UK Municipal Bonds Agency
5-8 The Sanctuary
UK Municipal Bonds Agency
London
SW1P 3JS

Telephone: 020 3837 9963
Mobile: 07974 355034

22 October 2015

Dear All,

Accounting Advice Relating to Borrowing from the UK Municipal Bonds Agency:

Further to our recent conversations concerning borrowing from the UK Municipal Bonds Agency (the **Agency**), please find enclosed a paper prepared by Grant Thornton UK LLP (**Grant Thornton**) which highlights issues relating to the accounting requirements including refinancing.

Grant Thornton is one of the leading accounting, tax and advisory firms in the country with a significant share of the local authority audit market. It therefore has an excellent understanding of the technical and practical issues that need to be considered.

The advice has been prepared for the Agency itself and is being released to you for information purposes only. Coupled with the standard terms and conditions common to any advice and guidance prepared by a professional firm, this does mean that there are some matters that need to be drawn to your attention:

- The advice has been prepared solely in relation to the UK Municipal Bonds Agency and it cannot be used for any other purpose.
- Any reliance you place on the information in the paper will be entirely at your own risk. Each local authority remains responsible for its own accounts and there is no warranty provided either by the Agency or Grant Thornton, either explicit or implicit, in relation to the advice.

- The advice cannot be passed to third parties.
- No local authority has any right of recourse to Grant Thornton or the Agency in relation to the advice. This also means that if you have a query concerning the advice you should contact me and not contact Grant Thornton directly.

If you have any questions or queries, do get in touch.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'C Wall', written in a cursive style.

Christian Wall
Portfolio Manager



Grant Thornton

An instinct for growth™

*Local Authority Accounting for borrowing via the
Municipal Bonds Agency*

Advice to the Municipal Bonds Agency



Grant Thornton

An instinct for growth™

Our Ref MBA20151013
Your Ref

Municipal Bonds Agency
Ground Floor
5-8 The Sanctuary
LONDON
SW1P 3JS

For the attention of Christian Wall

14 October 2015

Dear Christian

**Advice in connection with local authority accounting requirements
in relation to the Municipal Bonds Agency**

Grant Thornton UK LLP is the largest supplier of audit and related services to the local government sector in the UK. As a practice we have significant sector expertise including the specific requirements of UK local authority accounting. I am the firm's Head of Local Government, lead our public sector assurance team in London and the South East and am the partner responsible for public sector financial reporting.

Further to the letter of engagement dated 22 June 2015, I am pleased to present our report to you on the accounting implications for local authorities in relation to their borrowing via the Municipal Bonds Agency.

Please do not hesitate to contact me should you wish to discuss any aspect of this report or if you require assistance with any other matter.

Yours sincerely

Paul Dossett
Partner
For Grant Thornton UK LLP

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1 Terms used in this report

Term	Definition
CIES	Comprehensive Income and Expenditure Statement
CIPFA	Chartered Institute of Public Finance and Accountancy
Code	Code of Practice on Local Authority Accounting in the United Kingdom
EIR	Effective Interest Rate
Grant Thornton	Grant Thornton UK LLP
IAS	International Accounting Standards
IFRS	International Financial Reporting Standards
MBA	Municipal Bonds Agency
PWLB	Public Works Loan Board
Us/We	Grant Thornton UK LLP
You	The Municipal Bonds Agency

2 Important context

Introduction

- 2.1 Grant Thornton has been engaged by the Municipal Bonds Agency (MBA) to provide this advice under the terms as set out in the letter of engagement dated 22 June 2015.
- 2.2 This section sets out the context of this report, the basis of its preparation and its appropriate uses. It is important that the rest of this report is considered in the context of the information in this section.

Context

- 2.3 MBA wish to support local authorities investing in, and borrowing via, MBA in preparing their statutory financial statements.
- 2.4 As part of this, MBA has requested independent advice on the accounting implications for local authorities of investing in, and borrowing via, MBA under the Code of Practice for Local Authority Accounting in the UK and the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (as amended) ("the Project"). The work will be completed in two phases.
- 2.5 MBA will seek to circulate our reports to local authority shareholders and borrowers and potential shareholders and borrowers to promote knowledge of the financial reporting requirements and consistency.

Scope of engagement

- 2.6 As part of our work, we will assess documentation provided by MBA including:
 - background information provided in the Credit Agency Presentation March 2015 and Shareholder and Borrower Update March 2015 (Phase I and II)
 - articles of association (Phase I)
 - draft framework agreement (Phase II)
 - draft joint and several guarantee (Phase II)
 - a summary of the consideration by the MBA in relation to risks of local authority default (Phase II).
- 2.7 We will consider:
 - the accounting requirements for local authority shareholders in relation to their investment in the MBA (Phase I)
 - the Minimum Revenue Provision implications for local authority shareholders in relation to their investment in the MBA (Phase I)

- the accounting requirements for local authority borrowers in relation to:
 - the joint and several guarantee
 - loans taken out via the MBA (Phase II)
- 2.8 This report provides the results of our work in relation to Phase II, summarising the local authority accounting requirements for local authority guarantees and borrowing via the MBA. Our report sets out the key requirements and options/ methodologies available under the Code of Practice for Local Authority Accounting in the UK in preparing statutory financial statements and is not a substitute for detailed advice required by individual borrowers or the judgements required by Directors of Finance.

Limitation of liability

- 2.9 Our liability in connection with this engagement shall be limited, on the basis set out in Appendix 1 "Additional terms and conditions of engagement" of our letter of engagement, to a maximum aggregate amount of £2 million and, subject to that cap, to that part of any loss suffered which is proportional to our responsibility.

Forms of report

- 2.10 For your convenience, this report may have been made available to you in electronic as well as hard copy format, multiple copies and versions of this report may therefore exist in different media and in the case of any discrepancy the final signed hard copy should be regarded as definitive.

Confidentiality and reliance

- 2.11 Our reports will be addressed to the MBA. Our reports and other communications are prepared for the MBA only. Subject to paragraph 2.12 below, they should not be used, reproduced or circulated for any other purpose, whether in whole or in part without our prior written consent. We agree that MBA may disclose our reports to its employees, officers, directors, insurers and professional advisers in connection with the Project, or as required by law or regulation, the rules or order of a stock exchange, court or supervisory, regulatory, governmental or judicial authority without our prior written consent but in each case strictly on the basis that we owe no duties to any such persons.
- 2.12 MBA have informed us that onward distribution of our reports to local authority shareholders and borrowers and potential shareholders and borrowers ("Permitted Disclosees") will be required as part of this engagement. In these circumstances, we consent to the circulation of our reports strictly to those Permitted Disclosees to whom it is necessary to release them on the basis that you notify each recipient that they are being released to them for information purposes only and that any reliance they place on them will be at their own risk. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the MBA for our work, for our reports and other communications, or for the opinions which we shall form.
- 2.13 To the fullest extent permitted by law, we do not accept any responsibility for any loss or damage arising out of the use of the reports or other communications by the MBA for any purpose other than in connection with the Project.

3 Executive Summary

Introduction

- 3.1 This report sets out our advice relating to local authority accounting implications and requirements for borrowing via the MBA. It is based on our review of requirements in the 2015/16 Code of Practice on Local Authority Accounting in the United Kingdom and specific statutory requirements relevant to borrowing, where relevant.

Key messages

- 3.2 Local authorities entering into the joint and several guarantee as part of the Local Authority Financing Framework Agreement will enter into a financial guarantee contract. The financial guarantee contract is a financial instrument. This should be classified as financial liabilities at amortised cost, recognised at fair value and subsequently held at the higher of carrying value and a best estimate of the amount to settle the obligation when a payment under the guarantee becomes probable. Local authorities will need to consider assumptions and use judgement in determining fair value on initial recognition and subsequent measurement. Local authorities will also need to consider disclosure requirements in relation to the financial guarantee liability taking into account materiality (both quantitative and qualitative).
- 3.3 Local authority loan agreements with the MBA are financial instruments. These should be classified as financial liabilities at amortised cost and initially recognised at fair value less transaction costs (unless a local authority chooses to write these off immediately). These should be measured subsequently at amortised cost. Local authorities will need to consider assumptions and use judgement in determining fair value on initial recognition. Local authorities will also need to consider disclosure requirements in relation to the borrowing taking into account materiality (both quantitative and qualitative).
- 3.4 Local authorities making contributions to the MBA as part of the Local Authority Financing Framework Agreement will be providing loans to the MBA. The contribution loan agreement is a financial instrument. This should generally be classified as financial asset classified as loans and receivables, recognised at fair value and subsequently held at amortised cost. Local authorities will need to consider assumptions and use judgement in determining fair value on initial recognition and in considering impairment. Local authorities will also need to consider disclosure requirements such as fair value and credit risk of the contribution loans taking into account materiality (both quantitative and qualitative).
- 3.5 Where a local authority takes out borrowing from the MBA to refinance existing debt with other lenders, premia for early redemption may become payable. Whilst these will be chargeable immediately to the Surplus or Deficit on Provision of Services in the Comprehensive Income and Expenditure Statement, statutory adjustments allow local authorities to spread the impact of these to the General Fund in line with statutory provisions.

Conclusions

- 3.6 Whilst the report provides a summary of the key accounting requirements for local authorities, local authorities will remain responsible for the preparation of their financial statements. Issues requiring judgement have therefore been set out in the report and highlighted above for local authorities to consider in the preparation of their financial statements.

4 Accounting requirements

Introduction

- 4.1 In this section we set out the advice relating to local authority accounting implications and requirements in relation to borrowing from the MBA.

Background

- 4.2 Over 50 local authorities have invested in establishment of the MBA through two capital raises. This allows shareholders priority for borrowing from MBA, with non-shareholders charged a premium to borrow. All local authority borrowers agree, through the framework agreement, that they will enter into a joint and several guarantee.
- 4.3 The Local Authority Financing Framework Agreement between MBA and authorities borrowing from the MBA set out the arrangements and requirements relating to local authority borrowing from the MBA. Provisions relevant to accounting for this agreement are summarised below.

Joint and several guarantee

- 4.4 The draft Local Authority Financing Framework Agreement v11 sets out that:

To facilitate the issuance of Notes by the Company and borrowing from other lenders and/or investors, the Authorities have agreed to guarantee the payment of all sums expressed to be payable from time to time by the Company in respect of the Notes, the Trust Deed and certain other loan agreements or other borrowing arrangements that the Company may enter into from time to time.

- 4.5 It further provides details of the guarantee as follows:

The Guarantor irrevocably and unconditionally:

guarantees to each Beneficiary each and every obligation and liability the Company may now or hereafter have to such Beneficiary (whether solely or jointly with one or more persons and whether as principal or as surety or in some other capacity) and promises to pay to each Beneficiary from time to time on demand the unpaid balance of every sum (of principal, interest or otherwise) now or hereafter owing, due or payable (following the expiry of any grace period provided for) by the Company to any such Beneficiary in respect of any such liability; and

agrees as a primary obligation to indemnify each Beneficiary from time to time on demand from and against any loss incurred by such Beneficiary as a result of any such obligation or liability being or becoming void, voidable, unenforceable or ineffective as against the Company for any reason whatsoever, whether or not known to such Beneficiary, the amount of such loss being the amount which such Beneficiary would otherwise have been entitled to recover from the Company.

Local authority borrowing from the MBA

- 4.6 The MBA will borrow funds and lend on those funds to local authorities. The draft Local Authority Financing Framework Agreement v11 sets out arrangements in respect of borrowing from the MBA as follows:

The Company and any Authority may from time to time agree terms upon which the Company will make an Authority Loan to such Authority. The Company and such Authority will either (i) execute a Loan Confirmation in order to document such terms, which shall incorporate the Loan Standard Terms, save as modified or supplemented by the relevant Loan Confirmation or (ii) execute an agreement in such other form as may be agreed between the Company and such Authority.

- 4.7 These loans will be subject to a separate agreement.

Local authority contribution loans

- 4.8 Section 3 of the draft Local Authority Financing Framework Agreement v11 sets out arrangements in the event of default by a local authority. These are designed to prevent a call under the joint and several guarantee by providing the MBA with sufficient funds to meet interest payments/ principal repayments through local authority contribution loans, if necessary. The agreement states that:

If:

at 11 a.m. on the date falling 4 Business Days (or, in respect of principal and unless otherwise agreed between the Company and the relevant Authority, 8 Business Days) prior to a day on which a payment is due under the Finance Documents, the Company has been unable to obtain sufficient funds from (i) one or more Liquidity Facility Providers under Liquidity Facility Agreement(s) or (ii) one or more Lending Authorities or lenders or other providers of financial accommodation, in each case, under Finance Document(s), in each case to enable it to pay such amounts falling due under the Finance Documents, the Company shall; or

at any other time the Company expects to be unable to pay, or does fail to pay, any amount when due under the Finance Documents, the Company shall; or

on any date after the Funding Date on which an amount due by an Authority pursuant to Clause 3.3.1 above remains unpaid by the relevant Authority (notwithstanding that the Company has sufficient funds to enable it to make all payments of amounts due under the Finance Documents), the Company may,

notify each Authority (other than any Defaulting Authority) thereof as soon as reasonably practicable (or, in the case of paragraph (a) above, by 5 p.m. on such date). Such notice (a "Contribution Notice") shall specify the Shortfall Amount and shall set out the Authority Contribution required from each Authority which is not a Defaulting Authority (including specifying where, in relation to any Authority, the Authority Contribution is zero).

If the Company does so issue Contribution Notices, it may also initiate discussions with any Authority which is not a Defaulting Authority with a view to such Authority agreeing to be issued with an Individual Authority Contribution Notice pursuant to Clause 3.3.5(b).

- 4.9 The agreement further confirms that these contributions will be repaid to local authorities with interest following any enforcement action by the MBA as follows:

All amounts received by the Company from an Authority pursuant to a Contribution Notice, Further Contribution Notice or Individual Authority Contribution Notice shall be treated as Contribution Loans made by the relevant Authority to the Company, the repayment of which, and the payment of any interest thereon, shall be made in accordance with Clause 3.9 (Order of application of proceeds) and shall be due and payable only at the times and to the extent that the Company has funds available to make such payments in accordance with Clause 3.9 (Order of application of proceeds). Interest on Contribution Loans ("Contribution Interest") shall accrue at an interest rate equal to the higher of (i) the interest rate payable by the Defaulting Authority under the relevant Authority Loan, and (ii) the prevailing rate offered by the Public Works Loan Board (or any

replacement agency) in respect of loans having the same maturity and interest basis under the relevant Authority Loan (and to the extent (ii) applies, the relevant Defaulting Authority shall be required to indemnify the Company in respect of such cost pursuant to the Loan Standard Terms). Such interest, if unpaid, will be compounded with the amount due under the relevant Contribution Loan on the date falling 6 months after the relevant Contribution Loan is made and at 6-monthly intervals thereafter, but will remain immediately due and payable subject to availability of funds to make such payments in accordance with Clause 3.9 (Order of application of proceeds).

- 4.10 This section of the report sets out the accounting requirements for local authorities for entering into the joint and several guarantee, borrowing from the MBA and local authority contribution loans in the event of default by another local authority. Further details on the precise details and mechanisms in relation to the joint and several guarantee, local authority borrowing and local authority contribution loans are included within the draft Local Authority Financing Framework Agreement v11. Local authorities should ensure that they are familiar with the detailed provisions in the final agreement in preparing their financial statements and in forming any accounting judgements.

Accounting framework and requirements

- 4.11 Local authorities in the United Kingdom are required to prepare their statutory financial statements in line with the Code of Practice on Local Authority Accounting in the United Kingdom (the Code) which is based International Financial Reporting Standards (IFRS), except where these are inconsistent with specific statutory requirements.
- 4.12 This report sets out our consideration of the accounting issues based on the Code of Practice on Local Authority Accounting in the United Kingdom 2015/16 and any relevant statutory provisions in force at the date of the report. The MBA intends to focus initially on English local authorities. The report therefore will focus on the regulations applicable in England, however similar provisions exist in Wales and Scotland; there are no relevant equivalent statutory provisions in Northern Ireland.

Accounting for financial instruments

Financial instruments

Requirements

- 4.13 The Code and IAS 32 Financial Instruments: Presentation defines a financial instrument as *any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity*.
- 4.14 IAS 32 defines financial assets as *any asset that is:*
- (a) *cash;*
 - (b) *an equity instrument of another entity;*
 - (c) *a contractual right:*
 - (i) *to receive cash or another financial asset from another entity; or*
 - (ii) *to exchange financial assets or financial liabilities with another entity under conditions that are potentially favourable to the entity; or*
 - (d) *a contract that will or may be settled in the entity's own equity instruments...*

4.15 IAS 32 further defines financial liabilities as *any liability that is:*

(a) a contractual obligation:

(i) to deliver cash or another financial asset to another entity; or

(ii) to exchange financial assets or financial liabilities with another entity under conditions that are potentially unfavourable to the entity; or

(b) a contract that will or may be settled in the entity's own equity instruments...

Joint and several guarantee

4.16 Based on our understanding of the form of guarantee entered into by local authorities as set out in the draft Local Authority Financing Framework Agreement v11, the local authorities guarantee payments of MBA's liabilities to relevant beneficiaries in the event MBA cannot meet its obligations.

4.17 In such cases, a local authority will have a contractual obligation to deliver cash to the relevant beneficiaries any unpaid balances of the MBA and as such the guarantee will be a financial liability.

Local authority borrowing from MBA

4.18 Based on our understanding of local authorities' borrowing from the MBA as set out in the draft Local Authority Financing Framework Agreement v11 the MBA will make loans to local authorities in line with standards terms and the relevant Loan Confirmation or any other such agreement.

4.19 In such cases, a local authority will have a contractual obligation to deliver cash (the repayment and interest) to the MBA and as such the borrowing will be a financial liability.

Local authority contribution loans

4.20 Based on our understanding of arrangements for local authority contribution loans as set out in the draft Local Authority Financing Framework Agreement v11, in certain circumstances, a local authority may be required to make contributions to MBA. In these circumstances it is expected that these are repaid with interest by the MBA.

4.21 In such cases, the MBA will have a contractual obligation to deliver cash (the repayment and interest) to the local authority and as such the loan will be a financial asset.

Financial instrument classification

Requirements

4.22 Local authorities are required to account for financial instruments in accordance with IAS 39 Financial Instruments: Recognition and Measurement, except where adaptations, or interpretations, to fit the public sector are detailed in the Code or where there are statutory accounting requirements. Whilst all financial instruments are measured initially on the basis of fair value, subsequent measurement depends on the classification of an instrument.

- 4.23 Local authorities are required to classify their financial liabilities in one of two classes as follows:
- 1) fair value through profit and loss, where the financial liability is held for trading; or
 - 2) amortised cost, financial liabilities which are not held for trading.
- 4.24 Local authorities are required to classify their financial assets in one of three classes as follows
- 1) fair value through profit and loss, where the financial asset is held for trading
 - 2) loans and receivables, where the asset has fixed or determinable payments and are not quoted on an active market
 - 3) available for sale, those assets not classified as fair value through the profit or loss or loans and receivables.
- 4.25 Although IAS39 permits designation of a financial instrument to a different category to the one to which it would inherently belong, this is not permitted by the Code. For example, held to maturity assets permitted under IAS 39 are not permitted under the Code.

Joint and several guarantee

- 4.26 Based on our understanding of the reasons for local authorities entering into the guarantee, considering the draft Local Authority Financing Framework Agreement v11 which does not allow a local authority to transfer its obligations other than to a statutory successor, these could not be held for trading. The guarantee should therefore be classified as a Financial Guarantee Contract which is classified as amortised cost, unless a local authority has entered the agreement for the purpose of trading.

Local authority borrowing from MBA

- 4.27 Based on our understanding of local authorities' borrowing from the MBA and considering the draft Local Authority Financing Framework Agreement v11 which does not allow a local authority to transfer its obligations other than to a statutory successor, it is unlikely that this will be held for trading. The borrowing should therefore be classified as Borrowings classified as amortised cost, unless a local authority has borrowed principally for the purpose of trading.

Local authority contribution loans

- 4.28 Based on our understanding of arrangements for local authority contribution loans as set out in the draft Local Authority Financing Framework Agreement v11, contributions are expected to be repaid with interest specified within the agreement. Under these circumstances it is expected that payments would be fixed or determinable. The contribution loans should therefore be classified as debtors classified as loans and receivables.

Initial recognition and measurement

Requirements

- 4.29 A financial asset or liability shall be recognised when an authority becomes party to the contractual provisions of the instrument. In the case of a financial liability, local authorities will

not become party to the contractual provisions of the financial liability unless one of the parties has performed under the agreement, such as the advance of cash under a loan agreement.

- 4.30 IAS 39 requires that *When a financial asset or financial liability is recognised initially, an entity shall measure it at its fair value plus, in the case of a financial asset or financial liability not at fair value through profit or loss, transaction costs that are directly attributable to the acquisition or issue of the financial asset or financial liability. However, if the fair value of the financial asset or financial liability at initial recognition differs from the transaction price, an entity shall apply paragraph AG76 .*
- 4.31 IFRS 13 Fair Value defines fair value as *the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.*
- 4.32 IAS 39 considers that, *the best evidence of the fair value of a financial instrument at initial recognition is normally the transaction price (ie the fair value of the consideration given or received).* However, transaction prices may not always equal fair value under IFRS 13 which is based on an exit price concept. Local authorities will therefore need to consider the fair value of the financial instrument on initial recognition.
- 4.33 Local authorities will need to consider whether the transaction is at arms-length, is not taking place under duress (that is they are willing to enter into the transaction, they are motivated but not forced or otherwise compelled to do so), and takes place in the principal market (the market with the greatest volume and level of activity for the asset or liability). Where a transaction was is not at arm's-length a valuation technique should be used to establish fair value.
- 4.34 However, IAS 39 also requires that unless fair value is evidenced by a quoted price or a valuation technique using data from observable markets the financial liability shall be recognised at transaction price. In the case of liabilities, there is less likely to be an active market due to contractual and other restrictions on liability transfers. In cases where a transfer price is unavailable but the instrument is held by another party as an asset, the liability should be measured from the asset holder's perspective.
- 4.35 The effect of adjusting the fair value of a financial liability for transactions costs is to amortise those transaction costs over the life of the instrument. The Code adapts IAS 39 to provide an option to write off transactions costs immediately to Surplus or Deficit on the Provision of Services rather than adjust the initial recognition amount where they are considered immaterial.
- 4.36 In relation to financial asset loans, local authorities need to consider whether loans are made at below prevailing market rates (soft loans). Statutory accounting requirements under the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (as amended) with regards to soft loans (loans below prevailing interest rates) advanced by a local authority provide that the impact on the General Fund in relation to soft loans is the contractual interest receivable. Any difference between the amount credited to Surplus or Deficit on the Provision of Services in accordance with the Code and interest income under the regulations credited to the General Fund will be adjusted via the Financial Instruments Adjustment Account so that the General Fund reflects only the amounts required by the regulations (contractual interest receivable).

Joint and several guarantee

- 4.37 Authorities will be required to recognise the liability at the time of entering into the guarantee, when they become party to the contractual provisions.

- 4.38 The financial guarantee will be initially recognised at fair value. Based on our understanding of the guarantee, transactions are at arm's-length (although borrowers may be MBA shareholders they will not have control or significant influence over the MBA, as considered in our Phase I report) but no premium is payable for taking on the risk of the guarantee.
- 4.39 As no premium is received, the fair value at inception should be considered by local authorities and will require the use of an estimation technique. One such estimation technique might be the expected losses under guarantee, although authorities might consider other estimation techniques provide a more reliable estimate of fair value such as the price for an equivalent credit insurance policy (if such a policy were available).
- 4.40 In considering, expected losses under guarantee, local authorities would consider the probability of the guarantee being called and the likely amount payable. In doing so, local authorities might take into account the provisions in the draft Local Authority Financing Framework Agreement v11 intended to avoid the guarantee being called including:
- payment requirements and timetables set out in the Local Authority Financing Framework Agreement
 - availability of any MBA liquidity facility
 - the local authority contribution arrangements set out in the Local Authority Financing Framework Agreement.
- 4.41 Further considerations might include:
- the overall governance framework of the MBA including risk management and controls
 - MBA lending policies
 - the history of local authority default
 - local authority access to PWLB funds as a lender of last resort
 - the wider local authority legislative framework.

MBA may also be able to provide further documentary evidence of the history of local authority default.

- 4.42 In considering the matters in 4.40 and 4.41 above, particularly the terms of the Local Authority Financing Framework Agreement and the system of contribution loans alongside any other relevant information, local authorities may conclude that the expected losses are negligible. This will be a judgement for each local authority based on the information available to it at the time. The treatment of potential contribution loans is set out from 4.47 below. In recognising any financial guarantee any loss will be charged to the Surplus or Deficit on the Provision of Services. There are no statutory provisions for guarantees entered into on or after 9 November 2007 which would mitigate the impact on the General Fund.
- 4.43 The intention of IAS39 is to recognise a financial liabilities under financial guarantee contracts. It is not expected that an authority would account separately for any benefits as a result of entering into the guarantee, any benefits such as the ability to borrow at favourable rates which would be considered under accounting for the initial recognition of any borrowing from the MBA at fair value covered below.

Local authority borrowing from MBA

- 4.44 Local authority borrowing from the MBA will only be recognised by local authorities when the cash is received rather than at the date of the loan agreement (if different). The borrowing will

be measured initially at fair value less transaction costs directly attributable to the issue of the financial instrument.

- 4.45 Based on our understanding of the borrowing from the MBA, transactions are at arm's-length (although borrowers may be MBA shareholders they will not have control or significant influence over the MBA, as considered in our Phase I report). Transaction price (the receipt of the loan advance) is therefore likely to provide the best evidence of fair value and therefore used for initial recognition.
- 4.46 However, at initial measurement local authorities should consider whether the transaction price does provide the best evidence of fair value, and if not whether fair value can be evidenced by a quoted price or a valuation technique using data from observable markets. Where this is the case the borrowing should be recognised at fair value (with the gain or loss recognised in the Surplus or Deficit on the Provision of Services), otherwise it should be measured at transaction price.
- 4.47 On initial recognition transaction costs should be deducted from the fair value of the liability. However, the Code does provide an option for immediate write off to Surplus or Deficit on the Provision of Services where these are immaterial. Where local authorities consider that transactions are immaterial, on initial recognition of the borrowing they could either:
- deduct transaction costs from the fair value of the liability or
 - write off transactions costs to Surplus or Deficit on the Provision of Services.

Local authority contribution loans

- 4.48 The contribution loan will be recognised when the authority becomes party to the contractual provisions of the contribution loan agreement and when the authority takes on the legal right to repayment/ payment of interest. This is likely to be on providing the financial contribution/ loan to MBA. The loan will be measured initially at fair value.
- 4.49 Local authorities will need to consider fair value at recognition as the draft Local Authority Financing Framework Agreement v11 sets out the interest rate payable being *the higher of (i) the interest rate payable by the Defaulting Authority Loan, and (ii) the prevailing rate offered by the Public Works Loan Board (PWLb) (or any replacement agency) in respect of loans have the same maturity and interest basis under the relevant Authority Loan*. As this is likely to be based on the PWLB rate, it is likely that local authorities will consider that the interest rate reflects the market rates at the time the contribution loans are advanced.
- 4.50 Given the interest rates set out in the Local Authority Financing Framework Agreement it is unlikely that contribution loans will be provided at less than contribution rates. If, in the circumstances, bearing materiality in mind, where local authorities consider that contribution loans to the MBA are at less than market rate the fair value should be estimated as the present value of cash receipts discounted at the prevailing market rate of interest (for a similar organisation with a similar credit rating) with the sum by which the amount lent exceeds the fair value of the loan charged to Surplus or Deficit on Provision of Services. In applying the statutory regulations the impact on the Surplus Deficit on Provision of Services is reversed and replaced with the actual interest receivable. In considering the prevailing market rate of interest in calculating fair value, the Code confirms that it is acceptable to base the prevailing interest rate on the authority's borrowing cost plus an allowance for credit risk. The Code requires that the PWLB rate shall be used to estimate the prevailing market rate unless the authority can provide reliable evidence it would be able to borrow at a lower rate.

- 4.51 Whilst fair value on initial recognition should be adjusted for transaction costs, it is not expected that there will be transaction costs relating to these contributions loans.

Future considerations

- 4.52 Local authorities are required to apply the measurement and disclosure requirements of IFRS 13 fair value prospectively from 2015/16. There are no adaptations to IFRS 13 for the public sector context. However, it is likely that CIPFA will issue further application guidance in relation to local authority liabilities, particularly in relation to liabilities that cannot be transferred, therefore local authorities will need to consider any subsequent guidance issued by CIPFA in assessing fair value.

Subsequent measurement

Requirements

- 4.53 Subsequent treatment of a financial instrument depends on its classification. Under the Code, financial liabilities classified as amortised cost and financial assets classified as loans and receivables are measured subsequent to initial recognition at amortised costs.
- 4.54 In relation to financial guarantee contracts, following initial recognition, these are carried at the original amount at recognition, less any cumulative amortisation to match any expected changes in exposure, unless payment under the guarantee becomes probable at which point the amount of the liability should be determined as the higher of the carrying amount or the amount determined in accordance with IAS 37 Provisions, Contingent Liabilities and Assets, less any cumulative amortisation. IAS 37 requires provisions to be measured at the *best estimate of the expenditure required to settle the present obligation at the end of the reporting period*.
- 4.55 Any movements in the carrying amount of a financial guarantee liability will be made through the Surplus or Deficit on Provision of Services. As set out in 4.42, there are no statutory provisions which will mitigate any impact.
- 4.56 The amortised cost model requires accounting for a financial liability by applying a calculated single effective interest rate (EIR)¹ over the expected life of the instrument, rather than accounting for the cash flows within the contract to reflect the underlying substance of the instrument. The profile of interest charges under the EIR and contractual cashflows may be the same where loans are at fixed rates or variable rates linked to base rates, however these will be different where there are significant transaction costs.
- 4.57 Each year the carrying amount of the liability is increased for the interest calculated under the effective interest rate (charged to the Surplus or Deficit on Provision of Services in the Comprehensive Income and Expenditure Statement (CIES)) and reduced by any cash outflows (being interest and principal payments made under the contractual terms).
- 4.58 However, where judged immaterial, transaction costs may be charged immediately to the Surplus or Deficit on Provision of Services.
- 4.59 Where financial liabilities are measured at amortised costs there are no fair value revaluations following initial recognition.

¹ The effective interest rate is the rate of interest that will discount all cashflows throughout the life of the instrument down to the fair value of the liability calculated at initial measurement (fair value less transaction costs).

- 4.60 In relation to financial assets, financial assets are impaired and impairment losses incurred when there is objective evidence as a result of a past event that occurred subsequent to initial recognition. The Code, in 7.3.3.1, sets out events that provide objective evidence of impairment including significant financial difficulty of the creditor, breach of contract or probability that the borrower will enter into bankruptcy or financial reorganisation. Local authorities need to assess whether there is objective evidence of impairment at each balance sheet date.
- 4.61 Where objective evidence of impairment is identified local authorities need to consider whether the carrying amount exceeds the estimated recoverable amount (present value of expected future cash flows discounted at the original effective interest rate). Where this is the case the carrying amount shall be reduced and loss included in the Surplus or Deficit on the Provision of Services.

Joint and several guarantee

- 4.62 Following initial recognition of a financial guarantee liability, if any such liability is recognised, it is expected that this will continue to be held at carrying value less any cumulative amortisation.
- 4.63 Annually, local authorities would need to consider whether the payment under the guarantee becomes probable, and if so measure the guarantee as the higher of the carrying amount or in line with measurement of a provision in accordance with IAS 37.
- 4.64 In considering whether or not payment under the guarantee is probable, local authorities should consider whether there had been any local authority defaults and resulting local authority contribution loans under the Local Authority Financing Framework Agreement and might further consider whether the MBA had been able to recover money from defaulting authorities. For example, in the circumstances that a local authority default has occurred and the MBA has been unable to recover monies from defaulting authorities or that recovery is not probable, local authorities are likely to consider it probable that payments will be required under the guarantee. However this will be a local authority judgement.
- 4.65 In relation to the measurement of the guarantee, the measurement provisions of IAS 37 apply. IAS 37 requires measurement as *The best estimate of the expenditure required to settle the present obligation being the amount that an entity would rationally pay to settle the obligation at the end of the reporting period or to transfer it to a third party at that time. Further The estimates of outcome and financial effect are determined by the judgement of the management of the entity, supplemented by experience of similar transactions and, in some cases, reports from independent experts. The evidence considered includes any additional evidence provided by events after the reporting period.*
- 4.66 The standard recognises that there may be uncertainties around the amount and suggests that the individual most likely outcome may be the best estimate although authorities may need to consider other possible outcomes.
- 4.67 Where payment under the guarantee is probable, it is likely that the default amounts will be known or estimated. In these circumstances, local authorities should be able to calculate the best estimate of any payments under the guarantee based on information on their proportion of borrowing which would be available from the MBA.
- 4.68 Whilst it is possible that, following payments under the guarantee, local authorities obtain rights to recover funds, IAS 37 requires that *where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement shall be recognised when, and only when, it is virtually certain that reimbursement will be received if the entity settles the obligation.* In the event of any guarantee payments, local authorities would be expected to obtain their own legal advice as to further rights to recover funds from defaulting authorities and for that advice to be reflected in

the financial statements. A local authority would therefore need to record the liability irrespective of any further rights to reimbursement with the reimbursement asset only recognised if recovery was virtually certain.

Local authority borrowing from MBA

- 4.69 Following initial recognition of borrowing it is expected that this will continue to be held at carrying value plus the interest calculated under the amortised cost model, less contractual cash outflows. The relevant accounting entries being:

Dr CIES – Financing and Investment Expenditure (Interest based on amortised cost)
Cr Cash (contractual cash payments of interest and principal)
Cr Borrowing (balancing amount)

- 4.70 The carrying value will not be re-valued following initial recognition as these are held at amortised cost.

Local authority contribution loans

- 4.71 Subsequent to initial recognition, the contribution loans should be held at amortised cost being the amount at initial recognition plus interest (based on the amortised cost multiplied by the interest rate used on recognition) minus any cash receipts (interest and principal repayments).
- 4.72 At the balance sheet date local authorities will need to consider whether there is objective evidence of impairment and where applicable record any loss in the Surplus or Deficit on the Provision of Services as set out in 4.72. In doing so local authorities might consider whether or not the MBA has failed to recover money from defaulting authorities and availability of MBA equity in considering whether MBA were in significant financial difficulty.
- 4.73 Where objective evidence of impairment is identified, local authorities need to consider whether the carrying amount exceeds the estimated recoverable amount (present value of expected future cash flows discounted at the original effective interest rate). Where this is the case the carrying amount shall be reduced and loss included in the Surplus or Deficit on the Provision of Services.

Disclosure

Requirements

- 4.74 In considering the disclosures required in the financial statements a local authority will need to consider whether or not the financial instruments are either qualitatively or quantitatively material. Where material a local authority will need to consider the disclosure requirements specific to loans and receivables and financial liabilities held at amortised cost required in the Code which include:
- 7.4.2.2 the carrying amounts of loans and receivables (including where material separate disclosure and details of soft loans) and financial liabilities at amortised cost
 - 7.4.2.9 net gains or net losses on loans and receivables and financial liabilities at amortised cost, total interest income and expense for financial assets and financial liabilities that are not at fair value through profit or loss, interest income on impaired assets and the amount of any impairment loss.
- 4.75 Other financial instrument disclosure Code requirements that may need to be tailored to reflect the relevant financial liabilities include:

- 7.4.2.10 accounting policies for the recognition and measurement
 - 7.4.11 fair value in comparison to carrying value disclosures
 - 7.4.2.13 the methods and assumptions applied in determining fair value
 - 7.4.2.14 where a local authority does not recognise a gain or loss on initial recognition because the fair value is not evidenced by a quoted price in an active market for an identical liability nor based on a valuation technique on data from observable markets, additional disclosures providing additional information.
- 4.76 Local authorities will also need to consider relevant disclosures in relation to the nature and extent of risks arising from financial instruments.

Joint and several guarantee

- 4.77 Local authorities will need to consider the materiality of the financial guarantee contracts in considering the extent of disclosures. Local authorities might expect to include details of the nature of the guarantee within financial instrument disclosures providing details as set out in the Local Authority Financing Framework agreement.
- 4.78 The joint and several guarantee will need to be reflected in financial instrument disclosures relating to financial liabilities, accounting policies and judgements with regards to fair value measurements. In doing so, local authorities will need to ensure that judgements and estimation such as the those judgements made in relation to estimating expected losses under the guarantee or other techniques to estimate fair value on recognition.

Local authority borrowing from MBA

- 4.79 Local authorities will need to consider the materiality of their borrowing from the MBA in considering the extent of disclosures.
- 4.80 The borrowing will need to be reflected in financial instrument disclosures relating to financial liabilities, accounting policies and judgements with regards to fair value measurements.

Local authority contribution loans

- 4.81 Local authorities will need to consider the materiality of their contribution loans to the MBA in considering the extent of disclosures.
- 4.82 The contribution loans will need to be reflected in financial instrument disclosures relating to loans and receivables financial assets, accounting policies and judgements with regards to fair value measurements. Local authorities will also need to consider disclosures with regards to credit risk in the nature and extent of risks arising from financial instruments. Where the contribution loans are considered to be soft loans, local authorities will need to consider specific disclosure requirements relating to soft loans.

Re-financing with the MBA

Requirements

- 4.83 A financial liability is derecognised when the obligation in the contract is discharged or cancelled or expires. Under IAS 39, the difference between the carrying amount of a financial liability extinguished or transferred (if any) and the consideration paid is recognised in the Surplus or Deficit on Provision of Services. Differences are will arise when loans are repaid early and premiums become payable or discounts receivable.

- 4.84 At this point it is not expected that local authorities will derecognise borrowing from the MBA in the short/ medium term, therefore this report does not consider the de-recognition of borrowing from the MBA. However local authorities may consider re-financing current borrowing from other lenders with the MBA.
- 4.85 Specific statutory provisions are in place with regards to premiums arising on the early repayment of loans which allows local authorities to amortise the charge to the General Fund where this has been charged to the Surplus or Deficit on the Provision of Services. This will be an important factor in the considerations of Directors of Finance when considering any re-financing options.
- 4.86 In particular, the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (as amended) provide specific statutory accounting requirements relating to accounting for premiums on the early redemption of debt. In cases where the statutory adjustments are applicable, the Surplus or Deficit on the Provision of Services shall reflect total premium incurred and the application of the regulations shall be accounted for through the Movement on Reserves Statement with the double entry going to the Financial Instruments Adjustment Account. As a result the impact of the premium on the General Fund can be spread.
- 4.87 The regulations allow for premiums to be funded by capital receipts (in full or in part).
- 4.88 In relation to the early repayment of loans after 1 April 2007 the charge to the General Fund should be calculated in line with the statutory formula. The formula is $(D-E)/F$ where D is the amount of premium; E is the any amounts of the premium charged to the General Fund before the current year plus any capital receipts used to pay any part of the premium; and F is the number of financial years from the current year to the final year (where the final year is the later of the financial year in which the original loan would have been due to be repaid or, the financial year in which the replacement loan is due to be repaid).
- 4.89 Local authorities may amortise the premium over a shorter period.

Refinancing via MBA borrowing

- 4.90 In the case of refinancing with the MBA, local authorities will derecognise borrowing with other lenders when the obligation is discharged ie when the principal, outstanding interest and any premium is repaid.
- 4.91 Where a premium is payable a local authority will need to recognise this immediately in the Surplus or Deficit in the Provision of Services (Financing and Investment and Expenditure). However, the impact of the premium on the General Fund is reversed out and replaced with an annual charge managed via the Financial Instruments Adjustment Account or funded by capital receipts.
- 4.92 The annual charge to the General Fund will be calculated as the remaining un-financed premium balance over the remaining life of the original or replacement loan (whichever is later) or a shorter period as a local authority might choose.

Summary: accounting for the joint and several guarantee

Classification

Local authorities shall account for the joint and several guarantee as a financial liability at amortised cost.

Initial recognition

The joint and several guarantee shall be initially recognised as a financial guarantee liability at fair value. As no premium will be payable local authorities will need to use judgement to estimate fair value which might include consideration of expected losses under the guarantee.

Where a financial guarantee is recognised, any loss will be charged to the Surplus or Deficit on the Provision of Services.

Subsequent measurement

Annually local authorities will need to consider whether payment under the guarantee is probable. The financial guarantee liability will be subsequently measured of the higher of the carrying amount and, where payment under the guarantee becomes probable, the best estimate of the expenditure required to settle the present obligation at the end of the reporting period.

Losses will be recognised in Surplus or Deficit on the Provision of Services.

Disclosure

Local authorities will need to consider the materiality of the financial guarantee liability in providing details of the guarantee and considering the extent of disclosures and will need to consider the impact on financial instrument disclosures relating to financial liabilities at amortised cost, accounting policies and judgements with regards to fair value measurements.

Summary: accounting for borrowing from the MBA

Classification

Local authorities shall account for borrowing from the MBA as a financial liability at amortised cost.

Initial recognition

The borrowing shall be initially recognised as borrowing at fair value. The transaction price (the receipt of the loan advance) is likely to provide the best evidence of fair value and therefore used for initial recognition, however local authorities will need to consider whether fair value is different.

On initial recognition transaction costs should be deducted from the fair value of the liability unless local authorities chooses to write these off immediately to the Surplus or Deficit on the Provision of Services where these are immaterial.

Subsequent measurement

Following initial recognition of borrowing, the carrying amount will be adjusted as the opening carrying value plus the interest calculated under the amortised cost model, less contractual cash outflows. The relevant accounting entries being:

Dr CIES – Financing and Investment Expenditure (Interest based on amortised cost)
Cr Cash (contractual cash payments of interest and principal)
Cr Borrowing (balancing amount)

The carrying value will not be re-valued following initial recognition.

Disclosure

Local authorities will need to consider the materiality of the borrowing in considering the extent of disclosures and will need to consider the impact on financial instrument disclosures relating to financial liabilities at amortised cost, accounting policies and judgements with regards to fair value measurements.

Summary: accounting for local authority contribution loans

Classification

Local authorities shall account for contribution loans under the Local Authority Financing Framework Agreement as a loan debtor (financial asset) classified as loans and receivables.

Initial recognition

The loans shall be initially recognised as loan debtors at fair value. In doing so local authorities will need to consider whether the contribution loans are at the prevailing market rate of interest and whether the loans should be treated as soft loans. Where the loans are not considered to be at fair value the profit or loss will be recognised in the Surplus or Deficit on Provision of Services.

In the case of soft loans, the impact of any loss will be reversed out of the General Fund to the Financial Instruments Adjustment account.

Subsequent measurement

Following initial recognition of the loan debtor, the carrying amount will be adjusted as the opening carrying value plus the interest calculated using the original effective interest rate, less contractual cash inflows. The relevant accounting entries being:

Dr Cash (contractual cash receipts of interest and principal)
Dr/ Cr Loan debtor (balancing amount)
Cr CIES – Financing and Investment Income (Interest based on effective interest rate)

The carrying value will not be re-valued following initial recognition however at each balance sheet date local authorities will need to consider whether there is any objective evidence of impairment. Impairment losses will be identified where the carrying value is in excess of the recoverable amount the excess and will be recognised in the Surplus or Deficit on the Provision of Services.

Disclosure

Local authorities will need to consider the materiality of the contribution loans in considering the extent of disclosures and will need to consider the impact on financial instrument disclosures relating to loans and receivables, accounting policies and judgements with regards to fair value measurements.

Summary: accounting for re-financing

De-recognition of old loans

In the case of re-financing with the MBA, local authorities will derecognise borrowing with other lenders when the obligation is discharged ie when the principal, outstanding interest and any premium is repaid.

Where a premium is payable, a local authority will need to recognise this immediately in the Surplus or Deficit in the Provision of Services (Financing and Investment and Expenditure). However, the impact of the premium on the General Fund is reversed out and replaced with an annual charge managed via the Financial Instruments Adjustment Account or funded by capital receipts.

Initial recognition, subsequent measurement and disclosure of new loans

In recognising the new borrowing with the MBA, local authorities should consider the summary: accounting for borrowing from the MBA above.

Disclosure

Local authorities will need to consider the materiality of the re-financing in considering the extent of disclosures and will need to consider the impact on financial instrument disclosures relating to financial liabilities at amortised cost, accounting policies and judgements with regards to fair value measurements.



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DOCUMENT SEVEN

**STANDARD CONFIRMATION OF LA'S AUTHORITY TO BORROW FROM
UK MBA AND EXECUTE A GUARANTEE
(prepared by UK MBA)**

Standard confirmation of LA's authority to borrow from UK MBA and execute a Guarantee

To: UK Municipal Bonds Agency PLC
[Address]

Date: [●]

Dear Sirs,

Certificate of Approval - UK Municipal Bonds Agency PLC (the **Company**)

With reference to the Framework Agreement [to be entered into / dated [insert date]] between the Company and various UK local authorities and as annexed hereto as Annex 1 (the **Framework Agreement**) and the form of guarantee attached as Schedule 2 to the Framework Agreement (the **Guarantee**), we hereby confirm that:

- (a) the Authority has the necessary power to enable it to enter into the Framework Agreement and the Guarantee, and perform its obligations thereunder;
- (b) the Authority has approved the entering into of the Framework Agreement and the Guarantee; and
- (c) all necessary authorisations have been obtained, and all appropriate and applicable decision-making procedures have been followed and completed, to enable it to enter into this Agreement and the Guarantee.

[Attached hereto / Available at the weblinks specified below] are copies of documentation required to evidence the chain of authority from the council to the relevant signatories on behalf of such Authority, as follows:

[Annex 2 / [insert weblink]] - *[Set out all delegations of power from constitutional documents to signatory of the documents, referring to specific sections of documents where relevant. Such documents may include standing orders, Annual Treasury Management Strategy, delegations to committees, and should include minutes of meetings specifically approving the Framework Agreement and the Guarantee]*

Signed by: [name]

Chief Finance Officer (appointed pursuant to s151 of the Local Government Act 1972)

.....

Signed by: [name]

Monitoring Officer (appointed pursuant to section 5 of the Local Government and Housing Act 1992, as amended by Schedule 5 paragraph 24 of the Local Government Act 2000)

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