

#### 4 April 2012 Council Meeting

#### Community Centres – Full Council Referrals in relation to the draft Management Agreement and Lease

#### Further information on the implications of the following recommendations which were referred to Full Council by the Special Education, Culture and Sport Committee on 28 March 2012:

- i. *that the Council meet the costs of the community centres' personal and legal liability insurance cover; and to refer consideration of the financial implications to Council on 4<sup>th</sup> April;*

The cost of indemnity insurance is estimated to be between £450 and £500 per annum (this cost has been provided by the Community Centres' independent legal advisor and as such the extent of the cover and any limitations are unknown). It is recommended that the decision of the Education, Culture and Sport Committee is delivered via providing an additional £500 to the development grant of each Management Committee. It is recommended that an additional clause be inserted into the Management Agreement requiring each Management Committee to procure suitable indemnity insurance, and to provide the Council with evidence of the purchase and extent of the cover.

For 52 Community Centres, this will require an addition of £26,000 into the annual revenue budget.

The costs can be met from within the range of Education, Culture and Sport budgets available.

- ii. *to refer to Council on 4<sup>th</sup> April for consideration those provisions within the Agreement which, as drafted, enable the Council to take legal action against a Management Committee; and, in this connection, to instruct the Head of Legal and Democratic Services to provide advice to Council on the implications of it limiting the extent of such legal action to the equivalent or less than the value of the assets of the community centre except in the cases of criminality or gross misconduct*

Legal Services are of the view that the Council should not bind itself in the terms set out above, and would not recommend this course of action in respect of any agreement or other contractual arrangement. If the Council accepts this proposal then it means that in any circumstances where a Community Centre is in breach of a provision of the Management Agreement or lease, or where the Council incurs a liability or is otherwise challenged due to the consequences of an act or omission on the part of a Community Centre, then the Council would only be able to recover its loss up to the value of the current assets of the Community Centre in question. Such a restriction on the Council's rights is not justified and could have a significant financial impact in respect of many of the provisions contained within the

Management Agreement and Lease. Some of the potential scenarios are listed below –

If a Community Centre discloses personal data in breach of the Data Protection Act 1998 and the Council is fined and/or sued as a consequence.

If a Community Centre does not comply with relevant legislation in its operation of the premises.

If a Community Centre does not comply with its property maintenance obligations set out in the lease and the Council is required to undertake remedial works.

If a Community Centre alters the premises without consent and then fails to re-instate the premises to their original condition and the Council is required to undertake this work.

*[NB Members should note that this list is not exhaustive]*

Such breaches will most often not amount to criminality, or gross misconduct. In relevant circumstances, the recommendation would mean that the Council would be restricted to recovery of its losses up to the value of that Community Centre's assets at that time. Asset value will be minimal in respect of most Community Centres, however the fine/damages could be substantial.

The recommendation is disproportionate to the potential losses which may be incurred and there is no legal or operational justification for the Council to accept this level of risk. Further, it is impossible for the Council to manage or mitigate against this risk as it will have no operational control over the premises or Community Centre Management Committees, Volunteers etc.

This decision could also have implications for the Council's own insurance: the view of our Insurers could be that the Council would leave itself open in this way to potential liability. They may well take a dim view, which might have severe consequences for the Council's cover and future insurance premiums.

Legal Services are sympathetic to the view of the Community Centres and their concerns around personal liability. Whilst this is something upon which the Community Centres need to take independent legal advice, one obvious safeguard would be for the Community Centres to incorporate, thereby removing the possibility of personal liability.

For the above reasons, Legal Services cannot support this recommendation. If it is accepted by Members, then it will be contrary to legal advice and the Minute of the meeting will require to reflect this.

- iii. to retain the provision within the Management Agreement which allows the Council to terminate the Agreement in the event of a late payment by a community centre in relation to debts which are not disputed. However, to*

*require that the Management Agreement require any disputed debt to be referred to the dispute resolution process outlined therein; and to refer consideration of the financial implications to Council on 4<sup>th</sup> April*

The financial implications in relation to this decision, would be the costs involved in procuring an expert to determine who would be responsible for any disputed debt.

The Dispute Resolution process states that: “Any dispute or difference arising between the Parties in relation to the provisions of this Agreement will be determined by an expert to be agreed between the Parties. Failing agreement on an expert, either Party may apply to the Sheriff Principal of Grampian, Highlands and Islands for the appointment of such an expert.” “Any decision issued by such an expert shall be binding on both Parties except in the event of a manifest error in fact or in law. The appointed expert shall determine the party liable for the costs of the appointment (including how these costs may be apportioned.)”

Therefore, it may be the case that there would be no costs arising from the dispute resolution process assigned to the Council (other than officer time.) However if the expert determined that the costs of their appointment would fall to the Council, it is anticipated that each occasion of disputed debt could cost in the region of £1,000. (This would assume that the dispute would be heard within one working day.)

If an expert could not be agreed, the costs of applying to the Sheriff Principal would be expected to be covered in addition to the costs of the procurement of an expert.

While it is difficult to predict how often a dispute is likely to occur, over the last few months, there have been a number of cases where invoices from the Council to community centres have been disputed. Therefore it is recommended a provision of £10,000 is made available within an appropriate budget to fund the financial implications of this clause. This could fund up to 10 disputes per year.

It is recommended that any such additional costs arising be dealt with on a case by case basis as and when they arise.

- iv. to suspend Standing Order 22 to revoke the decision of the Committee of 23<sup>rd</sup> February – that there be provision to allow community centres who wish a lease in excess of five years to have such a lease subject to committee agreement – and instead that standard leases be for 10 years, with each request to be considered on a case by case basis and reported back to the Education, Culture and Sport Committee for approval; and to refer consideration of the financial implications to Council on 4<sup>th</sup> April;*

This decision means, that as each Community Centre Lease and Management Agreement is ready to sign, it will be referred to an appropriate Education, Culture and Sport Committee for approval prior to signing. The decision also means that the standard lease duration will be for a period of 10 years (although this would not preclude other durations of lease if agreed by Committee). The financial implications of this decision are that the Council will need to ensure that it has sufficient budget

allocated to fulfil its requirements in relation to keeping the building to the required condition.

It is understood that one of the reasons for the request that the duration of the lease is 10 years, is to allow Management Committees an opportunity to bid for capital funding. The attached sheet sets out some funding streams that are currently available and their requirements in relation to security of tenure.

The estimated required maintenance (Capital) for the next 4 years in relation to all the community centres is approximately £5.88m. This figure is derived from high level condition surveys which were carried out in 2008-2009 along with Asbestos Surveys and Fire Risk Assessments. Elements that are considered to be in poor or bad condition are classed as required maintenance. It should be noted that some elements currently classed as satisfactory may have deteriorated since the surveys were carried out. It is also expected that other satisfactory elements will move into either poor or bad condition during the course of a ten year lease. The Capital investment required over a ten year period will therefore be significantly greater than the current required maintenance figure of £5.88m. These capital costs are not currently budgeted for in the Non-housing capital programme. It will therefore be necessary for future bids to be made in terms of the Council's Capital Prioritisation Procedure should such expenditure be required.

It is anticipated that the cost of the appropriate "Marching In" Schedules for attachment to the leases would be in the region of £30,000. Whilst some of this work may be undertaken "in house", due to capacity issues, particularly due to the number of surveys required at the same time, this work will in all likelihood be outsourced.

It is important that both the Council and the Management committee be aware of all factors which would affect the property, both at the start of the lease and the end of the lease when the property would revert to the Council.

There is no capacity for this additional expense from the Education, Culture and Sport or Enterprise, Planning and Infrastructure budget, and it is recommended that the additional cost of £30,000 for Schedules be funded from reserves.