

Council

15 October 2024



Reading
Borough Council
Working better with you

Title	Constitutional amendments regarding Fees and Charges
Purpose of the report	To make a decision
Report status	Public report
Report author	Michael Graham, Assistant Director of Legal and Democratic Services
Lead Councillor	Cllr Liz Terry, Leader of the Council
Corporate priority	Not applicable, but still requires a decision
Recommendations	<ol style="list-style-type: none">1. That Council agrees the proposed amendments to the Constitution to allow Policy Committee, or the other Standing Committees, to make in-year changes to Fees and Charges.2. That Council agrees to change the wording in the Budget and Policy Framework, paragraph 2.1.3 (A) (4) from: “Changes to Fees and Charges” to: “A review of Fees and Charges in the context of the Council’s overall Medium Term Financial Strategy, including any changes required”3. That Council amends the Terms of Reference for Policy Committee at paragraph (5) (p.61 of the Constitution), the list of Key Decision areas, to add: “Changes to Fees and Charges”.4. That Council amends the Terms of Reference for each of the other Standing Committees (the Adult Social Care, Children’s Services and Education Committee, the Housing, Neighbourhoods and Leisure Committee and the Strategic Environment, Planning and Transport Committee), to add, before the Delegation to Officers: “Changes to Fees and Charges”.5. That Council amends the Proper Officer Appointments section of Part 3 of the Constitution under the section of “Registration Services Act 1953”:<ol style="list-style-type: none">5.1. In the third box to remove the words, “(the Proper Officer is called the Superintendent Registrar)”, and5.2. In the fourth box to delete the words, “Superintendent Registrar appointed by the Head of Community Services” and replace with the words, “Registration and Bereavement Services Manager”.

1. Executive Summary

- 1.1. Fees and Charges are usually decided on a yearly cycle which is co-ordinated with annual budget setting.
- 1.2. For a range of circumstances, Services may find it appropriate to recommend changes to Fees and Charges at different points in the year. Therefore, the procedure of taking a proposal to Council following a Standing Committee recommendation means that

changes cannot be as responsive to events as they could be. It means that changes to Fees and Charges usually default to the annual cycle.

- 1.3. For the sake of efficiency, it is suggested that the Constitution is clarified to confirm that whilst Fees and Charges will remain as an annual item at Budget Council (with a consolidated review for Councillors to approve), the Standing Committees will be able to make in-year changes to Fees and Charges within their terms of reference at any point in the year. Policy Committee will also have a default power to be able to make in-year changes to Fees and Charges on behalf of the Standing Committees, for any charges across the Council.

2. Policy Context

- 2.1. Fees and Charges are reviewed annually with a strong supporting link to the medium-term financial planning process. The Council does not have a formally adopted Fees and Charges policy, however the generally accepted guidelines in setting fees and charges are as follows:

- 2.1.1. Fees and charges will be reviewed annually as part of the budget setting process.
- 2.1.2. Income from charges for a service, taking one financial year with another, should not exceed the cost of provision.
- 2.1.3. Fees and charges are calculated on a full cost recovery basis. Any concessions will be specified and separately agreed.
- 2.1.4. Some fees and charges are set and amended by statute or through contractual arrangements and so do not require Council decision. Examples include parking penalty charge notices and planning application fees. However, for the remaining fees and charges the Council has discretion to amend as appropriate.

3. The Proposal

Current provisions in relation to Fees and Charges

- 3.1. Part 3 of the Council's Constitution makes the following general provision to reserve the Budget to Council, but it does not mention Fees and Charges in particular.

The Budget and Policy Framework	
(11)	Council must exercise the following functions:
(a)	Approving or adopting the following the plans and strategies including any subsequent amendment, modification, variation or revocation (but subject to the exceptions mentioned in (c) below)
	<ul style="list-style-type: none">• The Budget, including:<ul style="list-style-type: none">○ Setting the Council Tax○ The control of borrowing and investments○ Capital expenditure○ Determining the authority's minimum revenue provision and agreeing the Council's capital strategy and asset management plan;

- 3.2. Note - the phrase "subject to the exceptions mentioned in (c) below" is not relevant for the purposes of this report and decision.
- 3.3. The Budget and Policy Procedure Framework Rules state that each year, as part of the General Fund Budget Strategy, the Budget Report should set out "Changes to Fees and Charges".
- 3.4. It should also be noted that the Budget and Policy Procedure Framework Rules expects the annual budget setting process to deal with Housing Revenue Account matters such as, "*Proposals for rent levels, garage rents and heating and service charges for the forthcoming year*".

3.5. In the current Financial Procedure Rules at paragraph 2.2 it is noted that Council is responsible for approving the annual budget, which includes, “the annual income (fee setting) and charging policy”.

3.6. At paragraph 3.9 of the same Rules, it is stated:

Directors will establish a charging policy for the supply of goods or services and, in consultation with the Strategic Finance Director, review it annually, as part of the corporate planning process. An annual statement on fees and charges will be taken to the Policy Committee, and then Council, in alignment with the budget setting timetable ...

3.7. Later in the Financial Procedure Rules it is noted that (paragraph 8.1.2):

Where appropriate, Directors will ensure that charges for the supply of goods or services will cover the costs of their provision, including on-costs. These will be reviewed annually with the Strategic Finance Director, as part of the corporate budget process. An annual statement on fees and charges will be taken to Policy Committee, and then to Council, in alignment with the budget setting timetable.

On an exceptional basis, alternative timeframes will be considered in agreement with the Strategic Finance Director.

3.8. Elsewhere in the Constitution the following exceptions are noted:

- Charges in relation to Hackney Carriages and Private Hire are already delegated to Licensing Applications Committee under Part 3 terms of reference for committees.
- Charges in relation to Registration Services are delegated to the Proper Officer. (Please see below for a change in wording which is required in the Constitution in this regard.)

3.9. Taking the above together, we can see that whilst the Terms of Reference for Council do not specifically mention Fees and Charges, there is an expectation that setting Fees and Charges is an annual process, with changes submitted to Budget Council for approval.

Suggested changes

3.10. It is entirely appropriate for Council to retain oversight of Income Policy as part of the Medium-Term Financial Strategy (MTFS). The precise mechanisms for Executive Directors and Assistant Directors to discharge their duties as to income can be considered in more detail when the Financial Procedure Rules are submitted to Council for review in the near future (this review is currently in-hand with the Director of Finance).

3.11. It is proposed that there could be a better alignment between the Budget and Policy Framework Rules and the current Financial Procedure Rules. The latter describes an annual review in the context of an Income Policy and Services’ charging policies. Whereas, the former merely describes, “Changes to fees and charges”.

3.12. It is proposed to change the wording in paragraph 2.1.3 (A) (4) from:

“Changes to Fees and Charges” to:

“A review of Fees and Charges in the context of the Council’s overall Medium Term Financial Strategy, including any changes required”

3.13. This makes it clear that the overall responsibility for income is with Council as part of the MTFS. With this revised wording the Director of Finance can report on the income achieved by the Council and any modifications to targets etc and broad changes in policy which will be necessary in light of current pressures and the demands of the MTFS. There will be nothing to prevent the Director of Finance recommending changes as he does at present, and Council will still have an annual review and the ability to influence Fees and Charges, as it does at present.

- 3.14. However, it is also proposed that the Standing Committees (and a default power for Policy Committee on behalf of them all) is introduced so as to allow for detailed consideration of specific charging issues in the appropriate context. Allowing the Standing Committees to make in-year changes will allow for more detailed discussion of individual charges in the context of the Committee's terms of reference. Members may wish to note that changes to individual fees and charges at Budget Council are rarely discussed because of the many other issues which are presented in the same report.
- 3.15. In the Terms of Reference for Policy Committee at paragraph (5) (p.61 of the Constitution), the list of Key Decision areas, it is proposed to add: "Changes to Fees and Charges".
- 3.16. In the Terms of Reference for each of the other Standing Committees it is proposed to add, before the Delegation to Officers: "Changes to Fees and Charges".
- 3.17. Note that in each case, this means that changes to Fees and Charges will still be member decisions and will not count under the Key Decision criteria to allow officers to make a decision based on threshold value (unless a Committee makes a subsequent delegation to a specific officer for a specific issue).

Proper Officer function

- 3.18. In paragraph 3.8 above it is noted that the Proper Officer for Registration Services has the ability to set those charges. In preparing this report and consulting with the Service, it has been revealed that there is an error in the Constitution which needs to be addressed. Currently in Part 3 of the Constitution, Delegations to Officers, Proper Officer Appointments it is noted as follows:

Registration Services Act 1953	To be the Proper Officer (the Proper Officer is called the Superintendent Registrar) for the purposes of the Registration Act 1953, the Marriage Act 1949 (as amended by the Marriage Act 1994) the Civil Partnership Act 2004, the and the Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2011 and to set fees and offer discounts where applicable.	Superintendent Registrar, appointed by Head of Community Services
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- 3.19. The issue is that the Proper Officer and the Superintendent Registrar are different posts with different legal functions.

- 3.20. The third box should read:

To be the Proper Officer (~~the Proper Officer is called the Superintendent Registrar~~) for the purposes of the Registration Act 1953, the Marriage Act 1949 (as amended by the Marriage Act 1994) the Civil Partnership Act 2004, the and the Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2011 and to set fees and offer discounts where applicable.

- 3.21. The fourth box should read: "Registration and Bereavement Services Manager".

- 3.22. It is proposed to correct the Constitution accordingly.

4. Contribution to Strategic Aims

- 4.1. The Council's new Corporate Plan has established three themes for the years 2022/25. These themes are:

- Healthy Environment
- Thriving Communities
- Inclusive Economy

- 4.2. These themes are underpinned by "Our Foundations" explaining the ways we work at the Council:

- People first
 - Digital transformation
 - Building self-reliance
 - Getting the best value
 - Collaborating with others
- 4.3. Full details of the Council's Corporate Plan and the projects which will deliver these priorities are published on the Council's website - [Corporate plan - Reading Borough Council](#). These priorities and the Corporate Plan demonstrate how the Council meets its legal obligation to be efficient, effective and economical.
- 4.4. Ensuring that Fees and Charges are always up to date is an important factor to enable many Services to be provided economically. In the current financial circumstances, the Council needs to ensure that its sources of income have been fully reviewed and allow for appropriate cost recovery. This ensures the stability of Council finances and thus the sustainability of Council Services for the future.

5. Environmental and Climate Implications

- 5.1. The Council declared a Climate Emergency at its meeting on 26 February 2019 (Minute 48 refers).
- 5.2. There are no climate implications arising from this report. It is possible to foresee that the changes to some Fees and Charges may be a relevant factor for the Council's climate emergency strategy, in which case, officers will provide the relevant climate impact assessment at the time of proposing changes to the relevant Fees and Charges.

6. Community Engagement

- 6.1. No consultation, community engagement or information is required, or has been carried out voluntarily to help the report author consider the views of external stakeholder in preparing this report. It is not considered necessary.
- 6.2. It should be noted that under different legislation, the Council may be obliged to consult service users or the public at large when considering changes to specific Fees and Charges. Where this is relevant, it will be identified in the papers presented to Committee.

7. Equality Implications

- 7.1. Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to -
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 7.2. An Equality Impact Assessment (EqIA) is not relevant to the decision. However, should any individual amendment to Fees and Charges come forward with a new impact on residents then it could be appropriate for that proposal to be subject to an EqIA.

8. Other Relevant Considerations

- 8.1. There are none.

9. Legal Implications

- 9.1. Some services the Council provides are mandatory and governed by specific legislation whilst other services provided are discretionary. Discretionary Services are those which the council is permitted to provide but not required to provide.

- 9.2. Mandatory services usually indicate if there is a power to charge. The Council has a general power to charge a person for discretionary services under section 93 of the Local Government Act 2003 and under the power of general competence found in section 1 of the Localism Act 2011.
- 9.3. The overall position on charging is that the Council must not charge for a service if legislation prohibits it from doing so. If legislation requires the Council to provide a service and to charge for it, then we are required to do so. In the absence of specific powers or prohibitions on charging for services, the Council may use the powers in either s93 of the Local Government Act 2003 or s1 of the Localism Act 2011 to make charges for discretionary services. The Council cannot use these powers to make a profit, however the Council can legitimately recover total cost that includes overheads.
- 9.4. Statutory guidance published in 2003 outlines how costs and charges should be established, and that guidance remains in force (see: 'General Power for Best Value Authorities to Charge for Discretionary Services', ODPM, 2003). The Council must have regard to the guidance when charging for discretionary services under the 2003 Act.
- 9.5. In particular, the guidance contains useful advice on setting charges. It explains that for each discretionary service for which a charge is made, councils need to secure that, taking one year with another, the income from charges for that service does not exceed the costs of provision. The requirement to take one year with another recognises the practical difficulties councils will face in estimating the charges. It establishes the idea of balancing the books over a period of time (not less than one year and no more than three years). Any over or under recovery that results in a surplus or deficit of income in relation to costs in one period should be addressed by the council when setting its charges for future periods so that over time, income equates to costs.
- 9.6. The 2003 Act also enables councils to trade in activities related to their functions on a commercial basis with a view to profit through a company. Under the Local Authorities (Goods and Services) Act 1970 councils also have powers to enter into agreements with each other and a long list of designated bodies. These activities are not limited to cost recovery and a profit can be generated from these activities.
- 9.7. In terms of leisure and recreational facilities, section 19 of the Local Government (Miscellaneous Provisions) Act 1976 permits councils to charge for these beyond cost recovery limitations.

10. Financial Implications

- 10.1. There are no financial implications arising directly from this report. Any changes to fees and charges to be proposed outside of the annual budget setting process would be considered by Policy Committee or the relevant Standing Committee, and the financial implications of those specific proposals would be set out within those standalone reports.
- 10.2. The Quarter 1 Performance and Monitoring Report, approved by Policy Committee on 18th September 2024, identified net budget pressures totalling £13.068m. The report also set out that the Corporate Management Team has taken urgent action to address the situation and work has so far identified £8.081m of in-year mitigations. These mitigations reduced the overall forecast net pressures to £4.987m. Work is ongoing to identify further savings, however the position remains challenging. A pause on all non-essential expenditure and recruitment has been implemented until the budget is brought back in line. Approval of the recommendations set out in this report will facilitate additional in-year savings proposals that relate to proposed changes to fees and charges to be considered, which if approved would further improve the Council's financial position.

11. Timetable for Implementation

- 11.1. If the proposal is accepted, the change to the Constitution takes effect immediately. A revised copy of the Constitution will be published to the Council's website as soon as practicable.

12. Background Papers

12.1. There are none.