

**Report of Director of Environment and Housing**

**Report to Executive Board**

**Date: 17<sup>th</sup> September 2014**

**Subject: Allotment Rental Charges**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

1. Executive Board made a decision on 4<sup>th</sup> September 2013 to implement new allotment rental charges and changes to lease arrangements with allotment associations as follows:
  - (a) A phased price increase commencing in autumn 2014 to recover £50k subsidy, with a £15k above inflation rise in 2015 and 2016, projecting a full subsidy recovery of £80k in 2016/17.
  - (b) That allotment associations be given notice to terminate the existing lease on 29<sup>th</sup> September 2013 to allow a renegotiation based on the allotment associations keeping 32% of allotment rental by 2016/17 which with the proposed price increases is the equivalent in monetary terms to the value currently retained.
2. The decision to increase allotment rental charges was subject to a judicial review. The judgment was handed down on 5<sup>th</sup> August 2014.
3. Although the Council succeeded on some of the 4 grounds of challenge, the court concluded that paragraph (a) of the decision of 4<sup>th</sup> September 2013 was unlawful because the Council had failed to take into account a relevant consideration, namely section 10 of the Allotments Act 1950 (Appendix 1).
4. The Judge also expressed the view, without reaching a definite conclusion on the point, that he found it difficult to see how the decision could be approached without

some sort of valuation exercise. This might be achieved by looking at rents charged by other local authorities, or an alternative suggestion was to consider agricultural rents.

5. The Judge quashed paragraph (a) of the decision, but not paragraph (b). The judgment accordingly did not affect either the termination of the pre-existing leases to allotment associations of those sites which were not managed directly by the Council, effected by notices of termination served in October 2013 expiring in October 2014, or the decision to negotiate new terms so that the proportion of the allotment rents retained by each association would be reduced (and the proportion paid to the Council correspondingly increased). Subsequently, 9 associations have returned new, signed leases which include provisions for that proportion to be reduced.
6. As matters currently stand, therefore, the allotment rents remain at the 2013/2014 level and a new decision would be required in order to make changes to them.
7. Although the Council is, on legal advice, applying for permission to appeal, it is a sensible precaution at this stage for the Executive Board to reconsider its earlier decision in the light of the judgment which is now available; and for the Executive Board to take a decision about any increases in allotment rents on the legal basis as set out in the judgment. In order to preserve the Council's position in relation to an appeal, however, a new decision will need to be made without prejudice to the Council's argument in the appeal that the decision made on 4<sup>th</sup> September 2013 was not unlawful and should not have been quashed.
8. During the preparation of the previous report to Executive Board on 4<sup>th</sup> September 2013, officers had given consideration to, and taken legal advice about, s10 Allotments Act 1950 although those matters were not then expressly referred to in the report. Furthermore, consideration had been given to whether there were comparable charges which could be used in determining what the allotment rents should be in accordance with s10. This is further addressed and explained below; but one of the features of the Judge's judgment is that, while he agreed with part of the only previous decision of a higher court on the interpretation of s10 (*Harwood v Reigate and Banstead BC*), he disagreed with the conclusion and the critical part of the reasoning in that earlier case which had indicated that an authority should treat allotment gardening as a recreational activity which should be subsidised in the same manner as other recreational activities. Accordingly, part of the legal background to officers' previous consideration of the current issues has now changed and must be addressed.
9. Evidence of allotment rents from other local authorities, and land rentals being charged to the Council for allotment land, vary considerably and are difficult to compare precisely. The current figures are, however, capable of justifying rents higher than those which were originally proposed for 2014/15. It should be noted, though, as was the case on 4<sup>th</sup> September 2013, that Executive Board is being asked to phase in any increases over the course of 3 financial years; and accordingly consideration has to be given to the anticipated level of rent at the end of, and during, the period in question, as well as at the beginning. This is addressed below, but by way of introduction the full increases proposed by the end of that period are broadly still within the range of current allotment rents in other core cities

and neighbouring authorities and significantly lower than an allotment land rental currently being charged to the Council.

10. The report to Executive Board report on 4th September 2013 had identified potential savings in expenditure of £53k. These have now been achieved. There remains, however, an overall cost to the Council of £80k in providing allotments which is not funded by allotment rents and can accordingly be regarded as a subsidy.
11. The equality and diversity, cohesion and integration assessment previously carried out (Appendix 2) highlights the importance of being sensitive to the needs of those who are unable to afford a rental increase.
12. The decision on 4<sup>th</sup> September 2013 followed extensive consultation where three options were given for consideration and feedback sought to address the level of subsidy for allotment provision. Nearly 60% of respondents were in favour of some form of rental increase, with only 22% in favour of a third party operator taking over the management of allotments.

### 13. Recommendations

14. It is recommended that Executive Board approve the following, without prejudice to the Council's position that the decision made on 4<sup>th</sup> September 2013 was not unlawful and should not have been quashed:

- A phased rental increase commencing in autumn 2015, as set out in the following table, which starts for a full size plot in year 1 as £19.50 more per year (or £0.37 extra each week) to £33.50 more at the end of year three (which equates to £0.64 per week).

Rental	2015/16			2016/17			2017/18		
	Con-cession	Con-cession Pensioner	Full	Con-cession	Con-cession Pensioner	Full	Con-cession	Con-cession Pensioner	Full
Full plot (250sq m)	£29.00	£46.40	£58.00	£32.50	£52.00	£65.00	£36.00	£57.60	£72.00
Half plot (125sq m)	£14.50	£23.20	£29.00	£16.25	£26.00	£32.50	£18.00	£28.80	£36.00
Quarter plot (62.5sq m)	£7.25	£11.60	£14.50	£8.00	£13.00	£16.25	£9.00	£14.40	£18.00

- That a side letter is issued to each allotment association signing a new lease to confirm that the implementation of the provisions for concessions and of the reduction in the proportion of rental income that may be retained by the association (which had both been due to take effect in 2014/15) should be deferred until the proposed new rental charges take effect in 2015/16.
- Those sites managed by associations which fail to sign new lease agreements on or before 15<sup>th</sup> October 2014 will automatically become

directly managed by the Council and the Council will then offer a 12 month agreement to each plot holder on each site.

- Furthermore it is recommended that Executive Board note that following the Court ruling, allotment rental charges in 2014/15 will be on the same basis as the previous year (2013/14), including the level of concessions.
- That the Chief Officer Parks and Countryside will be responsible for implementing the recommendations in the timescales indicated.

## 1.1 Purpose of this report

1.2 This report seeks approval for a fresh decision on allotment rental charges following the outcome of a judicial review.

## 2 Background information

2.1 Section 10(1) Allotments Act 1950 provides as follows in relation to setting the amount of allotment rents:

“10 Rents to be charged for allotments let by local authorities

(1) Land let by a council under the Allotments Acts, 1908 to 1931, for use as an allotment shall be let at such rent as a tenant may reasonably be expected to pay for the land if let for such use on the terms (other than terms as to rent) on which it is in fact let;

Provided that land may be let by a council as aforesaid to a person at a less rent if the council are satisfied that there exist special circumstances affecting that person which render it proper for them to let the land to him at a less rent.”

2.2 Comparison with allotment rents in other authorities' areas, and other information concerning valuation, are considered in the main body of the report.

2.3 Among the broader financial considerations the Council continues to face serious budget pressures and has experienced cash funding cuts of £94m from central government between 2010/11 and 2013/14 with a further £81m required by 2015/16. This is a reduction of £175m with further reductions expected in 2016/17 and 2017/18, all in addition to internal budget pressures that the council faces. This has also impacted on the Parks and Countryside service, with a £2.7 million budget reduction between 2010/11 and 2014/15. This equates to a reduction of 23% and further reductions are expected to be required in 2015/16 and 2016/17.

2.4 A report to the Council's Executive Board on 4<sup>th</sup> September 2013 drew attention to the £133k level of subsidy for allotment provision and considered the findings from consultation on addressing this in future years. It provided recommendations on the future management and rental arrangements for allotments.

2.5 At that time, the levels of allotment rents were as follows:

<b>Rental</b>	<b>Non-Concession holders</b>	<b>Concession holders</b>
Full plot price (250 sq m)	£37.00	£18.50
Half plot price (125 sq m)	£18.50	£9.25

- 2.6 The consultation document was distributed to around 3,400 plot holder households in the city, from which 578 responses were received. Three options were stated for consideration and feedback invited to address the level of subsidy received for allotment provision. The first two options were based on an increase to allotment rental charges and the third was for a third party operator to manage allotments. Nearly 60% of respondents were in favour of some form of rental increase, with only 22% in favour of the third option (the remainder selecting no option).
- 2.7 Proposals were put forward that took account of consultation feedback as well as an equality, diversity, cohesion and integration assessment. These involved a reduction in cost of £53k coupled with increases in allotment rent phased in from 2014/15 to 2016/17. Concessions were retained for those who are registered disabled, unemployed, a full time student or in receipt of pension credit. A new 20% concession was proposed for those in receipt of a state pension.
- 2.8 Under the terms of the existing lease, associations paid one third of the plot rental collection from each plot holder for the year to the Council, thus retaining two thirds of the rental. However, the report proposed that a notice period of 12 months be given on 29<sup>th</sup> September 2013 in order to terminate the existing leases with allotment associations.
- 2.9 Executive Board resolved the following:
- That a phased price increase commencing in autumn 2014 to recover £50,000 subsidy, with a £15,000 above inflation rise in 2015 and 2016, projecting a full subsidy recovery of £80,000 in 2016/17, be approved.
  - That approval be given to allotment associations being given notice to terminate the existing lease on 29<sup>th</sup> September 2013 to allow a renegotiation based upon the allotment associations keeping 32% of allotment rental by 2016/17 (which with the proposed price increases is the equivalent in monetary terms to the value currently retained).
- 2.10 Subsequently this decision was subject to call in and a meeting of the Scrutiny Board (Safer and Stronger Communities) was held on 25<sup>th</sup> September 2013. The meeting heard representation from one of the call in signatories, and the Chair of the Leeds and District Allotment Gardeners Federation. Information in support of the decision was provided by the Executive Member for Environment and Parks along with the Chief Officer Parks and Countryside. Following a vote by members present, it was resolved that Scrutiny Board release the decision for implementation.

### 3 Main issues

3.1 Following the decision making process outlined in the previous section, two members of the Leeds and District Allotment Gardeners Federation sought a judicial review of the Executive Board decision, on the following four grounds.

- (1) The Council misconstrued or misapplied section 10 of the Allotments Act 1950.
- (2) The Council failed to take account of a relevant consideration in respect of section 10 of the Allotments Act 1950.
- (3) The Council took account of an irrelevant consideration, namely the Council's own financial position and its wish to eliminate the subsidy, which section 10 precludes it from doing.
- (4) The Council's conclusion on the rent level to be set was irrational.

3.2 The case was heard in July/August 2014 and the Council succeeded on a number of issues:

- The Judge adopted the Council's interpretation of Section 10 as requiring a broad, common sense approach, as had previously been held in the *Harwood* case.
- Section 10 did not prescribe any particular method for the determination of the rent.
- The claimants' attempt to compare s10 with the requirements for assessing commercial rents under Landlord and Tenant Act 1954, Pt II was rejected.
- There was no obligation on the Council to subsidise allotment holders.
- Ground 3 was abandoned at trial.
- Ground 4 did not succeed.
- The Notices to Quit served on the allotment associations remained effective.

3.3 The basis on which the Council was unsuccessful was fairly narrow:

- Section 10 was not expressly mentioned in the report to Executive Board and subsequent advice about s10 to the Scrutiny Board had not cured this.
- The Judge did not accept that the decision-making process was in substance an exercise which complied with s10.
- The judge found it difficult to see how the rent could be set without some form of valuation exercise, though he desisted from reaching any conclusion that this was mandatory.

- 3.4 In the light of this ruling, the judge quashed the proposed rental rise planned from October 2014.
- 3.5 During the preparation of the report to Executive Board on 4th September 2013, officers had given consideration to, and taken legal advice about, s10 Allotments Act 1950 although those matters were not then expressly referred to in the report. Furthermore, consideration had been given to whether there were comparable charges which could be used in determining what the allotment rents should be in accordance with s10. Further information about this is set out below.

### 3.6 Core City and Neighbouring Authority Comparisons

- 3.6.1 Each of the other core cities in England were approached (namely Birmingham, Bristol, Liverpool, Manchester, Newcastle, Nottingham and Sheffield) in order to enquire about comparative allotment rental charges. It should be noted that there is a difference between each core city on what constitutes a given plot size and the basis on which charges are applied. For example, Birmingham have four size classifications – ‘mini’ (up to 100 square yards), Small (101 to 200 square yards), Standard (201 – 400 square yards) and Large (over 400 square yards). In contrast, Nottingham do not have a size classification choosing to charge purely on a per square metre basis. Bristol and Sheffield have plot rentals based on sizes in differing bandings on a square metre basis.
- 3.6.2 In order to provide a consistent approach to comparison, the following table therefore assumes a “full plot” to be 250m<sup>2</sup> and excludes any water charges.

<b>Core City</b>	<b>2014/15 £ / 250m<sup>2</sup></b>
Birmingham	75.00
Bristol	52.50
Leeds	38.50
Liverpool	70.00
Manchester	57.50
Newcastle	54.00 (avg)
Nottingham	30.00
Sheffield	72.00

- 3.6.3 Rental levels accordingly vary considerably. In 2014/15, however, the average core city rental charge for an allotment (excluding Leeds) is nearly £59, £1 more than the proposed charge in Leeds of £58 for 2015/16, and over £20 more than the current charge.
- 3.6.4 All the authorities appeared to be unclear how allotment charges had originally been set, many years previously and subject only to inflationary increases. However, Birmingham, Bristol, Liverpool and Sheffield have undergone a recent rent review and are working towards an allotment service provision becoming cost neutral to the authority in the longer term. Comparison is further complicated because each authority tends to calculate charges, and to budget, differently. Newcastle, had two different rental charges for 250 m<sup>2</sup> ranging from £27.51 to £80, dependent upon the level of facilities available on the site, such as water, insurance, security fencing, car parking. Allotment sites in Newcastle managed

by an Association tended to have more facilities and as such attracted the higher allotment rental charges. Although both Sheffield and Birmingham have similar rental charges, each operates differently: Birmingham have a higher proportion of self-managed sites whilst Sheffield have a higher proportion directly managed by the Council.

3.6.5 For these reasons, officers remain of the view that direct comparison with other particular core cities is difficult; and accordingly the figures had not been included in the report to Executive Board on 4<sup>th</sup> September 2013. It can however be said (particularly in light of the judge's views about a valuation exercise) that, in a broad common sense way, the average current rental as above is broadly comparable to the £58 which was and is proposed for the first year of the increase. In addition, 3 of the other core authorities currently have allotment rents in the range of £70-£75: the proposed rent of £72 for 2017/18 is accordingly within that range.

3.6.6 Allotment rents per 250m<sup>2</sup> in neighbouring authorities are as follows:

<b>Neighbouring Authority</b>	<b>2014/15 £ / 250m<sup>2</sup></b>
Bradford	37.20
Calderdale	46.44
Wakefield	42.50
York	71.50

3.6.7 Again, direct comparison with specific authorities is difficult, for similar reasons as above. It is understood that these authorities are also looking to review their allotment rental charges. The average current charge for neighbouring authorities is just over £49, with a considerable range of variation. The current charge in York, however, is very close to the proposed rent for 2017/18.

3.6.8 Enquiries with these other authorities have established that none of them has used a valuation-based approach to calculate allotment rental charges.

### **3.7 Land Rental Assessment**

3.7.1 In most cases land allocated for allotment use is owned by the Council. There are however some examples where the Council pays rent to a landlord for land subsequently managed as Council allotments. In order to compare and contrast these arrangements in Leeds, two examples from the 6 allotment sites are provided based on the actual cost of rental referred to as 'site A' and 'site B' respectively, representing a recent acquisition compared to a well-established arrangement.

3.7.2 Site A has 11,231 square metres of available allotment space for rental which is the equivalent of 44.9 full size (250m<sup>2</sup>) plots. The amount of rental paid by the Council to a private landlord is £5,128 per annum. Site B is 9,542 square metres which is the equivalent of 38.2 full size plots. The amount of rental paid by the Council is £550 per annum. The table below provides a breakdown of the equivalent full rental and concession plots based on the proportion of overall plot holders.

	<b>Estimated Full Plots (250m<sup>2</sup>)</b>	<b>Plot Rent to Recover Land Lease Cost</b>	<b>Total</b>
<b>Site A</b>			
Full rate	28.1	£140.36	£3,951
Concession	16.8	£70.18	£1,177
<b>Sub Total</b>	<b>44.9</b>		<b>£5,128</b>
<b>Site B</b>			
Full rate	23.9	£17.72	£424
Concession	14.3	£8.86	£126
<b>Sub Total</b>	<b>38.2</b>		<b>£550</b>

- 3.7.3 It should be noted that site A represents a more recent land acquisition and therefore is reflective of commercial land valuation for allotment purposes and would require a rental to plot holders considerably more than both current and the proposed rent increases. Site B reflects an historic, non-commercial context where the rental has not been reviewed for some years (as is the case with the other 4 sites rented by the Council).
- 3.7.4 Advice has been taken from the council's valuers in property services who are qualified chartered surveyors and are Registered valuers with the RICS. They have confirmed that the City Council currently rents out land for garden purposes, usually ancillary to private domestic use (for example to increase the size of an existing garden, or to improve the condition of adjoining land), using standard garden tenancy agreements, at rents ranging between £1.50 psqm and £3.25 psqm. The land is to be used as garden land only. An additional rental is payable if, for example, the tenant wishes to park a car on the site.
- 3.7.5 The rental depends on the location and the use and is accordingly difficult to compare directly with allotments. A rent of £1.50 per m<sup>2</sup>, however, would equate to £375pa for a 250m<sup>2</sup> allotment plot.
- 3.7.6 With regard to agricultural rents, Property services have confirmed that the quantity of land involved in each instance is far greater than that assigned for allotment use and is usually leased over a long period of time on the basis that the lessee conducts activities on a commercial basis. Agricultural rents are accordingly not considered to be readily comparable with allotment rents. The agricultural rate, however, ranges between £140 to £300 per acre dependent upon a number of different factors, location, land fertility, and what the tenant is prepared to pay, equating to £8.75 to £18.75 per 250m<sup>2</sup>. This is lower than the figures for allotment rents, but reflects the factors mentioned above and the level of farm incomes.

### **3.8 Waiting list and demand**

3.8.1 Waiting list numbers are regularly reviewed, with allotment associations submitting their information at the beginning of the growing year, although numbers may vary throughout the year. At the time of drafting this report there are just under 1,000 people on the waiting list. Although this is a reduction from the level of about 1,500 at the time of Executive Board on 4<sup>th</sup> September 2013, demand remains significant notwithstanding the prospect of increased rents which had been consulted on from April 2013. As set out below, the public consultation indicated substantial support for even larger increases than those which Executive Board previously approved. Where allotment plot holders have decided to give up their allotment plot, the reasons given have been to do with time, ill health or family pressures. None have cited their reasons for giving up their allotment plot on the basis of the rental charge being too high.

### **3.9 Financial Implications**

3.9.1 The Judge's ruling acknowledged that the cost of providing the service was a relevant factor in determining an appropriate rent, and that the financial position of the Council could be taken into account in making a decision. This section outlines the position as it was at September 2013 and indicates how it has changed. It then considers the impact of the ruling in quashing planned rental increases from October 2014.

3.9.2 In terms of expenditure, a saving of £53k was identified in the previous Executive Board report, achieved by not filling the Community Food Growing Officer post, and reducing the improvements budget by around £24k. This has now been implemented and the level of cost savings identified has been achieved. There remains however an £80k subsidy each year on allotment provision.

3.9.3 The September 2013 report projected an income increase commencing in autumn 2014 to recover £50k subsidy, with a £15k above inflation rise in 2015 and 2016, projecting a full subsidy recovery of £80k in 2016/17. The judgement quashing the proposed rental increase in October 2014 in effect means that the allotment rental arrangements from October 2014 will remain at 2013/14 levels as follows.

- Full plot (250 square m): £38.50
- Half plot (125 square m): £19.25

3.9.4 On sites managed directly by Parks and Countryside, plots with water supply are charged an extra £18 per year for each full plot and £11.50 per year for each half plot.

### **3.10 Lease Arrangements**

3.10.1 In line with the Executive Board decision of 4<sup>th</sup> September 2013, allotment associations were given 12 months' notice to terminate existing leases on 15<sup>th</sup> October 2013, with new leases drawn up and submitted to each association. As at the end of July 2014, there were 9 allotment associations that have returned a signed new agreement.

- 3.10.2 Any allotment sites currently managed by allotment associations who have not signed a new lease agreement on or before 15<sup>th</sup> October 2014 will then automatically become managed directly by the Council. The Council has written to all associations explaining this to them and encouraging them to sign up to the leases.
- 3.10.3 Executive Board resolved on 4<sup>th</sup> September 2013 that allotment associations keep a reduced proportion of allotment rental from 2014/15. The effect of this reduction, combined with the increase in allotment rents, ensured that broadly the amount of money retained by each association would remain the same. This was based on proportions of 40% in 2014/15, 36% in 2015/16 and 32% in 2016/17.
- 3.10.4 The new lease agreements are not directly affected by the Judge's ruling. There is, however, now a discrepancy: if allotment rents are frozen at the 2013/14 level in 2014/15, and if the proportion to be retained by associations is reduced from two-thirds to 40%, allotment associations will have their income reduced, which was not intended. Accordingly, as set out below, it is proposed to address this by way of a side letter.
- 3.10.5 In addition, reference was also made in the lease to a new concession of 20% for those in receipt of a state pension which will not now be implemented in 2014/15.

### **3.11 Proposals**

- 3.11.1 Plot holders are entitled to 6 months' notice of an increase in rent. Rent is paid in October of each year. It is therefore proposed that any rental increases would not now be implemented until October 2015.
- 3.11.2 The equality, diversity, cohesion and integration assessment highlights the importance of being sensitive to the needs of those who are unable to afford a rental increase and therefore it is proposed to retain the current level of concessions for those who are registered disabled, unemployed, a full time student or in receipt of pension credit, as well as to introduce a new 20% concession for allotment charges for those in receipt of a state pension from October 2015.
- 3.11.3 Although information from some other authorities and from other land rentals could support an initial increase in the first year greater than the original proposals, when taken broadly the average allotment rents from other authorities support the original initial increases. The proposed phasing of increases over 3 financial years means that it is additionally necessary to consider the level of rents during and at the end of that period. The full increases proposed by 2017/18 are, however, still within the range of current allotment rents in other core cities and neighbouring authorities and significantly lower than an allotment land rental currently being charged to the Council. Furthermore, the proposals are sufficient, when combined with a reduction in the proportion of allotment rents retained by allotment associations so as to leave their income broadly stable, to address the Council's costs of providing the service. In all these circumstances it is not considered appropriate to implement a rental increase that is higher than that approved by Executive Board on 4<sup>th</sup> September 2013. It is therefore proposed to

implement findings based on the original consultation with the rental charges as set out in the following table.

Rental	2015/16			2016/17			2017/18		
	Con-cession	Con-cession Pensioner	Full	Con-cession	Con-cession Pensioner	Full	Con-cession	Con-cession Pensioner	Full
Full plot (250sq m)	£29.00	£46.40	£58.00	£32.50	£52.00	£65.00	£36.00	£57.60	£72.00
Half plot (125sq m)	£14.50	£23.20	£29.00	£16.25	£26.00	£32.50	£18.00	£28.80	£36.00
Quarter plot (62.5sq m)	£7.25	£11.60	£14.50	£8.00	£13.00	£16.25	£9.00	£14.40	£18.00

3.11.4 In order to compare current rental charges to these proposed increases, the following table outlines on a per week basis what these increases represent.

Rental	2015/16			2016/17			2017/18		
	Con-cession	Con-cession Pensioner	Full	Con-cession	Con-cession Pensioner	Full	Con-cession	Con-cession Pensioner	Full
Full plot (250sq m)	+£0.19	+£0.52	+£0.37	+£0.25	+£0.63	+£0.51	+£0.32	+£0.74	+£0.64
Half plot (125sq m)	+£0.09	+£0.26	+£0.19	+£0.13	+£0.31	+£0.25	+£0.16	+£0.37	+£0.32
Quarter plot (62.5sq m)	+£0.05	+£0.13	+£0.09	+£0.07	+£0.16	+£0.13	+£0.08	+£0.18	+£0.16

3.11.5 On this basis, the projected level of subsidy by the Council would be addressed in full by 2017/18, one year later than originally planned. It should be noted, however, that these increases do not allow for inflation which would be applied separately. Furthermore there are no proposals to increase water charges for Council managed sites other than for inflation.

3.11.6 The general proposal for 'quarter plots' is retained. There are already some examples where these are rented, and this could be an option for some existing plot holders should they feel unable to meet the rent increase. Similarly, a plot holder who currently has a full plot could consider renting a half plot as an alternative. This could have the further benefit of freeing up new plots to help meet demand in certain areas of the city.

3.11.7 As indicated above, allotment associations which have signed new agreements would be adversely affected in 2014/15 because they would retain less income in real terms. It is therefore proposed to issue a side letter to each allotment association, adjusting the proportion of rent retained by each association so that

its level of income remains broadly at the same level. Furthermore, the side letter will clarify the implementation of the new concession to those in receipt of a state pension to delay this until October 2015.

- 3.11.8 Those sites managed by associations which fail to sign a new lease on or before 15<sup>th</sup> October 2014 will automatically become directly managed directly by the Council, with the offer being made to each plot holder of a 12 month agreement.

## 4 Corporate Considerations

### 4.1 Consultation and Engagement

4.1.1 As outlined in the report to Executive Board on 4<sup>th</sup> September 2013, a consultation document was distributed to around 3,400 plot holder households in the city, from which 578 responses were received (15% of those distributed). It was also included on 'Talking Point' and the Council website and sent to all ward members, although no feedback was received from these sources. A copy of the document was also sent to the Leeds and District Gardener's Federation.

4.1.2 There were three options stated for consideration and feedback as follows:

- Option 1: review prices by applying an increase to all plot holders in proportion to what they currently pay to recover a £133k subsidy.
- Option 2: review prices by applying an increase to plot holders who currently pay the full rate whilst retaining plot rental levels for those entitled to concessions to recover a £133k subsidy.
- Option 3: review the management arrangements to seek a third party operator for allotment provision who would determine rental arrangements and meet all costs associated with provision.

4.1.3 The following table provides analysis of options selected by respondents including those where no specific option was chosen.

<b>Option</b>	<b>Number of responses</b>	<b>Proportion</b>
Option 1	304	52.6%
Option 2	34	5.9%
Option 3	128	22.1%
No option identified	112	19.4%
<b>Total</b>	<b>578</b>	

4.1.4 From this analysis it can be observed that nearly 60% were in favour of a rental increase, with the overwhelming majority in favour of option 1. Only 22% were in favour of a third party operator taking over the management of allotments. There were however a number of comments expressing concern at the overall level of rental increase proposed and that concessions were available on an age related basis.

4.1.5 The Leeds and District Allotment Gardener's Federation responded to the original consultation and raised the following issues:

- That the projected cost of allotment provision was too high, in particular salary costs and how the improvements budget was prioritised, along with estimated horticultural maintenance. They also acknowledged that while they are disappointed that higher than inflation rises may have to be introduced these should be phased in over a number of years.
- The Federation would like to work in partnership with the council to reduce costs by encouraging allotment holders to take a more active part in maintaining and managing their site e.g. to aim to achieve self-administered status for all allotment sites. They would also like to assist the council to develop a long term strategy for allotment provision in Leeds.

#### **4.1.6 Deputation to Full Council 10<sup>th</sup> September 2014**

4.1.7 Ahead of publication of this report, the Leeds and District Allotment Gardener's Federation have provided the draft of a deputation speech to full council on 10<sup>th</sup> September 2014. Given the imminence of consideration of related matters by Executive Board, the key points raised in the draft speech are considered in turn, as follows.

- That the proposed rental increase is not fair or reasonable.
- The reduction in the proportion of rent retained by allotment associations
- The impact on the number of self-managed allotment sites
- Engagement in the process

4.1.8 Should the actual speech delivered to full council raise any additional matters not addressed in this report, then a verbal response will be provided at the Executive Board meeting.

#### **4.1.9 *That the proposed rental increase is not fair or reasonable.***

4.1.10 The overriding concern expressed in the deputation is that the proposed rental increase is not fair or reasonable. The original decision has, however, been subject to a judicial review, and this report makes due consideration to the ruling in recommending a decision. There is evidence of unmet demand for allotments and support for significant rent increases in the consultation process. The rental increase starts for a full size plot in year 1 at £19.50 more per year (or £0.37 extra each week) to £33.50 more at the end of year three (which equates to £0.64 per week). The outcome of the judicial review was that the financial position of the Council could be taken into account in making a decision and the cost of providing the service was also a relevant factor in determining an appropriate rent. No additional significant cost savings, other than those already outlined above have been identified. Furthermore, rental comparisons provide broad support for the proposed increases and (together with the results of consultation) could support yet higher increases.

#### **4.1.11 *The reduction in the proportion of rent retained by allotment associations***

4.1.12 The main objection in the deputation speech concerns the reduction in the proportion of rent retained by each respective allotment association and the impact that the ruling will have on the level of income retained. This issue is referred to in section 3.10 of this report and specifically in paragraph 3.10.3 and 3.10.4, where it is noted that following the court ruling allotment rental will remain at 2013/14 levels with a lower proportion of rent retained by each allotment association. The proposal in paragraph 3.11.7 to issue a side letter to each allotment association addresses this issue by adjusting the proportion of rent retained so that the level of income remains broadly at the same level. This is further confirmed in the second recommendation of this report. This therefore means that the proportion of allotment rental retained by each allotment association will enable each association to retain the same level of income.

#### **4.1.13 *The impact on the number of self-managed allotment sites***

4.1.14 The overall implication is that the changes proposed will potentially reduce the number of self-managed sites as well as discourage any future sites from taking on this responsibility. As discussed above, the level of income should remain the same, and therefore there is no financial reason for allotment associations to give up their self-managed status. There are 60 out of 97 council managed allotments sites in Leeds that are self-managed. The Council continues to encourage allotment holders to consider becoming self-managed and over the last 2 years 26 of the 37 sites managed directly by the Council have appointed site representatives which is the first step towards attaining self-managed status. For a site to become self-managed it is working practice that a minimum of 75% of allotment plot holders must agree to the proposal. However, it should be noted that for some sites the plot holders do not wish to take on the added responsibility required to undertake management and therefore prefer that they are retained under Council control. Therefore the status of each allotment site is determined by the wishes of the plot holders.

#### **4.1.15 *Engagement in the process***

4.1.16 The Leeds and District Allotment Gardener's Federation also raise concerns about the level of engagement with the Council in the overall process. It is important to note that the consultation process was thorough and comprehensive and was conducted within a fixed timescale, and the views expressed by the federation have been summarised in paragraph 4.1.5. The recommendations took account of these views by identifying opportunities to reduce the cost of provision as well as phasing in proposed allotment rental increases over a number of years. The revised lease arrangements also took account of views expressed by an increased lease period of 20 years to better enable grant funding. As stated above, the Council has also supported sites to become self-managed and encouraged plot holders on Council managed sites to take a more active role.

## **5 Equality and Diversity / Cohesion and Integration**

- 5.1 The equality and diversity, cohesion and integration assessment included as Appendix 2 provides analysis and conclusions on the consultation findings. In particular it highlights the importance of being sensitive to the needs of those who are unable to afford a rental increase, whilst at the same time taking steps to reduce the cost of allotment provision.

## **6 Council Policies and City Priorities**

- 6.1 This report contributes to one of the Best Council Plan 2013-17 outcomes to 'achieve the savings and efficiencies required to continue to deliver frontline services'.

## **7 Resources and value for money**

- 7.1 Analysis of other rental levels is set out above.
- 7.2 In terms of expenditure, a saving of £53k was identified in the previous Executive Board report and has been achieved by not filling the Community Food Growing Officer post and reducing the improvements budget by around £24k. There remains however an £80k subsidy each year on allotment provision.
- 7.3 The original report projected an income increase commencing in autumn 2014 to recover £50k subsidy, with a £15k above inflation rise in 2015 and 2016, projecting a full subsidy recovery of £80k in 2016/17. The judgement quashing the proposed rental increase in October 2014 in effect delays the potential to apply any rental increase for a further year.
- 7.4 It is proposed that any rental increases would not be implemented until 2015/16, and accordingly that full recovery of subsidy would be achieved in 2017/18, one year later than originally planned. It should be noted that these increases do not allow for inflation which would be applied separately. Furthermore there are no proposals to increase water charges for Council managed sites other than for inflation.
- 7.5 The original Executive Board report recommended that allotment associations kept a reduced proportion of allotment rental from 2014/15. This was based on 40% in 2014/15, 36% in 2015/16 and 32% in 2016/17. Given that the proposed lease agreements are not directly affected by the ruling, allotment associations would have a reduced level of income from 2014/15 as the proposed rental increase will not now take place. Under the terms of the old lease associations retained 66%, however the new lease only provides for 40% on the assumption of a plot rental increase. It is therefore proposed to issue a side letter to each allotment association. This will ensure that the proportion of rent retained by each association enables the level of income to remain at the same level. Furthermore, the side letter will clarify the implementation of the new concession to those in receipt of a state pension to delay this until October 2015.
- 7.6 It is also proposed to retain the current level of concessions for those who are registered disabled, unemployed, a full time student or in receipt of pension credit,

as well as to introduce a new 20% concession for allotment charges for those in receipt of a state pension from 2015.

7.7 The following table illustrates the reduction in expenditure from a base position established in 2012/13 showing the effect of savings made to 2014/15 and projected position to 2017/18.

<b>Description</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>
Income	-£45k	-£45k	-£45k	-£95k	-£110k	-£125k
Expenditure	£178k	£149k	£125k	£125k	£125k	£125k
<b>Net Subsidy</b>	<b>£133k</b>	<b>£104k</b>	<b>£80k</b>	<b>£30k</b>	<b>£15k</b>	<b>£0k</b>

## **8 Legal Implications, Access to Information and Call In**

8.1 Any determination of allotment rents must be in accordance with Section 10(1) of the Allotment Act 1950 as follows.

10 Rents to be charged for allotments let by local authorities

(1) Land let by a council under the Allotments Acts, 1908 to 1931, for use as an allotment shall be let at such rent as a tenant may reasonably be expected to pay for the land if let for such use on the terms (other than terms as to rent) on which it is in fact let;

Provided that land may be let by a council as aforesaid to a person at a less rent if the council are satisfied that there exist special circumstances affecting that person which render it proper for them to let the land to him at a less rent.

8.2 The Council's decision to increase allotment rents was subject to a judicial review which included 4 grounds and raised numerous issues. The Council succeeded on a number of issues:

- The Judge adopted the Council's interpretation of Section 10 as having a broad common sense approach as had previously been held in the Harwood case
- Section 10 did not prescribe any particular method for the determination of the rent
- The Claimant's attempt to compare S10 with the requirements for assessing commercial rents under the Landlord and Tenant Act 1954, Pt II was rejected
- There was no obligation on the Council to subsidise allotment holders.
- Ground 3 was abandoned at trial.
- Ground 4 did not succeed.
- The Notices to Quit served on the allotment associations remained effective.

8.3 The basis on which the Council was unsuccessful was fairly narrow:

- Section 10 was not expressly mentioned in the report to Executive Board and subsequent advice to the Scrutiny Board had not cured this.
- The Judge did not accept that the decision-making process was in substance an exercise which complied with S10
- The judge found it difficult to see how the rent could be set without some form of valuation exercise though he desisted from reaching any conclusion that this was mandatory.

8.4 The consequences of the judicial review are as follows:

- The ruling clarifies the principle that it is for the Council to determine allotment rental.
- The Notices to Quit are valid and leases therefore come to an end on 15<sup>th</sup> October 2014.
- If associations do not sign up to new leases by 14 October 2014, the land reverts to Leeds City Council control and agreements would be put in place with each plot holder on these sites for a period of 12 months.
- The new Leases are not directly affected. The leases do not specify the amount of each allotment rent payable. The proportion of those rents retained by associations was not held to be unlawful.

8.5 The judgement of 5<sup>th</sup> August 2014 made reference to previous case law in how section 10 is interpreted and concluded the following.

- It is for the Council to make the decision.
- The Council should take into account all the relevant circumstances in a broad common sense way.
- The cost of providing the service may be a relevant factor but is not the only factor.

8.6 Although the Council is, on legal advice, applying for permission to appeal against the Judge's decision (which had to be filed by 27 August 2014), it is a sensible precaution at this stage for the Executive Board to reconsider its earlier decision in the light of the judgment which is now available; and for the Executive Board to take a decision about any increases in allotment rents on the legal basis as set out in the judgment. In order to preserve the Council's position in relation to an appeal, however, a new decision will need to be made without prejudice to the Council's argument in the appeal that the decision made on 4th September 2013 was not unlawful and should not have been quashed.

## **9 Risk Management**

- 9.1 If the proposed rental increase is not implemented, there will be a financial risk in achieving future years' budgets.

## **10 Conclusions**

- 10.1 The Council is required to comply with section 10 of the Allotments Act 1950 which, on previous case law and in the Judge's current ruling, requires taking into account all relevant circumstances in a broad, common sense way, giving such weight to the various factors as the Council thinks right so that it may come to a conclusion that it thinks right and fair. The outcome of the judicial review was that the financial position of the Council could be taken into account in making a decision and the cost of providing the service was also a relevant factor in determining an appropriate rent. It is not, however, the only relevant factor. Together with evidence of unmet demand for allotments and support for significant rent increases in the consultation process, the level of allotment rents in other authorities' areas and evidence of land rentals in the Council's area provides broad support for the proposed increases. Although some of the information from other authorities and from other land rentals could support an initial increase in the first year greater than the original rental proposals, when taken broadly, the average allotment rents from other authorities support the original initial increase. The proposed phasing of increases over 3 financial years means that it is additionally necessary to consider the level of rents during and at the end of that period. The full increases proposed by 2017/18 are, however, still within the range of current allotment rents in other core cities and neighbouring authorities and significantly lower than an allotment land rental currently being charged to the Council. Furthermore, the original proposals are sufficient, when combined with a reduction in the proportion of allotment rents retained by allotment associations so as to leave their income broadly stable, to address the Council's costs of providing the service. In all these circumstances it is not considered appropriate to implement a rental increase that is higher than that approved by Executive Board on 4<sup>th</sup> September 2013.

## 11 Recommendations

11.1 It is recommended that Executive Board approve the following, without prejudice to the Council's position that the decision made on 4th September 2013 was not unlawful and should not have been quashed:

- A phased rental increase commencing in autumn 2015 as set out in the following table which starts for a full size plot in year 1 as £19.50 more per year (or £0.37 extra each week) to £33.50 more at the end of year three (which equates to £0.64 per week).

Rental	2015/16			2016/17			2017/18		
	Con-cession	Con-cession Pensioner	Full	Con-cession	Con-cession Pensioner	Full	Con-cession	Con-cession Pensioner	Full
Full plot (250sq m)	£29.00	£46.40	£58.00	£32.50	£52.00	£65.00	£36.00	£57.60	£72.00
Half plot (125sq m)	£14.50	£23.20	£20.00	£16.25	£26.00	£32.50	£18.00	£28.80	£36.00
Quarter plot (62.5sq m)	£7.25	£11.60	£14.50	£8.00	£13.00	£16.25	£9.00	£14.40	£18.00

- That a side letter is issued to each allotment association to confirm the implementation of the provisions for concessions and the reduction in the proportion of rental income that may be retained by the association should be deferred until the proposed new rental charges take effect.
- Those sites managed by associations who fail to sign lease agreements on or before 15<sup>th</sup> October 2014 will automatically become directly managed by the Council and the Council will then offer a 12 month agreement to each plot holder on each site.
- Furthermore it is recommended that Executive Board note that following the Court ruling, allotment rental charges in 2014/15 will be on the same basis as the previous year (2013/14), including the level of concessions.
- That the Chief Officer Parks and Countryside will be responsible for implementing the recommendations in the timescales indicated.

## 12 Background documents<sup>1</sup>

12.1 None.

<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.