



Okehampton Town Council

# Okehampton Town Council Asset and Service Transfer Policy

## 1. Introduction

This policy establishes a framework and set of guidelines that Okehampton Town Council will follow when considering the transfer of assets or services from another authority or organisation.

The policy outlines due diligence requirements, assessment criteria for both assets and services, and identifies essential initial questions to be considered.

## 2. Key Assessment Principles

2.1 Asset Evaluation Criteria - Each potential asset transfer will be evaluated based on the following criteria:

- Ownership and Tenure
  - Determine whether the asset is owned or leased by the transferring authority and anyone who has control of the assets.
  - Establish whether the transfer involves freehold or leasehold ownership.
  - Ensure all necessary legal due diligence of title is carried out by legal advisors and include appropriate searches and enquiries are raised. Indemnities and where appropriate indemnity insurance, will be required where advised as necessary.
- Occupancy and Use
  - Identify any current lessees, tenants or other occupiers, obtain and examine terms of occupancy agreements. Obtain specialist legal advice on the occupancy agreements as part of the due diligence of the acquisition.
  - Review any restrictions, covenants, or agreements that may affect the future use or disposal of the asset.
  - Undertake due diligence in connection with the occupiers including details of any rent or service charge arrears, any legal claims or disputes or threatened claims or disputes involving the transferring authority. Agree a formula for dealing with the arrears on transfer. Also any ongoing or potential insurance claims.
  - Legal advice may be necessary to confirm whether existing tenant agreements will transfer to Okehampton Town Council and to address potential future liabilities related to these agreements.
- Condition and Maintenance
  - Review any available condition surveys, noting that independent assessments may be advisable.
  - Examine existing maintenance plans, historical maintenance spending, and current condition.
  - Request new structural or conditions surveys as necessary and liaise with the Town Council insurers from the outset regarding asset condition.

- Determine whether Okehampton Town Council is expected to assume responsibility for current or deferred maintenance obligations upon transfer; obtain legal input on potential indemnities or warranties from the transferring authority regarding the asset's condition.
- Agree a method and timescale for the takeover of repair responsibilities up to the day of completion depending on the urgency of the repair.
- Statutory Testing and Compliance
  - Confirm the status of statutory testing (e.g., electrical, gas, asbestos surveys, RoSPA) to ensure compliance and ensure all are up to date.
  - Obtain details of any breaches and action to date.
  - Include provision to ensure responsibility for statutory testing is clarified before the transfer. Seek legal guidance on any compliance certifications required to avoid future liability.
- Financial Implications
  - Assess operational expenses such as business rates, insurance, and ongoing costs including training and additional staff.
  - Check the date of the last insurance valuation and consider potential cost adjustments.
  - Request a breakdown of income and expenditure related to the asset over a representative period (e.g., 5-10 years).
  - Determine if financial support accompanies the transfer or if the asset will be brought up to standard prior to transfer.
  - To request and consider a record of insurance claims history including any ongoing or potential claims.
  - Verify whether the council's insurers require any specific conditions for liability coverage or if exclusions apply for certain types of assets. Seek advice on insurable risks and conditions.
  - Consider any existing service or maintenance contracts and the implications of keeping them or terminating them.
  - Identify any debts and goodwill if the transfer is of a business asset and obtain legal advice regarding the same.
- Strategic Fit and Risk Assessment
  - Evaluate the asset's development potential or intrinsic value and identify any risks, including any historic or current complaints or proceedings.
  - Liaise with the Police and local community groups or residents to understand if there is a history of anti-social behaviour to consider.
  - Determine if the asset is listed or protected and if it aligns with the council's broader strategic or long-term plans.
  - Clarify if legal protections or indemnities are advisable for risks related to listed or protected assets. Obtain legal advice on clauses to limit liability in cases of unforeseen regulatory changes.

2.2 Service Evaluation Criteria - Transferred services should align with Okehampton Town Council's strategic priorities and take into consideration the following:

- Nature of Service
  - Establish whether the service is statutory or discretionary.
  - Define baseline standards, requirements, and legal compliance obligations.
  - Seek legal input on any specific compliance standards for statutory services, including penalties or liabilities for non-compliance.
  - Identify notification obligations upon acquisition of the asset including statutory or to other third party bodies or agencies.
- Fit with Council Capabilities
  - Evaluate Okehampton Town Council's capacity to manage and deliver the service effectively.
  - Assess resource needs, including any skills, equipment, or facilities required.
- Financial and Staffing Considerations
  - Review budget implications, including any financial support, income sources, and ongoing costs.
  - Determine if TUPE (Transfer of Undertakings Protection of Employment) applies and conduct due diligence on staffing needs, performance, and employment terms.
  - Assess any impacts on the council's staffing structure, salary grades and collective agreements.
  - Seek specific advice on employment law and TUPE implications to prevent future liabilities. Clarify if indemnities or warranties may be needed from the transferring body regarding employment obligations.

2.3 Business Case Development - A business case should be prepared for all potential transfers to ensure clarity and informed decision-making. Core questions include:

- Rationale for Transfer
  - Understand why the transferring authority wishes to divest the asset/service and its importance.
  - Clarify what is being transferred, including any limitations.
  - Request legal advice on potential restrictions or limitations that may not be immediately apparent but could impose future liability on Okehampton Town Council.
- Support and Future Obligations
  - Determine the level of support available if Okehampton Town Council assumes responsibility for the asset or service, as well as implications if the transfer does not proceed.
  - Consult insurers to verify future obligations and ongoing liability coverage; confirm any specific legal clauses to clarify support expectations or indemnities.
- Transparency and Community Engagement
  - Ensure clear communications are managed to encourage community engagement and to prevent misunderstandings about the transfer's impact.

### **3. Sustainability Considerations**

The Council will integrate environmental considerations into its operational decisions. This includes taking into account any emerging factors relating to climate change, when evaluating asset acquisitions.

### **4. Approval and Governance**

- Each potential transfer will be reviewed by Okehampton Town Council, with final approval subject to a comprehensive review by professional advisers as needed. This will follow the usual processes of operational investigation by officers, informal engagement with members and partners, committee and final ratification by Full Council.
- The Council will refer to relevant best practice guidelines and ensure alignment with all legal and regulatory requirements.
- The Council is required to ensure they have the legal and regulatory requirements to spend public funds on the service or asset.

### **5. Legal and Insurance Considerations**

- The Council must include specific steps to involve legal and insurance advisors throughout the transfer process, especially in drafting and approving terms regarding liability, indemnity, and potential future claims and carrying out all necessary legal due diligence and to ensure all post completion matters (e.g registration at Land Registry) are carried out.
- Where there are either know liabilities existing or potential liabilities that will remain unsettled at the time of transfer, there shall be a need to obtain an indemnity for the benefit of Okehampton Town Council. This will need to be by way of a direct indemnity from the transferring body or an indemnity policy where appropriate.