

Change proposals related to local authority funded services to maintained schools and pupil referral units.

A. Context and background

In September 2024, the Council consulted maintained schools on proposals to change the way some services (school improvement and intervention, headteacher recruitment support, moderation of end of key stage assessments and redundancy) were funded. The consultation flagged to schools and PRUs (Pupil Referral Units) that the Council would come forward with further proposals relating to the 2026-27 financial year. This consultation sets out those proposals for your consideration.

The national funding arrangements for schools and LAs has been shifting over the years as the Department for Education (DfE) seeks to move schools and academies to a consistent funding arrangement, based on the National Funding Formula. Kent County Council (the Council) has long argued there should be parity of funding between maintained schools and academies, and between Kent schools and those in other parts of England.

With the introduction of the School Funding Reforms in 2013-14, local authorities (LAs) were directed to delegate a number of former centrally retained Dedicated Schools Grant (DSG) budgets to schools for the first time. At the time, a total of £8.7m of DSG funding was delegated to schools from 1 April 2013 and at the same time, local Schools Funding Forums were given the powers to de-delegate funding. This is where some of this funding is returned to the LA for certain categories of spend where better efficiency could be achieved through central delivery by the LA.

The Education Services Grant (ESG) allocated to LAs by the Government for the provision of statutory services in relation to schools was withdrawn in 2016-17. The DfE introduced a provision within the School Funding Regulations for LAs to agree a contribution from LA maintained schools' budget shares towards the cost of statutory services. This principle reflects the charge that most Multi Academy Trusts (MATs) place on their schools for central services.

With the introduction of the National Funding Formula and the withdrawal of DfE funding to LAs to support schools, we have seen funding shifting from LAs to schools to pay for services. It is acknowledged that cost pressures and inflation will have reduced the purchasing power of these allocations for schools. However, the Council has been slow in transferring the costs of services from itself to schools in line with DfE changes described above, instead continuing to fund many school services from council tax.

It was important, therefore, that we looked closely at how the Council funds its maintained schools and the services it provides to these, and in some cases academies, to ensure there is greater equity in funding. This work was termed the Review of Services to Schools.

The proposals will affect all maintained schools (community, community special, foundation, foundation special, voluntary controlled, and voluntary aided schools) and pupil referral units (PRUs).

The proposals involve “top-slicing” funding from maintained mainstream schools’ budgets and “buy-back” arrangements for maintained special schools and PRUs, to enable centrally provided/commissioned support to schools/PRUs to continue to be provided. For simplicity, we use the term “top-slice” in this document, which should also be read as “buy-back”.

We are also very conscious that any service the Council provides to schools and PRUs, regardless of how this is funded, must represent good value for money. Top-slicing shines a spotlight on what is being provided and the cost. Any request to top-slice is subject to annual consultation with schools and the agreement of the Schools Funding Forum (SFF), which provides an ongoing opportunity for the Council to report back to schools on the services it provides and to receive feedback on how these might need to change moving forward. This is a valuable reciprocal process, supporting transparency for all stakeholders and fostering continuous improvement. However, both schools/PRUs and the Council must enter contracts for services, so it is necessary to ensure both have time to implement any future changes. For this reason, we are recommending a “rolling two year” agreement process, such that if agreed, the arrangements under consultation would apply to 2026-27 and 2027-28. The annual consultation next year (2026-27) would confirm if the arrangements would continue in 2027-28 and decide if arrangements were to continue or change for 2028-29. It should be noted that the current timeline the Government has proposed for Local Government Reorganisation is 2028, at which point the County Council will cease and new unitary arrangements will come into place.

B. Areas of potential change for 2026-27 – why have these been considered and what is proposed?

1. Statutory compliance testing and surveys, including tree surveys.

Proposals – To top-slice school budgets. This would be for a rolling 2-year period.

Why is this being proposed?

For all maintained schools and PRUs the Council commissions Skanska to arrange and manage all premises-related statutory compliance tests and surveys and Kent Landscape Services for tree surveys. It does so regardless of whether the Council or the governing body is the duty holder, because schools financing regulations require the Council to fund all maintained schools equitably. The duty holder is generally the employer - the Council for community and voluntary controlled schools, and the governing body for voluntary aided and foundation schools.

Table 1 sets out the current break down of responsibilities between KCC and schools:

Table 1: Responsibilities of KCC and schools

	KCC	School
Asbestos Management	<p>Asbestos Survey – every 3 years.</p> <p>Resultant works from above survey.</p>	<p>Visually inspect asbestos “in situ” based upon survey results.</p> <p>School managed projects – an asbestos refurbishment survey must be undertaken.</p> <p>Resultant works required from school-managed projects.</p>
Water Hygiene	<p>Water Hygiene risk assessment every 2 years.</p> <p>Follow up annually by water hygiene contractor.</p>	<p>Resultant works from the risk assessment subject to agreed financial thresholds.</p> <p>Temperature monitoring and flushing on site.</p>
Fire Safety Management	<p>Fire alarm service on annual basis.</p>	<p>Full fire risk assessment every 3 years with annual review and complete any actions arising.</p> <p>Fire alarm maintenance and resultant works from servicing, in accordance with the capital / revenue maintenance criteria financial threshold.</p>
Electrical Safety	<p>5-year fixed electrical inspection for education establishments.</p> <p>3 years for leisure complex excluding pool.</p> <p>Annual fixed inspection for swimming pools.</p> <p>C1 & C2 remedial works from all inspections.</p>	<p>C3 & Health & Safety remedials from all fixed electrical inspection.</p> <p>Portable Appliance Testing on an annual basis or in line with PAT testing schedule complying with KCC guidance.</p>
Gas, Oil & Liquid Petroleum Gas (LPG)	<p>Annual service of fixed gas and LPG boiler and kitchen appliances.</p>	<p>Siting of carbon monoxide detector as advised by Gas Safe engineer. To be checked monthly.</p> <p>Oil – spill training. – Emergency spill procedures.</p>

	Oil fired boiler service_(6 monthly) Oil storage tanks inspection annually	Maintenance of all gas, oil and LPG equipment and appliances in accordance with the capital / revenue maintenance criteria financial threshold.
Lifts	Thorough examination at least every 6 months. Servicing 6 monthly.	Local escape procedure and training. Resultant works from examination and service in accordance with the capital / revenue maintenance criteria financial threshold. Maintenance every 6 months.
Local Exhaust Ventilation (LEV) and Extraction Equipment		LEV testing and inspection at a minimum of 14 months and resultant works. i.e. Fume Cupboards and DT equipment LEV. Extraction equipment testing in line with manufacturers recommendation or 12 monthly. Annual deep clean of kitchen extraction and regular cleaning of vents and traps.
Trees	Tree survey for sites – every 18 months.	Resultant works from the tree survey.
Radon	Test every 5 years, except for high risk sites where testing is annual.	Resultant works from testing in accordance with the capital / revenue maintenance criteria financial threshold.

The costs to KCC of undertaking the surveys, tests and servicing are revenue costs. KCC already delegates all revenue funding for buildings surveys, repairs and maintenance to maintained schools. However, to date the Council has not transferred the costs of statutory compliance in maintained schools to their budgets.

KCC undertook a full procurement process for its Facilities Management (FM) and Landscape Contract. This process, by definition, secured the best value available to the Council. However, we appreciate through this consultation school leaders will want reassurance that we have looked carefully at the value for money of KCC continuing to commission these services on behalf of schools. This is in respect of both the costs (do we secure better value through bulk purchasing?), and expertise

(we have technical experts who know what legislation requires who ensure the surveys are suitable, and comprehensive). Our technical experts resolve issues of dispute and quality assure the work received.

An external cost consultant has provided us with some market costs for surveys, and an academy trust has also kindly provided details of costs it incurs. Direct comparison of figures is challenging, as exactly what is provided may differ. However, as an illustration of why we believe our contract secures value for money, here are some examples:

	KCC cost of survey only	Market Median cost	Academy trust cost
Asbestos Management Survey	£248	£625	n/a
Water hygiene risk assessment	£380	£375	£917
Fire alarm service	£325	£700	£516
Tree survey	£550	£600	£375

Linked to this commissioned work is the Skanska helpdesk. Through this, Skanska will secure quotes from reputable companies on behalf of the school to address premises issues they have identified or to discharge the resultant works arising from statutory compliance testing along with a 24/7 emergency response to support schools in an emergency e.g. building failures/ fire. The Skanska team have the skills and expertise to ensure the works quoted for are appropriate and necessary, and this approach is compliant with the school's financial compliance requirements. Additionally, Skanska provides information from the surveys to KCC which informs our maintenance programmes, for example boiler servicing reports inform our replacement programme.

It is fundamental that the statutory compliance surveys are undertaken in line with the legal requirements and by a competent person. Failure to comply can result in prosecution with potential for fines and imprisonment alongside the potential risk of injury and to life deficient compliance measures pose. That risk remains with the duty holder. In cases of serious breach, the fines can be unlimited.

What we are proposing

The proposal is, therefore, for schools' budgets to be top-sliced to fund costs KCC incurs in commissioning Skanska to provide these statutory compliance surveys. The costs of KCC staff in managing this contract and providing support to schools (c£500k), for example our technical advisers, are not included in proposed top-slice for 2026-27.

The Council considered amending the Scheme for Financing Maintained Schools to make schools arrange their own statutory compliance checks. This is not our preferred option because we believe the current arrangements represent better value for money for schools and better manage risk. Firstly, the current contract with Skanska operates until 2032. Whilst there is flexibility in the contract to remove the school estate from this, there would be costs associated with doing so. Secondly, were schools to commission their own surveys there would still be costs to the Council, as well as the increased burden on individual schools. KCC would need to monitor that schools had commissioned and received surveys in a timely fashion and interpreted these correctly, to quality assure reports, and to check that resultant works had been undertaken. This is because where KCC is the duty holder, it can delegate responsibility for taking actions, but it cannot delegate its duties.

The funding for this monitoring and quality assurance work would still need to be top-sliced from schools/PRUs. The resource to undertake this work would be greater than required through the current arrangements, because Skanska commissions in bulk using a single specification, can track site visits and the receipt of reports, which are in consistent formats, and can have oversight of both school and LA remedial action. This is a streamline system when compared to staff in c300 schools and PRUs individually procuring and interpreting up to 8 different surveys, with delivery dates known only to them and reports produced by a wide range of contractors in differing formats. KCC could procure a framework of providers for schools to commission from, which would ensure compliant and consistent surveys, but schools would be required to interpret any surveys or reporting. KCC monitoring and compliance responsibilities would remain and the cost of creating the framework is estimated at in excess of £500k (using KCC's standard approach to accounting for procurement costs).

2. Health and Safety advice and training

Proposals – The Council has one option in respect to these costs, to top-slice school budgets. This would be for a rolling 2-year period.

Why is this being proposed?

All employers have a duty to comply with the legal requirements outlined in the Health and Safety at Work Act 1974 and associated legislation and must so far as is reasonably practicable, ensure the health, safety and welfare of employees and others who have access to their work environment or may be affected by their work activities. The Act mandates risk assessments and the implementation of appropriate safety measures.

As set out above, overall legal accountability for the health and safety of employees and others cannot be delegated and remains the responsibility of the employer. The employer must ensure that the risks, particularly those affecting staff and pupils, are managed as far as is reasonably practicable. Through its health and safety policy the duty holder generally delegates responsibility for managing health and safety to the headteacher. This person should have the necessary skills, knowledge and experience to provide competent guidance about managing health and safety risks at the school.

KCC's Health and Safety Team provide a range of support to schools:

- Competent health and safety advisers.
- Duty advice line.
- Provision of standards, guidance and templates.
- Regular guidance and news articles.
- Access to an on-line accident, incident, and near miss reporting form.
- Follow up support for serious concerns, trends in accident, incident and near miss reporting to reduce risk of reoccurrence (e.g. training, risk assessment).
- Advice on Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR).
- Audits informed by data and trend analysis to improve control measures and communications, guidance and training.
- Access to e-learning courses, such as asbestos management, control of substances hazardous to health (COSHH), fire safety, legionella and water hygiene, and manual handling.

The team provides all of the Council's health and safety advice and support, meaning it has a wide range of skills and expertise, as well as economies of scale. The activities the Team undertake in relation to maintained schools mitigates the health and safety risks for staff and visitors and thus reduces the likelihood and severity of potential consequences for school leaders, governors and the Council.

In terms of equity, academies are expected to commission their own health and safety support and guidance. Some do this through employing a health and safety specialist at Trust level, others through buying in a service. For this reason, the Council is proposing to top-slice maintained schools' budgets to cover the costs of providing this service.

We have considered whether the activities are all statutory duties, or whether any would be regarded as "additional", going beyond the statutory requirements. While it is possible to place a requirement on maintained schools to buy in advice and training, and to ensure they have appropriate risk assessments and monitoring arrangements in place, the Council would need to have a mechanism in place to monitor and quality assure that arrangement in community and voluntary controlled schools were adequate, as the Council would continue to be the duty holder. It would also need assurance frameworks for voluntary aided and foundations schools, where the governing bodies are the duty holders, as any failings on their behalf present risks to their school's delegated budget. For this reason, we have concluded all activity falls as statutory activity. We have looked at the arrangements other LAs have in place and, for example Bournemouth's health and safety offer, which is funded by top-slice, appears very similar to ours.

We have looked at the value for money of our health and safety support to maintained schools and PRUs. Our cost of £1.81 per pupil compares very favourably to the £4.58 per pupil average paid by a MAT with 8 primary schools for a consultant to support its schools. In addition to the Health and Safety Advisers, the Council's Infrastructure Service has technical experts on staff who support statutory compliance. The combination of expertise provides significant value for money.

3. Employment Tribunal Awards

Proposals - The Council only has one option in respect of these costs, to top-slice school budgets. This would be for a rolling 2-year period.

Why is this being proposed?

The Scheme for Financing Maintained Schools¹ sets out the circumstances in which a charge may be made to a school's budget share - "6.2.3 Awards by courts and employment tribunals against the LA, or out of court settlements, arising from action or inaction by the governing body contrary to the LA's agreement and/or advice." This means that ordinarily, if a school has followed the Council's (or their commissioned Human Resources (HR) provider's) advice, the Council meets the costs of employment tribunal awards (note: the Council does not meet the costs of settlement agreements). The Scheme implements s37 of the Education Act 2002, which relates to payments in the event of dismissal of employees in maintained schools.

The costs of school-based employment tribunal awards which the Council has to fund are small, averaging c£50,000 per annum. In part this is because both the Council's school insurance (Safe Hands) and the DfE's (RPA) provide legal costs cover. Subject to cover limits, these schemes cover the legal costs of a school defending a claim and, subject to the school following advice, the cost of any award.

While these insurance schemes are, in the main, meeting schools' costs, they are not meeting the costs of the Council in defending claims where it has also been named as a defendant or in paying any award not covered by insurance. The school funding regulations allow for the Council to secure from the schools' budgets (top-slice) its legal costs in defending school-based tribunals and the costs of any school-based tribunal awards it has to pay. The costs of this annually is c£69k – comprising c£50,000 in awards and £18,800 legal costs (based on the last three-year average).

These activities and costs are entirely statutory.

4. Staff Care (Occupational Health Advice)

Proposal – for schools to commission their own occupational health advice.

Why is this being proposed?

The Council currently commissions HR Connect (Staff Care Services) to provide a full suite of fully compliant occupational health (OH) services to maintained schools. This includes:

- Management referrals to an OH Advisor or OH Physician and the provision of a report containing advice, guidance and reasonable adjustments.
- Pre-placement questionnaire health screening.

¹ [Financial Scheme for Schools](#)

- Ill Health Retirement (IHR) case file collation and Independent Registered Medical Practitioner (IRMP) case file opinion.
- Health surveillance and other associated services including:
 - Flu vaccinations
 - Hepatitis B vaccinations
 - Health surveillance/screening activities e.g. lung function, audiometry, HAVS, driver-medicals, eyesight, dermatology.

The service utilises a fully compliant, online OH system and is delivered by a dedicated team of in-house clinicians and OH administrators who have extensive experience working with schools. The clinicians all hold relevant and up to date registration with the General Medical Council (GMC) or Nursing and Midwifery Council (NMC) as well as a specific OH qualification.

Schools refer individual employees to the service as and when required by their absence management policy. The governing bodies of all maintained schools have delegated revenue budgets. They are either the employer or act as the employer through legislation. The costs of occupational health advice are clearly a revenue matter which the Council believes schools should be meeting.

OH advice services are freely available in the market. Schools should be free to commission this support from their preferred provider, something many are already doing. There is no legal requirement for KCC to provide or fund OH support to maintained schools and PRUs.

It remains important that school leaders and governors access high quality OH support, whatever provider they choose to use. Failure to do so may lead to a lack of suitable risk assessments for higher risk roles, gaps in legally required health surveillance and screening, not following policies or guidance, increased risk of Employment Tribunals (ET's), higher absence rates and challenges with employee relations cases. All employees are required to be health screened in order to meet the requirements set out in Keeping Children Safe in Education.

How do we ensure we are getting value for money?

Under this proposal, it would be for individual schools to determine value for money. However, the Staff Care Services offer is competitively priced in comparison to the wider market and provides a full end-to-end occupational health service that has over 30 years' experience working in the education sector. Its industry leading systems and processes provide an excellent customer experience, securely hold employee OH records on specialist case management system and provide managers with the ability to start and track the progress of their OH processes in real-time. Staff Care Services only use fully qualified OH specialist clinicians and have a network of additional third-party clinicians it can utilise as required. The following table provides some benchmarking information to assure school leaders:

Core Occupational Health Service - Price Benchmarking

Service	Staff Care Services	Kent Based OH Provider	London Based OH Provider (1)	London Based OH Provider (2)	London Based OH Provider (3)	London Based OH Provider (4)	Bristol Based OH Provider	Bedford Based OH Provider	Wales Based OH Provider	Average Saving
Management Referral – Standard	£190	£300	£450	£250	£465	£225	£300	£250	£300	£114 per referral
Management Referral – Complex	£370	£465	£450	N/A	£465	N/A	£500	N/A	N/A	£100 per referral
Pre-Employment Screening Questionnaire - Online	£30	£45	N/A	N/A	£125	N/A	£50	£30	£130	£46 per referral

5. Administration of teachers' pensions.

Proposal – to top-slice school budgets for the full cost of the Council administering the pension arrangements of maintained school staff. This would be for a rolling 2-year period.

Why is this being proposed?

Under the regulations of the Teachers' Pension scheme, LAs are responsible for the provision of data and contributions to the Teachers' Pensions Scheme, and for ensuring compliance with the Disclosure and Auto Enrolment Regulations. The LA retains these responsibilities even where a maintained school chooses to use a payroll provider other than the LA. This is not something that can be delegated to schools and thus not a service schools can buy from the market. It is an area where the finance regulations enable the Council to top-slice maintained school budgets, recognising that the Education Services Grant has ended, and the Council must provide this service.

In practice, this means HR Connect are commissioned by KCC (at a cost of £122k) to:

- Collect, collate and present the monthly and annual information required by Teachers' Pensions for the Monthly Contributions Reconciliation for Kent Maintained and non-maintained schools. The data to be supplied in the format prescribed by Teachers' Pensions and within specified deadlines.
- Do so for staff in all KCC maintained schools and PRUs covered by Teachers' Pension Scheme (all payroll providers) and for KCC non-school staff in the Teachers' Pension Scheme.

- Resolve errors and discrepancies in the data received from schools and payroll providers; arrange payments and refunds to and from Teacher Pensions.
- Produce and communicate guidance to schools on the process for the following year.
- Support the annual audit process.

It is important that employees' pension records are accurate and up to date. Incorrect records affect the calculation of their pension benefits, delays the processing of pension payments, which potentially impacts employees' financial planning and retirement timeline. Late submissions can lead to errors in recording contributions, requiring corrections and adjustments, which may cause further delays and administrative complications. Late submissions also lead to fines of the County Council.

In addition, the Council has to provide audit certification to the Teachers' Pension Scheme. The fee for our external auditors to undertake this work and provide the certification is £10k per annum. The total cost to the Council is therefore £132k per annum.

How do we ensure we are getting value for money?

The service provided by HR Connect is fully compliant with the Teacher Pension Scheme regulations. It has been resourced and developed to ensure it minimises the risks to both KCC and maintained schools. The financial penalties and interest charges for late submissions can total hundreds of thousands of pounds for the County Council and schools if the service is not managed effectively. HR Connect have built a team with expert knowledge to best support complex queries from employees and the team is resourced to be able to liaise with several different payroll providers in order to minimise late submissions and the risk of penalties.

Alternatives

In previous consultations we have tried to inform school leaders of the consequences if our proposals are not taken forward. This approach has been well received, so is repeated here.

All requests for top-slicing have to be approved by the Schools Funding Forum (SFF) annually. As set out above, both schools and the Council need time to make changes, hence proposing a two-year rolling decision making process. If the SFF reject any of the proposals, the Council has four main options:

- To decide not to continue with a particular proposal.
- To reconsider and consult on an alternative.
- To seek approval from the Secretary of State on the current proposal.

- Reduce to a statutory minimum and seek approval from the Secretary of State for the agreement that the funding for this can be top-sliced from maintained schools' budgets.

It should be taken as read that we are not discounting any option, but it is important we recognise that the decision will have to be taken in the context of the difficult financial decisions that the Council has already had and will continue to have to make in order to deliver the required level of savings.

It is difficult for the Secretary of State to refuse a top-slice application when the service being provided is a statutory duty of the Council, and the funding being sought is to provide the minimum requirements to secure the duty. It should be noted the statutory minimum represents a change to the current arrangements, passing some responsibilities that are currently held by KCC to schools. It would require assurance frameworks to be put in place as KCC's direct control is reduced and schools' increases. This changes the risk profiles of different activities.

In respect of the proposals, the statutory minimum would be:

- **Statutory compliance testing** - the Council delegates the responsibility to schools for commissioning statutory compliance tests and subject to the capital thresholds, remedying any defects. Creating a Policy Framework, advising, monitoring, collating, recording, and providing assurance that schools have fulfilled these responsibilities would be the minimum required for the Council to discharge its duty.
- **Health and Safety** – provision of policy, access to training (which is paid for), and monitoring. Schools would need to commission advice and support (a policy requirement).
- **Employment tribunal awards** – already at statutory minimum.
- **Staff Care** – unaffected by the proposal that schools fund occupational health advice.
- **Pension administration** - already at statutory minimum.

The Council has considered and wishes to reject moving to a statutory minimum model for statutory compliance (including tree surveys) and health and safety because of the risks associated with these activities, and because we believe our current arrangements represent good value for money for maintained schools.

C. Overall impact of the proposals

Table 2 below summarises the current costs of top-slicing related to the proposals above. All of the pupil numbers and figures contained in this are indicative and based on October 24 census data; actual figures will be based on 2026/27 financial data using October 25 census data. Please note the pupil numbers relate to maintained schools only. Guidance sets out that LAs should charge a single rate per 5-16 year-

old pupils for all maintained mainstream schools (and this is deducted from the basic entitlement funding). The rate does not include Early Years or Post-16 as these pupils are funded via a different formula. LAs may chose a different rate for Special Schools and PRUs. As the Council is proposing a 2-year rolling agreement, it is important to note the costs would be increased year on year in accordance with the related contract clauses on inflation.

Table 8: Proposed top-slicing and buy-back rates based on 2024-25 costs. These costs are subject to annual inflation.

Top-slicing/buyback rates (£ per pupil) of existing	Primary (62,699 pupils)	Secondary (15,384 pupils)	Special & PRU (5,437 & 354 pupils)	Total pot
Statutory compliance (including tree surveys)	£22.61	£22.61	£22.61	£1,896,128
Health and Safety advice, training, and compliance	£1.81	£1.81	£1.81	£152,075
Employment tribunal awards and associated legal costs	£0.82	£0.82	£0.82	£68,800
Administration of teacher pensions	£1.57	£1.57	£1.57	£132,000
Total	£26.81	£26.81	£26.81	£2,249,003

D. What happens next?

Headteachers, bursars and governors of local authority-maintained schools and PRUs are invited to submit their responses via <https://letstalk.kent.gov.uk/funding-services-to-schools-2026-2027>. This consultation runs from 9 June for 7 weeks, closing at 5pm on Friday 25 July 2025.

The outcome of the consultation will be presented to the Children's, Young People and Education Cabinet Committee on 16 September 2025. The Committee will be asked to make a recommendation to the Cabinet Member in respect of the proposals. The Cabinet Member will be asked to make a decision on behalf of the Council.

The Cabinet Member's decision becomes the Council's proposal to the Schools Funding Forum. This proposal will be considered by the Forum in the autumn (date to be confirmed). The respective representatives for maintained primary and secondary schools will vote on whether to agree or reject the Council's proposals.

In the event the Schools Funding Forum rejects the Council's proposals, the Council has the right to refer the matter to the Secretary of State for determination.