

# CHESHIRE EAST COUNCIL

## Cabinet

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<b>Date of Meeting:</b>	11 <sup>th</sup> November 2014
<b>Report of:</b>	Anita Bradley, Head of Legal Services and Monitoring Officer
<b>Subject/Title:</b>	Property Search Fees

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### **1.0 Report Summary**

- 1.1 This report seeks to update Cabinet in respect of claims against the Council for refunds of property search fees. The report is in two parts and the Schedule in Part II sets out the detail of the claims and proposed resolution and is exempt from publication.

### **2.0 Recommendation**

- 2.1 Approval is given to proceed with the proposed settlement framework.
- 2.2 The Head of Legal and Monitoring Officer, in consultation with the Chief Operating Officer and the Finance Portfolio Holder, be authorised to take all future steps to settle this claim.
- 2.3 That officers be authorised to undertake all necessary actions to implement the recommendations above.

### **3.0 Reasons for Recommendations**

- 3.1 The reasons are set out in the Part II Schedule of this report. This issue refers to a 2008 Central Government charging policy change which was removed in 2010.

### **4.0 Wards and Local Ward Members Affected**

- 4.1 All

### **5.0 Policy Implications**

- 5.1 None

### **6.0 Financial Implications**

- 6.1 The amount being claimed is above £50,000 but below the £1m threshold for a Council decision.
- 6.2 Reserves have been earmarked in the budget to cover these claims.

## **7.0 Legal Implications**

- 7.1 The legal advice contained in this report, including on the basis of settlement and figures, is subject to legal professional privilege, which applies not just to this Council but all authorities involved in the proceedings and it is for this reason that the report has been written with a confidential schedule which is exempt from publication.

## **8.0 Risk Management**

- 8.1 Issues are set out in the confidential appendix.

## **10.0 Background and Options**

- 10.1 The charges levied by local authority land charges departments for property searches have historically been regulated by statute either on a mandatory charging basis or a permissive charging basis.
- 10.2 For several years during the early 2000s, there was debate about whether fees set by authorities for providing their land charges information were incompatible with the Environmental Information Regulations 2004 (the "EIRs"). The EIRs were brought into force on 1 January 2005 and specifically state that environmental information contained on a register or list must be made available for personal inspection free of charge.
- 10.3 Central Government failed to realise when publishing Charges Regulations in 2008 that there was a potential conflict with the EIRs. The result of this failure to identify potential conflict between the two statutory regimes is that a number of property search companies have now brought or threatened to bring legal action against authorities for charges levied from 1 January 2005 onwards.
- 10.4 A group of Property Search Companies are seeking to claim refunds of fees paid to the Council to access land charges data. Proceedings have not yet been issued. The claimants have also intimated that they may bring a claim against all English and Welsh local authorities for alleged anti-competitive behaviour. It is not clear what the value of any such claim would be as against the Council. It is possible that additional claimants may come forward to submit claims for refunds, but none have been identified at present.

## **11.0 Access to Information**

Due to the report being primarily in respect of Exempt Information no background papers are available for inspection.

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