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Herefordshire County Council: Objection to the 2013/14 accounts regarding the VFM of the Procurement of the Contract variation for the Waste Incinerator: Decision and Statement of Reasons

1 We write further to your Objection to Herefordshire's County Council's (the Council) accounts for the year ended 31 March 2014. This letter sets out my final decision in relation to that objection.

2 In your objection of September 9 2014 you stated that you believed that the Council has not put in place appropriate arrangements to ensure value for money for its waste management services. You accordingly requested that we issue a public interest report under section 8 of the Audit Commission Act

3 In exercising our functions under the Audit Commission Act in relation to your objection, we have had regard to paragraph 55 of the statutory Code of Audit Practice. This provides:

> **55** In considering whether to exercise any of their specific powers under the Act, auditors should apply a balanced and proportionate approach in determining the time and resources to be spent on dealing with matters that come to their attention. They should consider: the significance of the subject matter; whether there is wider public interest in the issues raised; whether the substance of the matter has previously been considered by the body's auditor; the costs of dealing with the matter, bearing in mind that these fall directly on the taxpayer; and in the case of objections, the rights of both those subject to objection and the objector.

4 You will see below that we do not consider that the matters raised in your objection justify a report under section 8 of that Act and we set out our detailed reasons for this.

The objection

5 Your objection of 9 September 2014 sets out a number of areas of concern in relation to the Council's arrangements to secure value for money from its waste management services; specifically that:

- the Council did not secure sufficiently skilled independent advice to support the work presented to Councillors on which to base their decisions
- the Council, with its partner Worcestershire County Council, negotiated changes to the Private Finance Initiative (PFI) contract for the waste management service in May 2014. You are concerned that this may not have been the best option to achieve value for money as the Councils did not at that stage test the market to see whether another provider could offer the service more competitively.
- the Council(s) seemed 'determin[ed] to continue with the proposal to build an incinerator, even though continuing with the PFI contract was deemed too expensive'
- a report by the National Audit Office (NAO) in June 2014 noted, inter alia, that the Councils had decided to use prudential borrowing to support delivery of the waste management service. In your view, the NAO report identified risks associated with this decision, and you are concerned that the Councils(s) may not have provided sufficient challenge to address these risks with respect to achieving value for money; specifically in relation to:
  - the management of the contractor
  - whether the Councils needed to act as the sole finance provider for the project, rather than as just one lender alongside a banking group
  - a reduction in income from the Department for Environment, Food and Rural Affairs (DEFRA)
  - the valuation of the Energy-From-Waste (EfW) facility at the end of the contract, 'given that the contractor will operate the facility for a much shorter period than originally envisaged'
  - the responsibility to bear any risks associated with any potential breach of European Union (EU) Law
- the Council may not have sufficient long-term financial resilience to fund on an on-going basis the loan costs associated with the PFI arrangement

6 Appended to your objection is a report carried out for the Herefordshire & Worcestershire Action Group entitled 'Review of Funding for a Mass Burn Incinerator.' In your letter of objection you state that you consider that the report 'adds weight to [your] concerns about the Local Authority not having in place adequate arrangements to achieve value for money'. You have also subsequently forwarded to us a copy of the Planning Inspector's report of 24 January entitled 'Herefordshire Local Plan Core Strategy 2011-31 (the CS) Minerals and Waste (M&W) Primary Note.' In this context, we have reviewed the aforementioned documentation and taken account of their contents where this appeared relevant to the heads of objection set out in Paragraph 5 above. We accordingly have not sought to respond to each detailed issue raised in these documents, but have had regard to the points made in considering your concerns as set out in your letter of objection.

Work carried out

7 We have:

- obtained and reviewed the key documents relating to the procurement of the EfW facility and shared these with you where we considered them material to our decision
- obtained the Council's response to various questions and other background information
- reviewed the legal advice received by the Council from counsel
- considered the impact of your concerns
- provided you with a provisional views document, inviting your comments

8 We have previously considered a number of the matters you raise in our Audit Findings Report (AFR) to the Council of September 2014. However as you have now raised a number of these matters as a formal objection, we have considered them here afresh. We however refer to our conclusions recorded in the AFR here, where, having considered the points you raise, we consider that they remain valid.

Background

9 The Worcestershire and Herefordshire Waste Management Service Private Finance Initiative Contract ('WMSC') was signed between Herefordshire and Worcestershire Councils and Mercia Waste Management Ltd (Mercia) in December 1998 to run for 25 years. The WMSC was to provide an integrated solution for the disposal of all Local Authority Collected Waste ('LACW') arising within the two counties. The Councils' local authority waste disposal company (Beacon Waste) was transferred at the same time to Mercia Waste Management Ltd ('Mercia') which took on responsibility for the disposal of all 'Contract Waste'. During the subsequent course of the project, Worcestershire County Council acted as the 'Lead' in progressing arrangements, particularly as it was responsible for 75% of the value of the contract, Herefordshire's portion of the contract amounting to 25%.

10 The Waste Management Service Contract included requirements for: a Mixed Waste Material Reclamation Facility ('MRF'); Transfer Stations; Pre-Sorted MRF; Household Waste Sites (now Household Recycling Centres); Operations and Management of Hill and Moor Landfill; Construction and operation of an Energy from Waste (EfW) Plant and Composting facilities. The intention was for the new facilities to come on stream early in the contract. Mercia started the construction of the facilities required under the contract, except for the Waste to Energy Plant, which required the land first to be secured and planning and other consents agreed.

11 The contract procured in 1998 was based on an EfW solution for dealing with residual waste. Mercia started the process to deliver an EfW plant at the anticipated British Sugar site in Kidderminster. However, the planning application failed at appeal in 2002 and the Councils therefore concluded that the proposed EfW plant was not deliverable at that particular site.

12 The Councils and Contractor agreed a 'standstill' position whereby the respective rights of the parties to terminate the WMSC were frozen to allow further discussion to identify alternative solutions for the disposal of residual waste. This followed on the failure to obtain planning permission for the Kidderminster EfW plant by the anticipated date. The WMSC continued, subject to it being agreed that it would be terminated should the standstill agreement be brought to an end. This standstill agreement continued to the date of the variation to the contract to deliver the EfW Plant at Hartlebury.

13 The planned EfW facility would have enabled the diversion of residual waste from landfill in accordance with the contract. The failure of the scheme to go ahead resulted in the landfill site at Hill and Moor filling faster than had been anticipated under the WMSC. Some means of diverting waste from landfill was therefore required. Mercia made interim arrangements to dispose of some of the residual waste at EfW plants outside of the two counties which helped ease problems.

14 Various solutions for the residual waste were subsequently investigated including out of county disposal, treatment and autoclaves. Planning permission was obtained in 2005 for an autoclave solution at Hartlebury Trading Estate (Worcestershire) and Madeley (Herefordshire).

15 In 2006 Worcestershire County Council acquired land at Hartlebury Trading Estate with the intention of developing an autoclave facility there. However autoclave negotiations with Mercia broke down in 2007 due to the uncertainty about the end market for the process by-product. A satisfactory end market was a planning requirement but it became clear that this could not be met with any certainty. The autoclave option was therefore not deliverable.

16 A Joint Municipal Waste Management Strategy (JMWMS) was originally adopted in 2004 by the two Councils. A Review of the JMWMS in 2009 included a list of possible options for the treatment of residual waste. The two Councils commissioned the firm, Environmental Resources Management Limited (ERM), to carry out an independent appraisal of available options. ERM shortlisted the following technologies as potential options:

- Energy from Waste (EfW) with and without Combined Heat and Power
- Mechanical and Biological Treatment (MBT) with gasification or Refuse Derived Fuel
- Autoclave

17 ERM assessed each option against 14 un-weighted criteria; specifically against:

- its projected Capital and Operational (CAPEX and OPEX) cost; and
- environmental criteria using the Environment Agency's life cycle assessment tool, WRATE (Waste and Resources Assessment Tool for the Environment)

18 The top two options identified by this process were: EfW and autoclaving. The appraisal ranked EfW highly, particularly where it featured combined heat and power (CHP).

19 In September 2009, the Council's Cabinet adopted the revised JMWMS which now adopted a neutral stance towards the type of technology to be deployed to deal with residual waste; whereas previously the two Councils had favoured autoclave technology.

The JMWMS was however supported by the ERM options appraisal which ranked EfW highly. The ERM options appraisal was included as an appendix to the September report to Cabinet on the JMWMS. The report stated that the options appraisal would inform the choice of future treatment of residual waste and that Mercia would be asked to come forward with a proposal on this basis.

20 In line with the JMWMS, Mercia subsequently proposed an Energy from Waste facility to deal with residual waste and accordingly commenced a site search. This resulted in the land at Hartlebury Trading Estate being selected as the best site available in the two counties for an EfW plant.

21 The two Councils then appointed Entec, a specialist technical advisor on waste, to examine the EfW proposal to ascertain to what extent it best met the needs of the Councils and the JMWMS. Entec produced a report, concluding that the EfW Proposal was likely to provide the flexibility required for the Counties' ongoing waste management needs against a range of waste growth scenarios. The Entec report was provided as an appendix to a December 2009 Cabinet Report on the development of the waste management proposals.

22 In January 2010, the Council's Cabinet received a report which concluded that Mercia's proposals for an EfW facility with CHP on the Hartlebury Trading Estate appeared to align well with the requirements of the JMWMS. Further, that the proposals were worth progressing through a planning application with a view to considering a variation to the PFI contract should planning permission be secured. The report to Cabinet noted that a financial assessment needed to be carried out to decide whether the proposals were: (i) affordable and (ii) represented value for money. The report set out how the financial assessment could be carried out.

23 Subsequently, the Secretary of State granted planning consent for the EfW Plant at Hartlebury in July 2012 following a comprehensive call-in Planning Inquiry. The consent required any development on site to commence within three years, that is, by July 2015.

24 An update on progress on the waste contract variation was reported to Cabinet in February 2012.

25 In December 2012, a report was taken to Cabinet on progress in relation to the contract variation negotiations with Mercia. This report included a refresh by an external expert of the JMWMS Residual Waste Options Appraisal which continued to rank EfW highly (with or without CHP). Cabinet authorised the pursuit of proposals for alternative methods of finance for the EfW Plant. Cabinet also authorised the procurement and commencement of enabling works at Hartlebury for the proposed EfW up to a maximum capital cost of £1.8M, without prejudice to the final decision on residual waste.

26 A December 2013 Cabinet meeting considered the option of constructing an EfW plant against other options such as 'do nothing' and termination of the contract. It also considered alternative methods of financing the EfW plant such as private finance, mixed private finance and prudential borrowing and prudential borrowing. The assessment

included both a quantitative appraisal which had been supported by the Council's financial advisers, Deloitte, and also qualitative factors.

27 The Council also assessed the cost impact of potential changes to waste volumes and possible increases to landfill tax. The preferred option from a value for money perspective remained unchanged even on the basis of more pessimistic assumptions employed by the Council's advisers. The assessment concluded that procuring an EfW plant fully financed through prudential borrowing as a variation to the existing contract was the best option over the whole life of the plant.

28 The December Cabinet report concluded that, in net present cost terms, the chosen option would be £128 million cheaper than the 'continue as is' option. over the 25 year period post construction. The report stated that it would add around £6.6 million to the annual unitary charge to be paid to the contractor.

29 Cabinet therefore agreed that the Council should enter a variation of the existing WMSC with Mercia to give effect to Option 2 (variation to the existing WMSC to build and operate an EfW at Hartlebury funded through prudential borrowing) to enable the construction and operation of a new EfW Plant at Hartlebury. Option 2 showed the best value for money for the whole life cost (to 2042). The costs included the construction and operation of an EfW plant as well as the other aspects of waste disposal and management as per the existing waste management services contract.

Your Objection

Findings

General factors taken into account

30 In considering the matters raised in your objection, we have taken into account general factors that are relevant to the Council's decisions. These include the concept of value for money ('VFM'), the pre-existing contract with Mercia Waste Management (Mercia) and the established criteria for decision making in public bodies.

31 The Audit Commission has defined VFM as comprising the achievement of economy , efficiency and effectiveness. In general terms, economy means securing a specified good or service at the best price, taking account of relevant contract conditions. Efficiency is about providing a level of service for a cost that compares well that achieved by similar authorities. Effectiveness is about whether a service or good meets needs.

32 Making a sound judgment which achieves value for money is often complicated. For instance, in relation to the matters considered here, making a robust decision about a large scale waste treatment facility involves complex considerations, not least in relation to the choice of waste technology and how reliable this will be over the life of the project. Expert advice is useful to aid decision making where Councils do not have sufficient internal expertise. But experts often have different views and it is possible that other experts might

have reached different views in this instance. Accordingly it is important that when Councils need to commission outside help to aid complex decision-making, that they:

- take appropriate expert advice
- consider that advice objectively;
- and have regard for the advice in reaching decisions

33 Expert advice was important in this instance given the large scale nature of the project. The complications of site suitability and availability, the acquisition of planning permission and changes in the development of waste technology, all contributed to a complex decision-making process, imposing constraints on options available. The Council also had to take into account the consequences of its existing contract with Mercia and the costs of varying or breaking this contract. This could mean that the best solution taking into account these constraints would not be the best solution if no such constraints existed.

34 A key consideration for the Council was also the financing of the project. Different methods of financing are in themselves complicated and subject to different risk implications.

35 The Council was therefore faced with the need to strike an appropriate balance between finance, environmental, practical and service considerations. Ultimately it is for a Council to determine how that balance is struck taking account of all relevant considerations. In this context, councils are invested with wide powers to undertake their activities. Providing that they make their decisions within accepted principles of proper decision making these decisions are not likely to be successfully challenged. When considering whether a decision made by a Council is both lawful and provides value for money, it is necessary to consider a range of factors, including, that the Council has:

- taken into account relevant information
- not taken into account extraneous information; and
- not made a decision so unreasonable that no reasonable Council could reach it
- had regard for the value for money implications of the decision.

36 Therefore in considering your objection and the Council's decisions we have had regard to these general principles, in addition to the specific detailed points of your objection.

Summary Decision

37 We have concluded, subject to the exception referred to below, that the Council took into account relevant information in making its decision in regard to the waste contract variation. In particular the Council:

- sought and obtained appropriate expert advice regarding the technology to deal with residual waste.
- obtained projected waste flow information from its advisers
- secured relevant financial information from appropriate experts and from the Council's officers regarding the costs of the project and financing criteria
- received detailed legal advice on its proposed course of action.
- determined appropriate criteria in regard to VFM, covering both quantitative and qualitative measures, and considered these criteria carefully in reaching its decision.

38 An overarching consideration was the fact that the Council had existing obligations under its extant contract with Mercia which would have led to significant penalty or termination costs had the contract been set aside. We consider that it was entirely reasonable for the Council to have regard for the additional costs which would have arisen had the contract been abrogated as part of its overall considerations.

39 Cabinet reached a final decision to proceed with the EfW waste treatment facility in December 2013 and the Council approved the financing option to take the project forward in January 2014. In our opinion this was a reasonable decision based on the information and advice received.

40 However, despite this overall assessment, we believe that there were three areas where the Council could have improved its decision making and reporting processes which we refer to later. Action has now been taken in relation to on-going monitoring and reporting of the lending arrangements.

Detailed response to the main issues in your objection

41 In considering your objection we have reviewed the particular matters you raise in your objection. In the following table we give our response to your individual points.

Table A Response to main issues listed in the objection

The Council did not secure sufficiently skilled independent advice to support the work presented to Councillors on which to base their decisions	The Council, and its partner, Worcestershire County Council, secured the support of a range of expert advisers during the course of the development of the project to aid its decision making. We have found no evidence to suggest that any of these advisers lacked independence nor the expertise to provide the advice required. A brief summary of the work carried out by the principal advisers (ERM, Entec, Deloitte and KpMG) used by the Council is set out below and the Council's response to that advice. **ERM** In 2009 the Councils engaged the consultancy firm ERM to carry out an options appraisal to identify solutions for the treatment of residual waste, taking account of the principles set out in the JMWMS. ERM is a firm with considerable expertise in this type of work. A key principle of the JMWMS was the desire to maximise value from the residual waste and use it wherever possible as a resource. ERM devised a method that allowed the benefit of gaining value from waste to be quantified. ERM compared the options based on the tonnages of material handled by each of the following management methods: • the amount of waste landfilled; • the amount of mass lost during treatment; • the amount of waste used to generate electricity; • the amount of waste used to generate heat; and • the amount of waste recycled. The score for each option was based on the relative tonnages for each management method, and multiplied by a weighting factor to represent the preference for each of these in the waste hierarchy. This criterion identified option B (EfW +CHP) as the best performing option in 2009 and again in 2012.

	As we noted in our AFR of September 2014: 'The option chosen was not necessarily the cheapest but the option identified as scoring most highly had benefits which others did not, including that it was tried and tested technology, which had been identified by the Councils as being a critical factor. The options appraisal was not weighted, in line with DEFRA advice at the time, but drew attention to the three key criteria which the Council considered most important. These criteria were developed in a workshop attended by officers and members. It took no account of transportation costs and income from heat energy and other recyclables on the advice of consultants who also stated that this would not have changed the outcome of the process. This option appraisal was refreshed by the same consultants in 2012 and the consultants concluded that the initial appraisal was still valid.' Our view is that the Council received expert advice from ERM and reached a reasoned decision regarding the choice of residual waste treatment technology based on the targets, policies or principles in the JMWMS. We reiterate our comments from our September AFR that the options appraisal was not weighted in line with DEFRA advice, but again conclude, that, notwithstanding this, the option appraisal was carried out in a reasonable and objective way. **ENTEC** The Councils commissioned a report from the firm Entec in September 2009 to identify the size of the residual waste treatment facility required drawing on elements of the waste flow model and the JMWMS. Again, we conclude that Entec had sufficient independence and expertise to carry out this work. The report produced by Entec specifically considered waste growth (see page 17) for 5 different scenarios. The report suggested that on the basis of the evaluation of these 5 scenarios, that a reasonable approach would be to base the capacity of the facility at 220,000tpa although the lowest estimate was for 201,000tpa. In 2012/13 the total Local Authority Collected Waste (LACW)in Herefordshire and Worcestershire was: 362,273 tonnes, of which: • 120,425 tonnes were Recycled • 42,400 tonnes were composted • 199,448 tonnes was Residual Waste. By 2023/24 it is forecast that LACW in the two counties will

	be: 404,177 tonnes/year, of which it is forecast that: • 134,355 tonnes would be recycled • 47,304 tonnes would be composted • 222,518 tonnes would be for Residual Waste treatment/disposal. At the planning inquiry for the EfW, section 7.34 of the Secretary of State's decision letter looks at the need for the facility; (i) it states: 'Ms Brook-Smith expressly agreed that EnviRecover's capacity of 200,000 tpa fits extremely well (and with a measure of prudence) in the range of capacity forecast to be required in the ENTEC report. She was able to agree, looking only at MSW, that the facility was appropriately sized.' The Council decision in December 2013 was to develop an EfW facility of 200,000tpa. Our view is that the Council in this instance took expert advice in order to guide decision making on the size of waste facility required and considered that advice appropriately. Entec considered a number of scenarios in assessing the likely amount of residual waste. The Council opted for an EfW plant at the lowest end of the range for residual waste treatment. This course of action allowed more room for improvements in recycling to be obtained without impacting on the residual waste facility. **DELOITTE** Deloitte prepared a report for the two Councils on December 6 2013 in order to provide a quantitative value for money analysis of the proposal by the Council's contractor, Mercia, to build an EfW facility as a variation to the Council's extant PFI waste contract. Deloitte has substantial experience in delivering advice of this nature and we have no evidence that the firm did not act independently in this instance. The Deloitte quantitative VfM analysis of the Council's six options was based on the financial models submitted by Mercia. The Deloitte report included two analyses: one, a 'no delay' analysis based upon a financial close for the contract variation of 31 December 2013 and a 'delay' analysis based upon a financial close of 30 September 2014.

	The report concluded that the Council's decision as to which option to take forward on either scenario ('delay' or 'no delay') should not be based on Deloitte's VfM analysis alone, but should link to the Council's qualitative considerations of the six options, but in particular to the Options 1, 1a and 2. These latter 3 options all involved continuing with the existing Mercia contract to its expiry in 2023, and as part of that contract, constructing an EfW facility. The differences between Options 1,1a and 2 related to the method of financing. For the 'no delay' scenario the difference between option 1a (co-financed by Mercia through commercial borrowing [51%] and the Council [49%] by prudential borrowing from the Public Works Loan Body ['PWLB']) and option 2 (financed by the Council wholly through prudential borrowing from the PWLB and lending this to Mercia on the same commercial terms as Option 1) was identified as 1.7% in net present value ('NPV') terms. That is, Option 2 provided better value for money. The report was included as Appendix D to the report on the Waste Management Contract presented to Cabinet on 12 December 2013. We have no evidence to suggest that the report was not carried out objectively and professionally. In our view, the Council acted on the report's advice in considering both qualitative and quantitative considerations in making its decision on the contract variation. Subsequently the Council proceeded essentially on the basis of option 2, which under the Deloitte analysis provided the best value for money in NPV terms. **KPMG** KPMG was commissioned by Herefordshire Council to carry out a review to provide additional assurance for the Council and was not carried out on behalf of Worcestershire County Council. The review covered: an examination of key documents, including the Deloitte report; a high level review of the draft financial model and associated supporting documentation. The review did not cover: the funding arrangement for the project; an evaluation of alternative options and any review of costs. The scope was therefore tightly circumscribed. KMPG in our view have the expertise and independence to carry out a review of this kind. The conclusions in the report are heavily qualified, either because key documents were in draft or because KPMG was not for instance present at the options appraisal exercise (albeit the report notes that KPMG considered that the advisers involved in that process had experience in the waste

	sector). The report noted that the Deloitte report did not make a clear recommendation as to whether the preferred option represented best value for money or not, but rather, as noted already here, advocated that the Council consider both qualitative and quantitative considerations. It recommended that the Council ensure that all assumptions used in key documents remained valid. It is not clear to what extent this recommendation was followed up. Given that KPMG's scope specifically did not cover the options (or alternative options); the funding arrangements or costs, the report provided limited assurance in line with its defined scope. Accordingly it was not key in assisting the Council in reaching its decision. **OTHER ADVICE** The Councils also took a range of legal and other expert advice during the course of the project. Again, our view is that we have no evidence to suggest that this was not appropriate or independent. **OVERALL CONCLUSION** We are satisfied that the Council sought sufficiently skilled and independent advice during the course of the project and that it acted appropriately based upon the advice received. We also concur with the conclusions set out in our September 2014 AFR to the Council which noted weaknesses in documentation presented to Members as follows: 'We have identified a significant issue in relation to the documentation supporting the reporting to members of officers' views of the preferred technological solution and the reasons for this to help make an informed decision. There was no detailed accompanying report to Cabinet setting out why officers (rather than consultants) considered that this choice of technology provided better value for money over other options available, taking account of cost and other key factors. Instead the accompanying officer report to the December 2009 Cabinet made reference to the fact that the technology proposed by Mercia had been ranked highly in the consultants ERM options appraisal (which had been commissioned to support the Joint Municipal Waste Management Strategy).'

	Notwithstanding this criticism, the AFR nonetheless concluded that 'On the basis of our work, having regard to the guidance on the specified criteria published by the Audit Commission in October 2013, we are satisfied that, in all significant respects, Herefordshire Council put in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources for the year ended 31 March 2014".
The Council(s), negotiated changes to the Private Finance Initiative (PFI) contract for the waste management service in May 2014. You are concerned that this may not have been the best option to achieve value for money as the Council(s) did not at that stage test the market to see whether another provider could offer the service more competitively.	In broad terms, the Councils had a pre-existing contract with Mercia which was legally binding. In addition to the detailed considerations outlined below, the Councils were also conscious that to have tested the market (to establish whether another provider could have offered the service more competitively) would have potentially given rise to an abrogation of the contract, had the contract been awarded to a provider other than Mercia. This would potentially have exposed the Councils to significant exit costs (through contractual penalties for instance), which may not have been recouped through any potential savings from instigating an open market tender. In relation to the decision taken, the Councils took legal advice which confirmed that the proposed contract variation was lawful and consistent with the provisions of European Union (EU) procurement law. The Councils also undertook other due diligence work including procuring advice from the Technical Advisor, AMEC, which confirmed that the proposed costs were within current market expectations. AMEC also confirmed that in their opinion the existing contract allowed the contractor to propose variations to the contract price arising from change in law. These provisions remain in place and the risk allocation between the parties is clear. Further work was undertaken to confirm the operating expenditure for the EfW plant. Existing service expenditure was supplied by Severn Waste Services, the contractor responsible for the delivery of Operational and Maintenance services for all waste disposal streams until 2023. Operation and Maintenance services post 2023 were validated by the Councils' advisor team.

	Financing costs post 2023 were provided by the Councils' internal Finance Teams based on forecasts from the Public Works Loans Board. The Councils' Financial Advisor, Deloitte (see above) supported this process including the linkage of the Credit Agricole and Councils Financial Models. The Credit Agricole Financial Model was subjected to a Model Audit by an independent auditor. At the December 2013 Cabinet meeting, Herefordshire Council considered a range of options in addition to the option of constructing an EfW plant through a contract variation. These included a 'do nothing' option as well as termination of the contract. As noted previously, the Council also assessed the cost impact of potential changes to waste volumes and possible increases to landfill tax. The preferred option from a value for money perspective remained unchanged. The assessment concluded that procuring an EfW plant fully financed through prudential borrowing as a variation to the existing contract was the best option over the whole life of the plant. As also noted, the Council also considered alternative methods of financing the EfW plant such as private finance, mixed private finance and prudential borrowing and prudential borrowing. The assessment included both a quantitative appraisal which had been supported by the Council's financial advisers, Deloitte, and also qualitative factors. Cabinet therefore agreed that the Council should enter a variation of the existing WMSC with Mercia to give effect to Option 2 (variation to the existing WMSC to build and operate an EfW at Hartlebury funded through prudential borrowing) to enable the construction and operation of a new EfW Plant at Hartlebury. Option 2 showed the best value for money for the whole life cost (to 2042). The costs included the construction and operation of an EfW plant as well as the other aspects of waste disposal and management as per the existing waste management services contract. In May 2014, the Council negotiated some further changes to the contract variation which were financially advantageous to the Council, but substantially the arrangement remained that agreed at the December 2013 Cabinet meeting.

	We therefore consider that the Council gave adequate consideration to the decision to vary the PFI contract to enable construction of a waste facility. The Council considered lifetime risks and took appropriate measures to mitigate risks in the course of reaching its decision. This does not mean however that there should not be further risk evaluation of the project as it proceeds.
The Council(s) seemed 'determin[ed] to continue with the proposal to build an incinerator, even though continuing with the PFI contract was deemed too expensive'	See comments above. We consider that the Council adequately considered the cost, environmental and other factors in reaching the decision it did. We have seen no evidence to suggest that the PFI contract was deemed too expensive for the Council to continue with. The expert advice presented to Cabinet at its December 2013 meeting clearly indicated that the decision which was taken represented the best long term value for money given the prevailing circumstances and constraints. The Council's decision therefore was driven by rational considerations, considering a range of options, rather than by any pre-existing and fixed point of view about the solution to be adopted.
A report by the National Audit Office (NAO) in June 2014 noted, inter alia, that the Councils had decided to use prudential borrowing to support delivery of the waste management service. In your view, the NAO report identified risks associated with this decision, and you are concerned that the Councils(s) may not have provided sufficient challenge to address these risks with respect to achieving value for money; specifically in relation to: – the management of the contractor – whether the Councils needed to act as the sole finance provider for the project, rather than as just one lender alongside a banking group – a reduction in income from the	The National Audit Office raised a number of concerns about the Herefordshire and Worcestershire waste scheme, principally in relation to its role as sole finance provider and the valuation of the EfW facility at the end of the contract. However it also raised a specific concern about the nature of the management of the contract which is covered below. **The management of the contract:** The NAO report noted that: 'The local authorities will raise the finance through 'prudential borrowing' and then lend it to the contractor in the form of a loan. This unusual approach presents a number of risks to Herefordshire and Worcestershire, including the need to manage two separate, and potentially, competing relationships with the contractor-one as its sole investor, and the other as the contracting authority.' The Council considers that it has adequate arrangements in place to mitigate any risk from the two different relationships it has with its contractor. Given that the advice from its advisers was that Option 2 (variation to the existing WMSC to build and operate an EfW at Hartlebury funded through prudential borrowing) represented the best value for money of all available options over the life of the project, the Council's decision to assume a sole lender role as well as a contracting authority (a relationship that it would have had irrespective of the option chosen) was a decision supported by external expertise in terms of its value for money.

Department for Environment, Food and Rural Affairs (DEFRA) – the valuation of the Energy-From-Waste (EfW) facility at the end of the contract, 'given that the contractor will operate the facility for a much shorter period than originally envisaged' – the responsibility to bear any risks associated with any potential breach of European Union (EU) Law	Given that the option chosen represented best VFM according to its advisers, the Council therefore needed then to consider how to manage its two different roles. Worcestershire County Council has established a Waste Credit Governance Committee to provide oversight of the Council acting as Lender to the waste project and the waste contractor, Mercia Waste Management Ltd. In meetings to date the Committee has for instance considered a range of cash-flow tests to provide assurance to the Council that Mercia is able to sustain sufficient cash to qualify as equity. By contrast Herefordshire Council did not establish a separate waste credit governance committee, arguing that it could maintain adequate oversight of the contractor, both in terms of its role as a lender and contracting authority, through its existing committee structures. The Council has however recently updated its Terms of Reference for the Audit and Governance Committee to include a role in governing the loan arrangement, which will fulfill a function very similar to that provided by Worcestershire County Council's Waste Credit Governance Committee. An update paper was provided in this respect to the Audit and Governance Committee meeting of 19.3.15. We have not however identified any evidence to suggest that the dual role (lender and contracting authority) provides disadvantages which outweigh the advantages to be accrued from an arrangement which the Council's external advisers have argued provides best value for money. We discuss the advantages of the arrangement, in VfM terms, as it relates to the use of prudential borrowing below. **Sole Finance Provider**: the Council considered a range of financing options at its December 2013 Cabinet meeting. As has been already noted, the difference, for the no delay scenario, between option 1a (co-financed by Mercia through commercial borrowing [51%] and the Council [49%] by prudential borrowing from the Public Works Loan Body [PWLB]) and option 2 (financed by the Council wholly through prudential borrowing from the PWLB] and lending this to Mercia on the same commercial terms as Option 1) was identified by the Council's advisers Deloitte, as 1.7% in net present value (NPV) terms, amounting to a difference of some £12m. On the basis of the Deloitte advice, acting as sole finance provider, provided best value for money of the available options. The advantage of prudential borrowing from the Council's perspective was that it was able through PWLB to access a source of cost effective reliable financing. The two Council(s) worked with their Financial Advisors on the funding side, in this case, Ashursts as legal advisors, Deloitte as financial advisors and Fitchner as technical advisors to

	understand the basis on which Commercial Banks reserve elements of the margin they make from providing debt finance against risks that may emerge. The Councils agreed to borrow from the PWLB based on a repayment basis to maximise the efficiency and affordability of borrowing. The Councils determined that they would take advantage of historic low levels of interest associated with PWLB public sector borrowing. The Councils noted that that the public sector borrows money on the basis of long term gilt prices whilst the commercial banks' costs of finance are based on the London Inter Bank Offer Rate (LIBOR). The Councils calculated that the difference between the cost of public sector borrowing and that which could be obtained through Commercial Banks was about 3%. Therefore prudential borrowing provided better value for money as the Councils effectively agreed to lend money to Mercia at a commercial rate but source the funding from PWLB at a lower rate. This generated a surplus which will be used to offset the loss of WIG (previously known as PFI credits) and to provide contingency against any possible overspend risk during the EfW facility construction that is not absorbed by either Mercia or its subcontractors. The arrangement involved the Councils providing loan finance to Mercia in the period 2014 to 2023 and continuing to repay the outstanding debt finance at 2023 at the conclusion of the WMSC. In considering the best route forward, the Councils undertook an assessment of risk of becoming the Lender. Working with their advisers, the Councils considered a number of risks; including: • counterparty risk with Mercia's shareholders and the major construction and operation subcontractors • key income generation assumptions • general industry risk • specific risks of this particular project; and • interest rate fluctuations To mitigate these risks, the Councils have negotiated a security package with Mercia and its EPC contractor during the construction phase that has left only a minimal risk, according to advisers, that costs are borne by the Councils during the construction phase. From a funding perspective, almost all of the debt finance is repayable during the operating period should termination on any basis occur.

	Our view is that the Council considered its decision carefully in determining the best financing option for the project and that it took appropriate advice in making its decision. It has also worked with its partner Council, to put in place actions to mitigate risk. **Reduction of Income from DEFRA:** A detailed report 'Herefordshire & Worcestershire Variation Business Case version 4.0' was produced in June 2014 as an update of financial information presented to the Cabinets of both Councils in December 2013., following financial close. The section on 'Costs, Budgets & Finance' notes inter alia that the proposed variation was between £152 million and £163 million lower in NPV terms than Option 3, to continue 'As Is' (to continue 'As Is' with the existing contract and not execute the EfW variation). The report noted: 'Following work with DEFRA it was confirmed, in December 2013, that the level of Waste Infrastructure Grant (WIG) credits received by the Councils reduce by 2013 by £30 million from 1 April 2014 to the end of the WMSC in December 2023. This reduction does not affect the Value for Money assessment, as per the Her Majesty's Treasury Green Book does not consider WIG credits. However this was a consideration in relation to affordability.' (page 38) To mitigate the impact of the reduction in WIG credits, as has already been noted, the Councils, according to the report, intended to use a portion of their accumulated reserves that have been established, to smooth the uplift in costs for the EfW plant together with the anticipated surplus from the Councils' provision of debt finance for the variation. The December 2013 Cabinet report had noted that the uplift in unitary charge from adoption of the contract variation was £6.55 million. Following further negotiations subsequently, the position at financial close in May 2014 showed an improved position, with the contract uplift in unitary charge being £2.7 million. Removing a loan buffer from the Councils' lending and adding back the maintenance reserve being built up, meant that the total equivalent uplift amounted to some £3.8 million, within the original £6m affordability envelope set for the project.

	The report also demonstrated at Table 15 (page 49) that the option chosen by the Councils- Option 2- remained the best option in value for money terms, notwithstanding the loss of PFI credits. The report notes: 'Whilst the reduction in WIG Credits was a major factor of the Councils to consider, it was viewed that a reduction would make the preferred option deliverable and acceptable for Central Government whilst remaining (1) Value for Money for local tax payers when considered against the alternative options and (2) affordable.' (pp 49-50) We are satisfied that the Council carefully evaluated its funding strategy for the project relying on appropriate expert advice to reach a reasonable balance decision on the best funding method, taking account of the loss of PFI credits. **Valuation of the EfW Facility at the end of the contract:** The NAO report commented on the valuation of the EfW facility at the end of the contract, 'given that the contractor will operate the facility for a much shorter period than originally envisaged'. We are not clear as to the precise nature of the risk being referred to in this instance. The Councils have reported that following construction, the EfW plant will be attributed a normal life (for an asset of this kind) of 25 years and the cost will be depreciated over this timeframe. The plant will be handed back to the Councils in 2023, 7 years into its useful economic life. At that point, the plant will have 18 useful years life remaining. The value of the asset at that stage will be used to determine the plant and loan bullet valuation. The basis of the valuation will be prudent according to the Councils. Open market valuations will not be used; rather a straight line depreciated cost value will be derived, which is the basis normally used in the financial planning of EfW plants. It is expected that the value of the plant is likely to exceed its written down value at the point that the asset is handed back to the Councils. Whilst the Special Purposes Vehicle (SPV) will repay the bullet tranche on a maturity basis (one repayment at the end of the Contract), the Council will alongside Worcestershire Council on a several basis enter into either an annuity loan from the PWLB (repaying the Capital during the last 7 years of the Concession) or enter into a series of short dated maturity loans to manage its exposure to interest rate risks. Therefore the repayment by the SPV of the Bullet Tranche in 2023 will in turn just form part of the normal Treasury Management activities of each Council.

	The Councils also intend that the plant should maintain its value by taking a number of additional measures: • specific maintenance and performance commitments have been stipulated during the operational period to preserve the asset value • the Councils will maintain maintenance reserves to meet the cost of any remedial works which might be required in 2023 • the contract has specific insurance commitments • the market standard loan obligations ensure that the asset value is maintained in the event that any early step-in were required We are satisfied that the Council has taken reasonable steps to ensure that the value of the EfW plant is maintained and that it has in place plans to deal with the handover arrangements consequent upon the transfer back to the Councils of the asset in 2023. **Risks associated with any breach of European Union (EU) law:** again as the NAO report does not expand on this point, we are not clear as to which aspect of EU law this point relates. In relation to EU procurement law, the Councils took Counsel's advice which was clear that the proposed procurement did not breach EU procurement law. In essence this was based upon a view that the contract variation did not materially alter the sense of rights and obligations under the original WMSC, which was to construct a waste to energy plant. The Council also took separate advice which confirmed that the arrangements did not breach EU state aid regulations. As regards any future changes to, for instance, EU emission laws, the Council concluded that it was difficult to 'price in' or predict the impact of any changes which might in any event not happen, but if they did, would be inherently difficult to quantify in terms of their financial or operational impact at this stage. We have concluded that the Council took advice to ensure that the variation complied with EU procurement and state aid law. We however accept that it was difficult for the Council to put in place measures to mitigate any possible future changes in EU law which are at this stage difficult to predict.
The Council may not have sufficient long-term financial resilience to fund on an on-going basis the	The Energy from Waste loan finance will be financed by borrowing and repaid by Mercia Waste Management until 2023 when the outstanding debt finance will be repayable by the Council until 2042. The loan finance to Mercia Waste

loan costs associated with the PFI arrangement	Management will mirror the structure that would be provided by Commercial Banks and will comprise two elements: • An interest only loan to the value of circa £31 million (£123 million when combined with Worcester County Council) that will be taken on by the Councils in 2023 (equivalent to the forecast Net Book Value of Asset); and • A loan that is repaid by Mercia to the Value of £9.5 million (£38 million when combined with Worcester County Council) between 2017 and 2023. Repayments by Mercia Waste Management will be ring-fenced to directly repay the debt that specifically relates to this project. In order to reduce its overall borrowing requirement, the Council set out in its 2014/15 Treasury Management Strategy ('The Strategy'), that it proposes selling fixed assets to raise proceeds of around £60 million (approximately £20 million per annum) over the three years from 2015/16 to 2017/18. Appendix 2 of the Strategy shows total estimated council borrowing over the next twenty years, assuming that these proceeds are received. This shows a reduction in the longer term fixed rate borrowing from £132m in 2015 to around £55m by 2034. Increased borrowing increases both interest payable and the amount to be set aside from revenue each year for the repayment of loan principal (called Minimum Revenue Provision ('MRP')). Annual MRP is estimated to be around £10m. Therefore if, after the large capital schemes scheduled for the next few years are completed, the new capital spend financed by borrowing can be be reduced to below the annual MRP, the Council's total borrowing will fall, as is shown in Appendix 2 of 'The Strategy'. This is clearly dependent on the Council's ability to sell off assets successfully to the desired value over the next few years. The Council is also required to set specific parameters, known as Prudential Indicators, each year to control the extent of its borrowing. The essential purpose of this requirement is to ensure that the Council always has the means to repay and does not borrow beyond its ability to service associated debts. There is a requirement under the Local Government Act 2003 for local authorities to have regard to CIPFA's Prudential Code for Capital Finance in Local Authorities (the "CIPFA Prudential Code") when setting and reviewing their Prudential Indicators.

	'Gross Debt and the Capital Financing Requirement' is a key indicator of Prudence. In order to ensure that over the medium term debt will only be for a capital purpose, the local authority needs to ensure that debt does not, except in the short term, exceed the total of the capital financing requirement in the preceding year plus the estimates of any additional capital financing requirement for the current and next two financial years. If in any of these years there is a reduction in the capital financing requirement, this reduction is ignored in estimating the cumulative increase in the capital financing requirement which is used for comparison with gross external debt. The Chief Finance Officer reported in the 2014/15 Strategy that the Council had no difficulty meeting this requirement in 2013/14, nor are there any difficulties envisaged for future years. This view takes into account current commitments, existing plans and the proposals in the approved budget. The Strategy did not however provide any analysis of Prudential Indicators beyond 2016/17. This will need to be updated to take account of the Council's treasury management requirements, particularly as the loan for the EfW facility commences. We will in any event continue each year to review the Council's treasury management arrangements to ensure that the Council continues to abide by the requirements of its Prudential Code. In addition, it is the duty of the external auditor of local authorities to consider at each annual audit the financial resilience of councils as part of their value for money conclusion work. In essence, we carry out a review Herefordshire Council's financial resilience each year, having regard not only to the liability arising from the PFI arrangement, but also to other factors impacting the budget, including other cost pressures and reductions in grant income arising from other areas of the Council's services. In this context, the ongoing PFI liability is one of only a number of ongoing cost commitments which the Council needs to service going forward. Auditors' work on financial resilience focuses heavily on the development of the medium term financial plan, which is a key tool in enabling the Council to predict the impact of spending pressures and income reductions going forward, but also to plan the actions required on a medium-term basis to ensure that the Council continues to maintain a lawful balanced budget.

	As part of the 2014-15 audit of accounts we shall be undertaking work to support the value for money conclusion which will include a consideration of the Council's financial resilience. In the September 2014 Audit Findings Report we commented positively on the improvements made by the Council to strengthen financial resilience but noted the challenges ahead, which the Council, like all councils, faces, as Government grant is reduced. In February 2015 the Budget and Medium Term Financial Strategy (MTFS) was presented to Council setting out details of the 2015-16 Budget and the MTFS (2015-17). The Budget and MTFS set out the cost and other pressures facing the Council in the year ahead and in the medium term. The report states that the Council delivered savings totaling £34m between 2011/12 and 2012/13 but identifies further savings of £18m required in the period 2015/16 to 2016/17. This is very challenging, but in this context, the Council faces similar challenges to other councils and has recently strengthened its arrangements to secure financial resilience. The Budget and MTFS accordingly set out how the Council intends to meet its legal requirement to deliver a balanced budget in the short and medium term. The Budget includes provision for the costs associated with the waste PFI scheme during the period of the Budget and MTFS. Beyond that financial horizon, the Council will be updating its MTFS over the coming year, but the longer term, beyond the timeline of the current MTFS, is inherently difficult to model financially as this is dependent significantly on factors such as the Government's public sector funding intentions and associated decisions around annual grant settlements for local government. In conclusion, it is clear that the Council faces a number of significant cost pressures in the coming years, not least in relation to Adult Care Services, and the liability associated with the PFI scheme forms just one element of those cost pressures. It however has plans in place to deliver financial balance. In addition the actions it has taken with its partner, Worcestershire County Council, have secured a waste contract variation, which according to their advisers, has delivered the most cost effective long term solution. This will therefore mitigate the impact of other pressures within the MTFS.

	We are therefore satisfied that at this stage the Council has plans in place to secure financial resilience in the medium term and that the costs associated with the waste contract do not pose any threat to financial resilience during the period of the MTFS. It is difficult to look further forward than the period of the current MTFS. Delivering the Council's longer-term treasury management strategy is heavily dependent on the need to deliver significant asset sales to reduce indebtedness. But in the longer term, the waste PFI will represent, as has been noted, just one of a number of cost pressures, that the Council, like other Councils, will face.

42 On the basis of the above responses to the detailed points of the objection, and with the limited exceptions referred to below, we believe that the Council has taken proper professional advice, considered the relevant facts and reached a reasonable decision based on that information.

Areas where the Council could have improved its decision making process.

43 We consider that there were a number of areas where the Council could have improved its decision making process. The first was in relation to the approval of the residual options appraisal in 2009. The second area was the consideration of the change in options from EfW + CHP to EfW (CHP enabled). Also related to this decision was the lack of consideration of the potential income from electricity sales and the potential sale of heat and recyclates. The third was in relation to level of detail associated with the reporting of the prudential borrowing plans and also in relation to the arrangements for the ongoing monitoring of the Council's role as Lender.

Residual options appraisal 2009

44 We have already reported our conclusions on the shortcomings in relation to the residual options appraisal in our Audit Findings Report of September 2014. We noted that: 'We have identified a significant issue in relation to the documentation supporting the reporting to members of officers' views of the preferred technological solution and the reasons for this to help make an informed decision. There was no detailed accompanying report to Cabinet setting out why officers (rather than consultants) considered that this choice of technology provided better value for money over other options available, taking account of cost and other key factors. Instead the accompanying officer report to the December 2009 Cabinet made reference to the fact that the technology proposed by Mercia had been ranked highly in the consultants ERM options appraisal (which had been commissioned to support the Joint Municipal Waste Management Strategy).'

Change in options from EfW + CHP to EfW (CHP enabled)

45 It is not clear when the Council changed its preferred approach from EfW with CHP to EfW without this facility. The November 2012 ERM review of the residual options appraisal still included this option and scored it as the highest option with an overall score of 2.5. The next best option with a score of 3.14 was the EfW option, although this option scored best for costs. But by December 2013 EfW + CHP was no longer deemed to be an option to be considered

46 The November 2012 ERM report did not take into account the potential income arising from heat supply, electricity export and sale of recyclate to the market. These were omitted from the financial assessment. The reasons for excluding these potential incomes from the assessment was that they were considered to be subject to considerable uncertainty, due to significant fluctuation in market prices and to changing levels of Government subsidy.

47 ERM was subsequently asked to consider the effects of including potential income in 2014. The firm concluded that the performance of option B (CHP) would have improved in all likelihood significantly, with revenue generated from heat, electricity and metal. ERM also concluded that Option A (EFW), which was ranked 1st in the original assessment, would have performed even more strongly, if costs associated with transport and recyclate and electricity revenue had been included. However the ERM report was a brief high level document and it did not, in particular, contain detailed modeling of the heat, and electricity revenue. The report was also prepared after the decision had effectively been made by the Councils and was in any event not considered by Cabinet at its December 2013 meeting.

48 The change to EfW was not specifically reported to Cabinet and in our view this was a departure from best practice. It may have been considered that this option was an obvious choice given that the Hartlebury site did not have a potential power user. Nonetheless, the change to EfW should have been reported to Cabinet so that it could consider the change before the December 2013 decision was taken.

49 We believe that it would also have been better if Cabinet had been provided with more information about the potential revenues from heat supply, electricity export and sale of recyclate before making its decision to proceed with the EfW option.

50 However, we do not consider that it is likely, that the reporting shortcoming identified above would have resulted in a different decision being taken by Cabinet, given the absence of a suitable site for EfW with CHP and the difficulty of securing planning permission for a suitable site. Nevertheless it is an area where the Council should improve its reporting of material changes in any future major projects.

Prudential Borrowing and the Council's role as Lender

51 Worcestershire County Council in January 2014 provided a report to Cabinet setting out the detailed arrangements associated with the proposed prudential borrowing arrangements, involving PWLB support, and explaining the Council's risk management strategy. This report enabled Members better to understand the complexities and long term implications of the arrangements that the two Councils were entering into. Although reports prepared by Herefordshire Council covered the essentials of the proposed arrangements, particularly in the December report to Cabinet, we are not aware of any detailed report being prepared on the prudential borrowing arrangements. We are clear however that the omission of such a detailed report would have made no difference to the decision that the December 2013 Cabinet took, and that the essential information that was required by Cabinet to make an informed decision was made available to it.

52 We noted earlier that Worcestershire County Council has established a Waste Credit Governance Committee to provide oversight of the Council acting as Lender to the waste project and the waste contractor, Mercia Waste Management Ltd. Herefordshire Council did not establish a separate waste credit governance committee, arguing that it could maintain adequate oversight of the contractor, both in terms of its role as a lender and contracting authority, through its existing committee structures. The Council has however recently updated its Terms of Reference for the Audit and Governance Committee to include a role in governing the loan arrangement, which will fulfill a function very similar to that provided by Worcestershire County Council's Waste Credit Governance Committee. An update paper was provided in this respect to the Audit and Governance Committee meeting of 19.3.15.

Overall Conclusion

53 We have therefore considered the Councils decisions in this procurement and overall our view is that, although there were three areas in which the Council may have fallen short of best practice, on balance the Council conducted the procurement process in a reasoned and well-informed way. The Council took into account relevant matters, given wide consideration to VFM issues, and reached a reasonable decision on the basis of the relevant information considered.

Public Interest Report

54 We have discretion as to whether or not to make a Report in the Public Interest under section 8 of the Audit Commission Act 1998. Factors which we take into account include:

- the significance of the issue and its impact on the public
- the level of existing interest in the issue from the public
- any remedial action already taken by the Council
- the costs of producing such a report.

55 The progress of the waste project has been a significant issue locally. However our view is that, on balance, the Council has conducted the procurement process in a reasonable way, taking into account all relevant matters; giving close consideration to VFM issues and accordingly reached a reasonable decision on the basis of relevant information and advice received. There is therefore no major issue or concern which we feel we need to bring to the attention of the public. There is also no particular remedial action that we believe the Council needs to take in relation to this project.

56 Therefore we do not believe that issuing a Report in the Public Interest under section 8 of the Audit Commission Act 1998 would be justified.

Next Steps and Rights of Appeal

57 In this objection, we understand that you have sought a public interest report under section 8 of the Audit Commission Act 1998, and not a declaration under section 17 of that Act. As such, it is our understanding that you do not have a right of appeal to the Court (which would normally lie to the High Court within 28 days of this document being received).

58 We have copied this letter to Herefordshire Unitary Authority.

Yours sincerely

Phil Jones

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CC.
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Enclosures: (attached)