

S106 Monitoring Fees

1. The Case for charging from 1st September 2019

1.2 The amended CIL regulations coming into force on 1st September 2019 give us the opportunity to charge monitoring fees on Section 106 agreements.

1.3 Reg 122(2A) now provides that the monitoring sum to be paid must fairly and reasonably relate in scale and kind to the development and *must not exceed the authority's estimate of the monitoring costs over the lifetime of the s106 obligations affecting the development*. The cost of monitoring can also include the cost of reporting S106 under the CIL regulations.

2. Publicity and authorisation to start charging

2.1 The amendment does not expressly require publication of monitoring fees and the fee will be site specific and subject to change. Karl has discussed this item with CMT and they confirm that an ICM or further approval is not required. A new paragraph to warn of the charge has been placed on the Planning obligations web page.

3. Legal/Case Officer Instruction

3.1 A schedule of monitoring fees, which are to be applied from now on, are attached to the end of this report. Planning Case officers and Technical Support must use this schedule to apply the relevant monitoring fee under the 'heads of terms' on the Legal Instruction/Authorisation form.

4. Calculating an hourly rate

4.1 An hourly rate of monitoring time has been calculated based on the Planning Contributions Officer role and Post Approval Implementation Officer role together with 10% of an hour of Planning case officer and 5% of an hour of Group Head time.

4.2 The hourly rate of monitoring is £49.26 rounded up to £50

4.3 West Sussex County Council also monitor their obligations and although Arun do not fully monitor all the WSCC Obligations, we are the first and last point of monitoring every obligation on every Agreement and we liaise very regularly with the monitoring officers at WSCC. As of 1st April 2020 WSCC will be adding their own monitoring fee to the Agreement.

5. Calculating a price per obligation.

5.1 It is considered by the monitoring officers that an average of 3 hours per year per obligation is the average amount of time that will be spent per ADC obligation, therefore the rounded charge of **£150** per obligation per year of monitoring is to be applied.

5.2 For WSCC obligations an average of 1 hour per year is deemed the average amount of time spent, therefore the rounded charge of **£50** per obligation per year of monitoring is to be applied.

5.3 The initial set up of the whole agreement on LAM takes the most amount of time - anything from 1 hour for simple one obligation unilateral agreements to 12 hours for the major sites with numerous obligations and complex trigger points. It is then likely that agreements/obligations will not need any resource spent on them for 6 months or a year or even more. When an obligation is picked up to be due

either by developer information, using weekly lists and various automated monitoring reports, focused time will then be spent on checking, chasing, liaising, invoicing, site visits. It is also very likely that this focused time will be spread across more than 1 obligation on the agreement, therefore saving time.

6. Calculating the anticipated number of hours of monitoring

6.1 Based on the evidence of previous agreements, most financial obligations require an average of 3 years monitoring time which equates to 9 hours.

6.2 Based on previous agreements, non-financial obligations require an average of 6 years monitoring time which equates to 18 hours. These tend to require more officer time and liaison with various parties, often with multiple non-standard trigger points and requiring multiple site visits.

6.4 For unilateral undertakings for Pagham Access Obligations, for developments of less than 10 dwellings, the monitoring fee has been based on the number of dwellings in order to keep the fee proportionate to the actual contribution payable. If the contribution is paid in advance there is no monitoring charge as it is not expedient for the monitoring officer to pursue.

6.5 The fees schedule is in the table below (Appendix 1)

7. Summary and Conclusion

The monitoring fee schedule has been calculated on a cost recovery basis using past evidence on the average time between completed agreement and payment or compliance with obligation.

Upon any new evidence of these assumptions being incorrect, the fee schedule will be reviewed and potentially amended.

Appendix 1 – S106 Monitoring Fees Schedule

Schedule of Monitoring Fees payable per Obligation in an Agreement - payable at the same time as the 1st true obligation payment due date.

Pagham Access Contribution on Minor Residential development (less than 10 dwellings) Where contribution is paid upfront before the agreement is completed	Pagham Access Contribution on Minor Residential Development (of less than 10 dwellings)	Non-Residential Development & Major Residential Developments (Over 10 dwellings)
£0	£150 for 1 dwelling £200 for 2 dwellings £450 for 3-9 dwellings	£450 per Financial Arun Obligation (based on 9 hours monitoring over 3 years) £900 per Arun Non-Financial Obligation (based on 18 hours monitoring over 6 years) £150 per WSCC Obligation (Financial or Non-Financial) (based on 9 hours monitoring over 3 years)

FAQ's

If I have more than one obligation within in the same category/area i.e. Obligation to pay a Play area contribution and pay a Public Open Space Contribution all to be paid on commencement, can I group them as one monitoring Fee of £450? Yes, it would seem reasonable to group them into the same type categories, as long as the trigger points are all the same.

Do I need to add a monitoring fee for a POS maintenance transfer fee? No, as this is not a monitorable obligation in quite the same sense as the others and we often do not receive it if the POS is transferred to a private company but we should be charging for the non-financial obligation(s) to gain approval and provide that POS to a satisfactory standard.

What about contributions or obligations due to outside bodies such as NHS or Police? If these are due to be paid to us (which they usually are) they would attract the £450 fee per obligation.

WSCC are charging their own monitoring fees now, do I still add a monitoring fee to us for their obligations? Yes, because we still spend substantial time liaising and chasing up WSCC obligations and we must ensure we keep the overall record of the Agreement for land charges purposes.