



## **Constitution**

**Monday 26 February 2024**

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## **Part 1: Introduction**

(February 2023)

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### 1.1 The Council's Constitution

Cherwell District Council has agreed this Constitution which sets out how the Council operates, how decisions are made and the procedures that are followed. The processes are intended to make the Council transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose. In the case of any conflict between this Constitution and legislation, the legislation will prevail.

### 1.2 What is in the Constitution?

The Constitution sets out who has the power to take which decisions, how those decisions are taken and the Codes and Protocols that are followed when we make decisions.

The Scheme of Delegation and Committee Terms of Reference set out who does what; the Procedure Rules set out how they do it; and, the Codes and Protocols set out the expected standards of behaviour.

In addition there is annually updated information (such as a list of current Councillors and scheduled meetings for the year) that are not part of the Constitution but are available from our website, or in hard copy.

The following is a list of annually updated information that can always be found on our website ([www.cherwell.gov.uk](http://www.cherwell.gov.uk)) or obtained in hard copy by contacting the Democratic and Elections team:-

- Calendar of meetings (these are agreed for a whole municipal year ahead, that is from May to the following April). Exceptional or special meetings may be added to this. Meetings may be cancelled if there is no business or may be moved if there are deadlines to be met, for example, to ensure a response to government consultation is sent in time
- Agenda for all meetings
- Minutes of all meetings
- A list of wards in the district
- A list of district Councillors and contact details
- Details of who on the Executive is responsible for what (called "Portfolio Holders")
- Details of who is on which committee, joint committees and who represents the Council on which outside body.

## 1.3 How the Council Operates

### 1.3.1 Councillors – elections and terms of office

The Council is composed of 48 Councillors, who represent 16 wards. Each ward has three councillors. One councillor in each ward is elected three years in four.

Councillors serve a four year term. A Councillor elected at a by-election will serve the remainder of the four year term for the particular seat in question.

Councillors must be registered voters of the Cherwell district, or must own or lease land in the district for at least the last 12 months preceding their consent to be nominated, and must not otherwise be disqualified.

### 1.3.2 Role of councillors

Councillors are democratically accountable to residents of their ward. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them. Councillors represent their communities and act as advocates for individual constituents. They have to balance different interests and govern for the good of the area as a whole.

### 1.3.3 Rights and duties of councillors

The Council will give councillors the information and resources to fulfil their role, in so far as the law allows.

Councillors have to agree to follow a code of conduct to ensure high standards in the way they undertake their duties. The Code of Conduct is set out in this Constitution. The Council's Standards Committee is responsible for promoting and maintaining high standards of conduct by members.

### 1.3.4 Council

- All Councillors meet together as “the Council” (sometimes referred to as “Full Council”).
- Meetings of the Council are open to the public and press, unless the Council has passed a resolution that they be excluded on the grounds that information deemed to be “exempt” i.e. personal or confidential, as defined by statute, is likely to be revealed.
- At Council meetings, Councillors decide the Council's overall policies and set the budget each year.
- The Council is responsible for appointing the leader and various committees, and for holding the Executive and the committees to account for the decisions they

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take.

#### **1.4 Principles of Decision Making**

Any decision made by the Council will be made in accordance with the following principles and in accordance with the procedure rules set out in this Constitution:-

- Proportionality: that is, the action taken will be proportionate to the desired outcome
- Decisions will be taken following due consultation and taking into consideration professional advice from officers
- Due regard will be shown for human rights and all decisions will be based on balancing the rights of the individual against the public good
- Open transparent decision making
- Clarity in the aim and desired outcome of decisions
- Decisions will be taken that comply with the law and this constitution

When acting in a quasi-judicial role the Council will follow a proper procedure which complies with the rules of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

#### **1.5 Access to information by Councillors**

All Councillors are entitled to inspect any document (except those only available in draft) in the possession or under the control of the Council unless it contains exempt or confidential information (as defined and set out in this Introduction) in which case Councillors will be required to demonstrate a need to know. This does not preclude the Council from deciding to provide Councillors with information over and above this entitlement.

#### **1.6 The Executive**

- a) Under the Local Government Act 2000, Cherwell District Council chooses to have an Executive with a Leader.
- b) The Executive takes strategic key decisions. Individual Executive Members and officers are responsible for many day to day decisions.
- c) The Executive is made up of a Leader and other Councillors. The Leader is appointed to the Executive by the Council. The Leader then appoints individual Councillors (called Portfolio Holders) to the other positions in the Executive.
- d) When major (or "key") decisions are to be discussed or made, they must be published at least 28 clear days ahead of the decision being made.
- e) All meetings of the Executive are open to the public and press except where

“exempt” i.e. personal or confidential matters are being discussed.

- f) The Executive has to make decisions which are in line with the Council's overall policies and budget. If it wishes to make a decision which is outside the budget or policy framework, this must be referred to the Council to decide.
- g) Certain decisions, in particular non-key decisions, may be taken by individual members of the Executive (Portfolio Holders).
- h) The Council has discretionary powers to set up area committees or forums but has decided not to do so at this time.
- i) The Council may establish joint arrangements or joint committees in accordance with current legislation.

### **1.7 Overview and Scrutiny**

The Overview and Scrutiny Committee carries out the overview and scrutiny functions and supports the work of the Executive and the Council as a whole.

The Overview and Scrutiny Committee allows residents to have a greater say in Council matters and may hold public inquiries into matters of local concern. This may include reviewing the work of the Council's partners and other public sector organisations.

Overview and Scrutiny Committee meetings are open to the public except where exempt matters are being discussed. The Committee publishes reports and recommendations which advise the Executive and the Council as a whole on its policies, budget and service delivery.

The Overview and Scrutiny Committee also monitors the decisions and work of the Executive as published in the Executive work programme. The Overview and Scrutiny Committee can “call in” or challenge a decision that has been made but which has not yet been implemented.

The Council also appoints members to any countywide Joint Overview and Scrutiny Committee(s).

### **1.8 Non-Executive Decisions**

Decisions on some matters (for example planning applications and Licensing) cannot, by law, be taken by the Executive and are either taken by full Council or delegated instead to “Regulatory Committees” or to officers.

Terms of Reference for committees are set out in part two of the Constitution.

Delegations to officer are set out in part three of this Constitution.

### **1.9 Council employees**

The council employees are called Council officers. Officers give advice, implement

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decisions and manage the day-to-day delivery of the council's services.

Corporate Directors and the Chief Executive are appointed by the Personnel Committee. The authority to appoint Assistant Directors rests with the Head of Paid Service and below Assistant Director level, the responsibility to employ officers rests with the relevant Assistant Director.

There is a Code of Practice which governs the relationship between officers and Councillors, which is part sixteen of this Constitution.

Certain decisions are delegated to officers as set out in the Council's Scheme of Delegation in part three of this Constitution.

## 1.10 Statutory Posts

The Council has three statutory posts: Head of Paid Service, Chief Finance Officer, and Monitoring Officer, which are all appointed by Full Council.

The statutory posts of Chief Finance Officer and Monitoring Officer have the right by law to require adequate resources to be made available to them to carry out their role.

The specific responsibilities of these statutory posts are:

### 1.10.1 Head of Paid Service

(as required by section 4 of the Local Government and Housing Act 1989)

- Responsible for overall management and operation of the Council which includes management of officers who work for the Council.
- Must report to Council, Executive and all other committees when required to do so.
- Responsible for ensuring the proper use of evaluation systems for determining what officers are paid and reporting as and when required on the number and grade of officers required.
- Is appointed by Full Council
- The roles of Chief Executive and Head of Paid Service are separate. At Cherwell District Council, it is custom that the Chief Executive is appointed the Head of Paid Service

### 1.10.2 Section 151 Officer

(as required by section 151 of the Local Government Act 1972, also referred to as the "Chief Finance Officer")

- Responsible for the administration of the Council's finances.
- Has a specific duty to make a public report in specified cases of actual or



anticipated financial misconduct (section 114 of the Local Government Finance Act 1988).

- Must nominate an appropriately qualified officer to deputise in their absence.

### **10.10.3 Monitoring Officer**

(as required by section 5 of the Local Government and Housing Act 1989)

- Responsible for ensuring that the Council acts within the law
- Has a specific duty to make a public report if at any time they think that any proposal, decision or failure to act by the council may break the law or give rise to a finding of maladministration
- Must nominate an appropriately qualified officer to deputise in their absence.

## **1.14 Legal and Financial Procedures**

The Council shall have Legal and Financial procedure rules as set out in this Constitution.

Financial Regulations will be reviewed regularly by the Chief Finance Officer to ensure they are fit for purpose. Council will approve all changes other than those required by the fact of a change in law which the Chief Finance Officer has delegated authority to make.

The Contract Rules of Procedure will be reviewed regularly by the Chief Finance Officer and the Monitoring Officer to ensure they are fit for purpose. Council will approve all changes other than those required by the fact of a change in the law which the Monitoring Officer has delegated authority to make.

The Scheme of Delegation sets out the authority to sign documents.

The Assistant Director Law and Governance will keep the Council's seal. All documents that should be sealed will be sealed in accordance with the Scheme of Delegation as set out in this Constitution. The Assistant Director Law and Governance, or nominated deputies within Legal Services, will seal all Council documents unless there are exceptional circumstances when a Corporate Director or the Chief Executive has specific authority to do so.

## **1.15 Summary of the Rights of the Public**

This summary of rights explains how members of the public can participate in the democratic decision making processes of the council and how they can access information relating to Council and committee meetings.

### **1.15.1 Voting and Petitions**

If you are registered to vote in the district you have a right to vote and sign a petition to request a referendum for an elected mayor.

You may also present petitions to Council and committee meetings, providing that it meets the requirements set out in the meeting procedure rules and the procedure rules for that particular committee as set out in the Constitution.

### **1.15.2 Information**

Members of the public have the right to inspect the Council's accounts and make their views known to the external auditor. The external auditor will visit the Council on a specified day so the public can make their views known. Fourteen days' notice of the visit will be given in at least one local newspaper. The accounts will be available for public inspection twenty working days before the auditor's visit.

### **1.15.3 Complaints**

You have the right to complain about the actions of the Council, officers or Councillors to:

- The Council under its complaint scheme
- The Local Government and Social Care Ombudsman after exhausting the Council complaint scheme
- The Monitoring Officer about a breach of the Councillor code of conduct

### **1.15.4 Responsibilities of the Public**

The Council expects the public to behave responsibly in exercising these rights. The Council will not tolerate violent, abusive or threatening behaviour to Councillors or officers working for, or on behalf of, the Council.

The public are required to comply with various laws, by-laws, rules and regulations which are enforced by the Council and may incur civil or criminal penalties if they do not do so.

## **1.16 Meetings of the Council and Committees**

### **1.16.1 Notice of Meetings**

The Council will give at least five clear days' notice of any meeting by posting details of the meeting at the Council's main offices at Bodicote House, Bodicote, Banbury and normally on the Council website ([www.cherwell.gov.uk](http://www.cherwell.gov.uk)), unless the meeting is convened at shorter notice as a matter of urgency.

### **1.16.2 Access to Agenda and Reports before the Meeting**

The Council will publish copies of the agenda for meetings and reports which are to be considered on the Council website at least five clear days before the meeting and copies will be available for inspection at the Council's main office. If an item is added to an agenda after publication, if it is urgent business, the report will be available to members of the public as soon as possible and supplied to Councillors on the committee.

Agendas and reports will be supplied on request to members of the public. Agendas and reports are available for a minimum of six years after the date of the meeting.

Reports included in agendas will set out a list of background papers (non-published material used in creating the report) relating to the subject matter of the report. These background papers will be published on the Council's website. They will also be supplied at the request of members of the public and are available from the report author for a minimum of four years after the date of the meeting.

The Council may make a reasonable charge for the supply of agenda, reports, minutes and background papers to cover costs.

### **1.16.3 Attending a meeting**

Members of the public may attend meetings of the Council and its committees, except, for example, when confidential or exempt matters are being discussed.

Unless otherwise stated in the notice of the meeting, meetings are held in the Council's main offices at Bodicote House, Bodicote, Banbury. If you wish to attend a meeting Customer Services officers at reception will direct visitors to the relevant meeting room.

### **1.16.4 Speaking at a meeting**

Members of the public can request to speak at certain meetings. Further information on how to speak at a meeting can be found in the meeting procedure rules and procedure rules for the particular committee as set out in the Constitution.

### **1.16.5 Confidential Items**

Members of the public will be asked to leave a meeting if it is likely that confidential information will be disclosed. This will usually be stated on the agenda for the meeting. Confidential information is information given to the Council by a Government Department on terms that forbid its public disclosure or information that cannot be publicly disclosed by court order.

### 1.16.6 Exempt Items

Members of the public may also be asked to leave a meeting if it is likely that exempt information will be disclosed. This decision is at the discretion of the meeting and will be made based on advice from officers. In making a decision to exclude the public, the committee will apply the public interest test: that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Exempt information is information falling into one or more of the categories set out in the table below, subject to qualifications set out in the constitution. Exempt information is permitted under the Local Government Act 1972 Schedule 12A as amended and the paragraph numbers on the following page are the paragraph numbers in Schedule 12A.

If reports to be included in the agenda contain confidential or exempt information they will be marked 'not for publication' together with the category of information likely to be disclosed.

Paragraph Number	Category
1	Information relating to any individual
2	Information which is likely to reveal the identity of an individual
3	Information relating to the financial or business affairs of any particular person (including the authority holding that information)
4	Information relating to any consultations or negotiations, or contemplated negotiations, in connection with any labour matters arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority
5	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings
6	Information which reveals that the authority: <ul style="list-style-type: none"> <li>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</li> <li>(b) to make an order or direction under any enactment.</li> </ul>
7	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime

### 1.16.7 Minutes of a Meeting

The Council will produce minutes of meetings that record the decisions taken by a

committee and the reasons for the decisions and options considered in the case of the Executive.

When exempt or confidential information is disclosed at a meeting a summary minute will be published in the public minutes in addition to exempt or confidential minutes, if required.

Minutes will be published on the Council website and will be available on deposit at the Council's main office for a minimum of six years after the date of the meeting.

#### **1.16.8 Executive Work Programme Incorporating the Private Executive Meeting Notice and the Notice of Intention to make Key Decision**

Members of the public can find which major decisions are going to be discussed and determined by the Executive from the Executive Work Programme. The Work Programme is published on the Council's website on a monthly basis.

#### **1.17 The public have the right to:-**

- Vote at local elections if they are registered
- Sign a petition for a local referendum for an elected mayor
- Contact their local Councillor about any matters of concern to them
- A copy of the Constitution
- Attend meetings of the Council, Executive and committees except where, for example, personal or confidential matters are being discussed
- See reports and background papers and any records of decisions made, except where confidential or personal information would be disclosed
- Address meetings of the Council, Executive, and various committees, subject to the Council's rules for public participation at meetings
- Find out, from the Executive Work Programme, what major (key) decisions are to be discussed or decided by the Executive and when
- Inspect the Council's accounts and make their views known to the external auditor (known as the district auditor)
- Complain to the Council about the standards of service, action or lack of action by the Council or its officers
- Complain to the Ombudsman if they think the Council has not followed its procedures properly (however, this can only be after using the Council's own complaints process)
- Complain to the Monitoring Officer if they have evidence which they think shows that a Councillor has not followed the Council's Code of Conduct
- Film, record and broadcast meetings of the Council, the Executive and

Committees which are open to the public subject to the efficient running of the meeting not being adversely affected.

The Council welcomes participation by its residents in its work and undertakes extensive consultation about its policies and services. For more specific advice on your rights, please contact the appropriate Council department, or if you are not sure which department to contact, ask for the Democratic and Elections team.

## **1.18 Rules about this Constitution**

### **1.18.1 Suspension**

The rules of procedure in part two of this constitution may be suspended where such a proposal is made and seconded at a formal meeting and the suspension is agreed upon by a majority of those present. The purpose of any suspension should be to enhance the democratic process rather than restrict it. The right of an individual councillor to request that details of their vote or abstention on any particular item is recorded in the minutes of the meeting cannot be suspended.

### **1.18.2 Interpretation**

This constitution will be interpreted in accordance with the advice given by the statutory officers at any formal meeting or their representatives at that meeting.

### **1.18.3 Publication**

The Constitution will be made available on the Council's website and hard copies of the whole or any part will be available on request subject to the payment of a reasonable fee if anyone wishes to have their own copy.

### **1.18.4 Changes**

The Monitoring Officer is responsible for assessing the effectiveness of the constitution and recommending changes in the light of legislation or best practice. The Monitoring Officer may make factual changes to the Constitution as necessary in order to ensure that the Constitution complies, and keeps up to date, with the law.

Any significant proposed amendments to this Constitution shall be agreed by Council. The Monitoring Officer shall ensure that, where appropriate, members of relevant Council committees are consulted on proposed amendments, prior to their consideration by Council and that the responses to the consultation are included in any subsequent report.

## **Part 2: Committee Terms of Reference**

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### **2.1 Delegation of Functions**

### **2.2 Council Terms of Reference**

#### **2.2.1 Policy Framework**

#### **2.2.2 Budget**

### **2.3 Executive**

#### **2.3.1 Overview**

#### **2.3.2 The Leader of the Council has determined:**

#### **2.3.3 Decisions made under the Executive Arrangements**

#### **2.3.4 Executive Terms of Reference**

#### **2.3.5 Key Decisions**

### **2.4 Executive Portfolio Holder Terms of Reference**

#### **2.4.1 Portfolio Holder Function**

#### **2.4.2 Portfolio Holder Decision Making**

#### **2.4.3 Non-Key Decisions**

### **Terms of Reference for Cherwell District Council Committees**

### **2.5 Accounts, Audit and Risk Committee Terms of Reference**

### **2.6 Appeals Panel Terms of Reference**

### **2.7 Budget Planning Committee Terms of Reference**

### **2.8 Executive Urgency Sub Committee Terms of Reference**

### **2.9 Emergency General Purpose Committee Terms of Reference**

#### **2.9.1 Decision Making Contingency Plan**

### **2.10 Licensing Committee Terms of Reference**

### **2.11 Licensing Committee Sub-Committee Terms of Reference**

### **2.12 Overview and Scrutiny Committee Terms of Reference**

### **2.13 Personnel Committee Terms of Reference**

### **2.14 Planning Committee Terms of Reference**

### **2.15 Shareholder Committee**

## 2.16 Standards Committee Terms of Reference

### 2.1 Delegation of Functions

The Constitution details which part of the decision making process is responsible for which function. The allocation of functions follows the Local Authorities (Functions and Responsibilities) (England) Regulation 2000 as amended.

### 2.2 Council Terms of Reference

Meetings of Council will be conducted in accordance with this Constitution and in particular the Council Procedure Rules.

The functions of Council are principally to:

- Approve the Budget and Policy Framework
- Set Council Tax
- Formulate Council policy
- Provide a forum for Members to debate issues of importance to the district
- Provide a forum for holding the Leader of the Council, Executive Portfolio Holders and Committee Chairmen to account
- To hear addresses and receive petitions on matters of importance to the District from key organisations and the public in accordance with this Constitution.

Additionally the Council has the following specific functions which may not be delegated or Council has decided not to delegate:

- Taking decisions in respect of functions which are not the responsibility of the Executive and which have not been delegated by the Council to Committees, Sub-Committees or Officers;
- Adopting and changing the Constitution, the Council's Code of Conduct and Members' Allowance Scheme
- Appointing the Leader of the Council
- Noting the appointment of Executive Portfolio Holders and the allocation of portfolios
- Agreeing and/or amending the terms of reference and delegation for committees, deciding on the composition of committees and making appointments to and removing Members from them
- Appointing representatives to outside bodies unless the appointment is an executive function or has been delegated by the Council



- Consideration of notices of motion and reports within the terms of reference of Council
- Deciding referred planning applications
- Appointing the Electoral Registration Officer and Returning Officer
- Appointing the Head of Paid Service and confirming the appointment of Monitoring Officer and Section 151 Officer
- Considering reports of the Auditor, Head of Paid Service; Monitoring Officer and Section 151 Officer
- Making decisions about any matter within the Executive arrangements where the decision maker is minded to make it in a manner which would be contrary to or not wholly in accordance with the budget and policy framework
- Making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation, Personal Bills or Private Members Bills
- Responding to appropriate bodies with regard to boundary reviews or other electoral issues
- Changing the name of the area, electoral areas and parishes;
- Functions relating to parishes and parish councils, including the size of Parish Councils, dissolving, grouping and separating parishes
- Functions relating to changing governance arrangements for Parish, Ward or County District boundaries and community governance
- Functions relating to establishing, creating and removing polling districts, altering the years of ordinary elections of councillors and parish councillors
- To consider the making of agreements with other local authorities for the placing of staff at the disposal of those authorities.
- All other matters which, by law, must be reserved to Council or local choice functions that Council has decided to reserve to itself.

### **2.2.1 Policy Framework**

The policy framework consists of all high level Council policies and strategies including those which are reserved to council by law. This includes, but is not limited to the Community Plan, Corporate Plan and Local Development Framework.

In cases of uncertainty the Monitoring Officer shall adjudicate whether a decision to be taken forms part of the Policy Framework and requires Council approval

### **2.2.2 Budget**

The budget consists of the allocation of financial resources to different services and projects, proposed contingency funds, the council tax base, setting the council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

In cases of uncertainty the Section 151 Officer shall adjudicate whether a decision to be taken forms part of the Budget and requires Council approval.

## **2.3 Executive**

### **2.3.1 Overview**

This part of the Constitution together with the Executive Procedure Rules principally constitutes the Executive arrangements as set out in the Local Government Act 2000. The Executive arrangements set out here are interrelated to other parts of the Constitution.

The Leader of the Council is responsible for all executive functions as defined in the Local Government Act 2000 as amended. These may be made by the Leader of the Council, the Executive collectively, exercised under joint or area arrangements or delegated to individual Portfolio Holders or Council officers.

The Executive may not make decisions on matters which they are prohibited from making by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and other subsequent legislation.

The Executive shall only make decisions within the budget and policy framework except in cases as set out in the Executive Procedure Rules.

### **2.3.2 The Leader of the Council has determined:**

- The Executive shall collectively make all Key Decisions on behalf of Cherwell District Council.
- The Executive may choose to delegate these to a Portfolio Holder, officer, area committee or joint arrangements with another authority or refer them to the Leader of the Council for decision.
- Executive Portfolio Holders shall in the first instance make all Non-Key Decisions within their area of responsibility unless delegated in this Constitution to an officer. The Portfolio Holder may decide to delegate these to an officer, area committee or joint arrangements with another authority or refer them to the Executive for collective consideration, who in turn may decide to refer it to the Leader of the Council for decision.
- Officers shall take all decisions in the first instance delegated to them in this Constitution within their area of responsibility. An officer may choose to refer a decision to a Portfolio Holder, who in turn may decide to refer a decision to

the Executive for collective consideration, who in turn may decide to refer it to the Leader of the Council for decision.

- Even where Executive functions have been delegated, this does not prevent the discharge of delegated functions by the person or body who delegated them. This shall be the case should the decision maker find that a conflict of interest has arisen, then the function will be exercised in the first instance by the person or body by whom the delegation was made.
- These delegations may be amended by the Leader of the Council, however such amendments shall not take effect until after they are reported to Council.

### **2.3.3 Decisions made under the Executive Arrangements**

A notice of any decision made under the Executive arrangements shall be published and sent to all Members as soon as is practical following the decision being made in accordance with the call-in provisions of this Constitution.

### **2.3.4 Executive Terms of Reference**

The Executive will consist of the Leader of the Council together with at least two, but not more than nine, other Councillors appointed to the Executive by the Leader of the Council. The Executive will conduct itself in accordance with this constitution and in particular the Executive Procedure Rules.

The functions of the Executive are principally to:

- Make recommendations to full Council on the formulation, adoption and revision of the Budget and Policy Framework and all of the Council's corporate strategies
- Make Key Decisions within the agreed Budget and Policy Framework
- Make decisions referred to it by Portfolio Holders and officers with delegated decision making powers.

Additionally the Executive has the following specific functions:

- Setting the Council Tax Base
- Performance Monitoring and Management
- Developing Council Policy
- Adoption of and approval of amendments to the Statement of Community Involvement (SCI)

### **2.3.5 Key Decisions**

A Key Decision is a 'significant' decision that is legally within the power of the Council to make, is not precluded by statute from being made under the

Executive arrangements and is not otherwise retained for decision by Council or delegated to a Committee of Council or Officer by this Constitution.

Significance - A decision is significant if it meets the financial and/or community impact criteria:

Financial

A decision that will result in the Council:

- Incurring potential revenue expenditure or savings above an amount to be determined by Council annually (currently above £50,000)
- Incurring potential capital expenditure or savings above an amount to be determined by Council annually (currently above £250,000)
- Procuring or awarding any Contract having a total value exceeding £500,000.

and/or

Community Impact

A decision that is significant in its effects on communities living or working in an area comprising two or more Wards in the area of the Council. That is a decision where:

- A significant number of users of the service in the Ward(s) will be affected and/or
- An impact that will last for a number of years, or be permanent; and /or
- A significant impact on communities in terms of environmental and social well-being.

The following are not regarded by the Council to constitute key decisions:

- Implementing approved budgets or policies and strategies where there is little or no further choice involved and the main decision has already been taken by the Council in agreeing the budget and policy framework.
- Implementing approved actions and targets in annual service plans.
- Decisions by the Assistant Director Finance and Procurement which are part of the ordinary financial administration of the Authority, notably those relating to investments, within the agreed Treasury Management policy.
- Implementing projects for which specific conditions have been attached by external funders, such as the Government or European Union.
- The award of contracts for the provision of works, goods and services, within an agreed policy and budget and where a decision has been made.
- Changes arising from amendments to statute where there is little or no

discretion.

## **2.4 Executive Portfolio Holder Terms of Reference**

Areas of responsibility are determined and assigned by the Leader to individual Members of the Executive (Portfolio Holders) whom the Leader appoints. The Leader may re-allocate functions between Portfolio Holders during the Council year.

### **2.4.1 Portfolio Holder Function**

The function of an Executive Portfolio Holder is to:

- Have general responsibility for the standards and performance of functions within their area of responsibility
- Make recommendations to the Council on the formulation, adoption and revision of the Budget and Policy Framework and all of the Council's corporate strategies
- In the first instance make Non-Key Decisions within their area of responsibility as allocated by the Leader of the Council
- In the first instance make decisions referred to them by officers with delegated decision making powers

### **2.4.2 Portfolio Holder Decision Making**

Executive Portfolio Holders shall in the first instance make all Non-Key Decisions (as defined below) within their area of responsibility unless delegated in this Constitution to an officer.

The Portfolio Holder may choose to delegate these to an Officer or refer them to the Executive for collective consideration if any of the following circumstances apply to the matter under consideration:

- A proposed decision is deemed to be controversial either by the Portfolio Holder or the relevant Corporate Director, Director or Assistant Director, or such Officer has registered major concerns about the proposed decision
- It impacts on more than one area of Council activity
- It has major resource implications
- It does not fall squarely within current policies
- The individual Portfolio Holder has a disclosable pecuniary interest (whereupon they shall take no part in the collective decision).

If the relevant Portfolio Holder is not available or unable to exercise his delegated authority at the appropriate time and in the view of the Corporate Director or Director the decision cannot wait until their return or a meeting of the

Executive, the Leader of the Council or in his absence the Deputy Leader shall have reserve powers to take a decision on the issue in question.

### **2.4.3 Non-Key Decisions**

All decisions that are legally within the power of the Council to make, are not precluded by statute from being made under the Executive arrangements, are not Key-Decisions and are not otherwise retained for decision by Council or delegated to a Committee of Council or an officer.

## **Terms of Reference for Cherwell District Council Committees**

### **2.5 Accounts, Audit and Risk Committee Terms of Reference**

(8 members based on proportional representation with unnamed substitute and 2 Independent Persons (non-voting). Every permanent Committee member shall undertake appropriate training before being permitted to serve on the Committee)

#### Statement of Purpose

1. The Accounts, Audit and Risk Committee is a key component of Cherwell District Council's corporate governance framework. It provides an independent and high-level focus on the adequacy of the risk management framework, the internal control environment, the integrity of the financial reporting and governance processes. By overseeing internal and external audit it makes an important contribution to ensuring that effective assurance arrangements are in place.

#### Governance, risk and control

2. To review the council's corporate governance arrangements against the good governance framework, including the ethical framework and consider the local code of governance.
3. To review the Annual Governance Statement prior to approval and consider whether it properly reflects the risk environment and supporting assurances, taking into account internal audit's opinion on the overall adequacy and effectiveness of the council's framework of governance, risk management and control.
4. To consider whether the annual evaluation for the Annual Governance Statement fairly concludes that governance arrangements are fit for purpose, supporting the achievement of the authority's objectives.
5. To consider the council's arrangements to secure value for money and review assurances and assessments on the effectiveness of these arrangements.
6. To consider the council's framework of assurance and ensure that it adequately addresses the risks and priorities of the council.

7. To monitor the effective development and operation of risk management in the council.
8. To monitor progress in addressing risk-related issues reported to the committee.
9. To consider reports on the effectiveness of internal controls and monitor the implementation of agreed actions.
10. To review the assessment of fraud risks and potential harm to the council from fraud and corruption.
11. To monitor the counter-fraud strategy, actions and resources.
12. To review the governance and assurance arrangements for significant partnerships or collaborations.

#### Internal Audit

13. To approve the internal audit charter.
14. To review proposals made in relation to the appointment of external providers of internal audit services and to make recommendations.
15. To approve the risk-based internal audit plan, including internal audit's resource requirements, the approach to using other sources of assurance and any work required to place reliance upon those other sources.
16. To approve significant interim changes to the risk-based internal audit plan and resource requirements.
17. To make appropriate enquiries of both management and the head of internal audit to determine if there are any inappropriate scope or resource limitations.
18. To consider any impairments to independence or objectivity arising from additional roles or responsibilities outside of internal auditing of the head of internal audit. To approve and periodically review safeguards to limit such impairments.
19. To consider reports from the head of internal audit on internal audit's performance during the year, including the performance of external providers of internal audit services. These will include:
  - a) updates on the work of internal audit including key findings, issues of concern and action in hand as a result of internal audit work
  - b) regular reports on the results of the QAIP (Quality Assurance Improvement Programme)
  - c) reports on instances where the internal audit function does not conform to the PSIAS (Public Sector Internal Audit Standards), considering whether the non-conformance is significant enough that it must be included in the AGS.
20. To consider the head of internal audit's annual report:
  - a) The statement of the level of conformance with the PSIAS and the results of the QAIP that support the statement – these will indicate the reliability of the conclusions of internal audit.

- b) The opinion on the overall adequacy and effectiveness of the council's framework of governance, risk management and control together with the summary of the work supporting the opinion – these will assist the committee in reviewing the AGS.
21. To consider summaries of specific internal audit reports as requested.
22. To receive reports outlining the action taken where the head of internal audit has concluded that management has accepted a level of risk that may be unacceptable to the authority or there are concerns about progress with the implementation of agreed actions.
23. To contribute to the QAIP and in particular, to the external quality assessment of internal audit that takes place at least once every five years.
24. To provide free and unfettered access to the audit committee chair for the head auditors, including the opportunity for a private meeting with the committee.

#### External audit

25. To support the independence of external audit through consideration of the external auditor's annual assessment of its independence and review of any issues raised by PSAA (Public Sector Audit Appointments) or the authority's auditor panel as appropriate.
26. To consider the external auditor's annual letter, relevant reports and the report to those charged with governance.
27. To consider specific reports as agreed with the external auditor.
28. To comment on the scope and depth of external audit work and to ensure it gives value for money.
29. To advise and recommend on the effectiveness of relationships between external and internal audit and other inspection agencies or relevant bodies.
30. Recommend to Full Council whether the external auditors should be selected by Public Sector Audit Appointment (PSAA) or whether internal arrangements should be set up to appoint the auditors.

#### Financial reporting

31. To consider reports on the effectiveness of financial management arrangements, including compliance with CIPFA's Financial Management Code.
32. To monitor the arrangements and preparations for financial reporting to ensure that statutory requirements and professional standards can be met.
- 33.
34. To review the annual statement of accounts. Specifically, to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the council.



35. To consider the external auditor's report to those charged with governance on issues arising from the audit of the accounts.

#### Accountability arrangements

36. To report to those charged with governance on the committee's findings, conclusions and recommendations concerning the adequacy and effectiveness of their governance, risk management and internal control frameworks, financial reporting arrangements, and internal and external audit functions.

37. To report to full council on a regular basis on the committee's performance in relation to the terms of reference and the effectiveness of the committee.

38. To publish an annual report of the work of the committee, including a conclusion on the compliance with the CIPFA Position Statement.

#### Treasury Management

39. To be responsible for ensuring effective scrutiny of the treasury management strategy and policies. Receiving regular reports of activity, reviewing the treasury risk profile and adequacy of treasury risk management processes.

## **2.6 Appeals Panel Terms of Reference**

(10 members based on proportional representation with no substitute members. Members shall not be members of the Personnel Committee. The Appeals Panel hearing will be made up of any 3 Members to be drawn from the membership of the Panel)

- To hear and determine any appeals by or grievance appeals against the Head of Paid Service (Chief Executive) made by any member of the senior management team.
- To hear and determine any appeals brought by the Chief Executive, Monitoring Officer or Section 151 Finance Officer against any disciplinary sanctions imposed short of dismissal.
- To hear and determine any appeals against any disciplinary sanctions imposed on Corporate Directors.

## **2.7 Budget Planning Committee Terms of Reference**

(12 members based on proportional representation with unnamed substitutes, with specific reservation of a place for the Executive Portfolio Holder holding the area of responsibility for financial management)

The Committee will:

- Provide strategic overview of all matters that could significantly impact upon the finances of the authority

- Oversee the implementation of the forthcoming and on-going financial reform that will significantly affect the Council
- Provide advice on the impact of business and housing growth in the district and estimate the financial impact of such growth
- Be responsible for supporting the budget setting strategy and process for:
  - the general fund
  - capital programme
  - assets
  - treasury management
  - reserves
  - investments
  - recommending the Committee's preferred option, for formal consideration by Executive, in light of the Council's stated priorities.
- Have a planning horizon which will be medium term ( five years) including the medium term financial strategy
- Will also focus on major projects facing the Council that will have a significant impact on the resources of the Council as well as the budget setting round for the forthcoming financial year.
- Be responsible for considering how the council responds to changes in the way the council is funded, value for money and other legislative initiatives and reforms.
- Innovate and challenge the way the Council manages its budget and financial affairs.

## **2.8 Executive Urgency Sub Committee Terms of Reference**

(3 members of the Executive including the Leader of the Council or Deputy Leader of the Council if possible)

In the event of a level 2 contingency being declared by the Chief Executive or Monitoring Officer or in their absence their appointed deputies, the Executive Urgency Sub Committee shall make any decisions under the Executive functions of the Local Government Act 2000.

## **2.9 Emergency General Purpose Committee Terms of Reference**

(3 members consisting of the Leader of the Council, Deputy Leader of the Council and Leader of the Opposition with named substitutes of any Executive

Member, any member of the majority party group and any member of the opposition respectively).

- In the event of a level 2 or 3 contingency being declared by the Chief Executive or Monitoring Officer, or in their absence their appointed deputies, the Emergency General Purpose Committee shall make any decision within the power of Cherwell District Council or its committees that are not part of the Executive functions or reserved in legislation to Full Council.

### **2.9.1 Decision Making Contingency Plan**

Level 1 Contingency – Essential Decisions Only (for maintaining essential council services and dealing with the contingency) – Members unable to act.

- Chief Executive (or Executive Director or Director in their absence) to make all decisions under urgency provisions in the constitution.
- In formal consultation process with Leader and Executive Members by whatever means possible.
- Decisions would need to be formally reported at a later date.

Level 2 Contingency – Normal Business Suspended – very few Members able to act

- Suspension of all committees except Executive, call-in waived by Chairman of Overview and Scrutiny Committee.
- Executive Urgency Subcommittee to take urgent decisions under the Executive functions of the Local Government Act 2000.
- Executive Portfolio Holder decisions could be used as normal and could be maximised with Executive delegating decisions to, Leader and Deputy Leader. Leader and Deputy Leader both have reserve powers to act in case of inability of Executive Member to act.
- Non-urgent Executive business rescheduled.
- Emergency General Purposes Committee to take urgent decisions outside the scope of the Executive.
- Full Council to be summoned for urgent matters reserved to it e.g. setting the council tax.

Level 3 Contingency – Meetings without pressing business cancelled – limited number of Members able to act.

- Regulatory and Executive committees meet to consider pressing business, all other business rescheduled.
- Other meetings suspended.

For situations below level 3, normal meetings continue with greater use of

substitute members where possible.

Level of contingency to be declared by the Chief Executive or Monitoring Officer or, in their absence, their appointed deputies.

## 2.10 Licensing Committee Terms of Reference

(12 members based on proportional representation with unnamed substitutes)

- To deal with applications to exhibit an unclassified film, or to change the classification given to any film by the British Board of Film classification, for exhibition within the District.
- To deal with all matters which are the responsibility of the Council in relation to hackney carriage and private hire vehicles licensed by the Council, except those delegated to the Sub-Committee or Officers.
- To deal with all matters which are the responsibility of the Council under the Licensing Act 2003 except those which are delegated to the Sub-Committee or Officers.
- To deal with all matters which are the responsibility of the Council under the Gambling Act 2005 except those which are delegated to the Sub-Committee or Officers.
- To deal with all matters and determine applications which are the responsibility of the Council in relation to Street Trading under Section 115 of the Highways Act 1980 and Section 3, schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- Any matter relating to proposed changes to the public rights of way network, and public rights of access to open country and common land, which is not the result of the consideration of a planning application.
- So far as the responsibilities may arise under the relevant legislation, functions set out in Part B of Schedule 1 to the Local Authorities Functions and Responsibilities (England) Regulations 2000, relating to taxi, private hire vehicle, gaming, entertainment, food and miscellaneous licensing.
- Any miscellaneous functions relating to highways which may be the responsibility of the Authority which are not discharged by the Planning Committees as set out in Part I of the Schedule to the Local Authorities Functions and Responsibilities (England) (Amendment) Regulations 2001.
- To determine Public Path Order applications (which are not the result of the consideration of a planning application) which the Assistant Director Law, Governance & Democratic Services proposes to refuse, and (ii) (if approved) to confirm such Orders where no objections have been made within the statutory period; and (iii) to determine whether to abandon or to refer to the

Secretary of State an Order to which objections have been made within the statutory period.

## 2.11 Licensing Committee Sub-Committee Terms of Reference

(3 members drawn from Licensing Committee who have attended relevant training)

- The hearing of, and decisions on, applications and notifications under the Licensing Act 2003 where this cannot be decided by the Assistant Director Regulatory Services and Community Safety because valid representations/objections have been received and not withdrawn.
- The hearing of, and decisions on, applications for review of a premises licence/Club Premises Certificate under the Licensing Act 2003.
- The hearing of, and decisions on, applications for and notifications under the Gambling Act 2005 where this cannot be decided by the Assistant Director Regulatory Services and Community Safety because valid representations/objections have been received and not withdrawn.
- The cancellation of club gaming/club machine permits under the Gambling Act 2005
- The cancellation of a licensed premises gaming machine permits where a permit holder requests a hearing under the Gambling Act 2005
- Consideration of temporary use notices under the Gambling Act 2005 where an objection has been received unless each person who would be entitled to make representations agrees that a hearing is unnecessary and that the Assistant Director Regulatory Services and Community Safety is satisfied that a counter notice is not required.
- Decision to give a counter notice to a temporary use notice under the Gambling Act 2005.
- To provide a forum for applicants who may wish to appeal against decisions of the Assistant Director Regulatory Services and Community Safety in respect of Street Trading and provisions of facilities on the Highway.
- To provide a forum for applicants who may wish to appeal against decision of the Assistant Director Regulatory Services and Community Safety in respect of animal welfare Licensing.

**Note:** The Licensing Subcommittee will be made up of any 3 Members to be drawn from the membership of the parent Committee. Members must have received appropriate training and must have taken a non-committal approach to any lobbying in respect of the appeal to be heard, otherwise they may not participate in the hearing. The delegation of functions will be in accordance with

the Licensing Act of 2003.

## 2.12 [PLEASE REFER TO APPENDIX 4A]

### ~~Overview and Scrutiny Committee Terms of Reference~~

~~(12 members based on proportional representation with unnamed substitutes. Executive members may not sit on or substitute on Overview and Scrutiny Committee)~~

~~The Committee will be appointed to discharge the functions conferred by Section 21 of the Local Government Act 2000 or Regulations under Section 32 of the Local Government Act 2000~~

### ~~Functions~~

~~Within its scope and terms of reference, the Overview and Scrutiny Committee will:~~

- ~~(a) — review and monitor the performance of the Council's services;~~
- ~~(b) — review and/or scrutinise policies, proposals, decisions made or actions taken in connection with the discharge of any of the Council's functions;~~
- ~~(c) — make reports and/or recommendations to the Council and/or the Executive in connection with the discharge of any functions;~~
- ~~(d) — consider any matter affecting the area or its inhabitants;~~
- ~~(e) — exercise the right to Call in, for reconsideration, decisions made, but not yet implemented by the Executive.~~
- ~~(f) — consider matters arising from a Councillor Call for Action (CCfA) under Section 119 of the Local Government and Public Involvement in Health Act 2007 and Regulations thereunder; and~~
- ~~(g) — undertake the functions of the Council's crime and disorder committee for the purposes of Section 19 of the Police and Justice Act 2006, including CCfA relating to crime and disorder matters.~~

### ~~Specific Functions~~

- ~~(a) — **Scrutiny** — Within its scope and terms of reference Scrutiny may:
 
  - ~~(i) — review and scrutinise the decisions made by and performance of the Executive and/or Committees and the appropriate Officers both in relation to individual decisions and over time;~~
  - ~~(ii) — review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service area;~~~~

- ~~(iii) — question Members of the Executive and/or Committees and appropriate Officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;~~
- ~~(iv) — make recommendations to the Executive and/or appropriate Committees and/or Council and/or any external bodies arising from the outcome of the scrutiny process;~~
- ~~(v) — review and scrutinise the performance of major partnerships and other public bodies in the area and invite written reports and/or request them to address the Committee and local people about their activities and performance;~~
- ~~(vi) — require Members of the Executive, the Chief Executive, Corporate Directors, Directors and Assistant Directors to attend to answer questions and give evidence on receipt of at least 5 days' written notice.~~
- ~~(vii) — question and gather evidence from any person, not a Member or an Officer of the Council, with their consent;~~
- ~~(b) — **Advisory and Review** – Within its scope and terms of reference the Overview and Scrutiny Committee may:~~
  - ~~(i) — assist the Council and the Executive in the development of its Policy Framework by in-depth analysis of policy issues, excluding those policy areas which fall under the remit of the Strategic Planning and Regeneration Committee;~~
  - ~~(ii) — conduct research, community and other consultation in the analysis of policy issues and possible options~~
  - ~~(iii) — consider and implement mechanisms to encourage and enhance community participation in the development of policy options;~~
  - ~~(iv) — make recommendations to Executive and/or appropriate Committees and/or Council and/or any external bodies arising from the outcome of the scrutiny process.~~
  - ~~(v) — review and scrutinise the performance of major partnerships and other public bodies in the area and invite written reports and/or request them to address Councillors and local people about their activities and performance.~~
- ~~(c) — **Annual Report** – The Overview and Scrutiny Committee will report annually to Council on function on their workings and make recommendations for future work programmes and amended working methods if appropriate.~~

- (d) ~~**Work Programme** – The Overview and Scrutiny Committee will exercise overall responsibility for the Overview and Scrutiny Work Programme and for ensuring that this is sustainable with regard to the support and resources that are available to it and that is considered in conjunction with other committees of the Council and their respective work programmes in order to minimise duplication of effort.~~

## 2.13 Personnel Committee Terms of Reference

(12 members based on proportional representation with unnamed substitutes. Appeals Panel members may not sit on or substitute on Personnel Committee)

- Determination and review of all policies affecting the employment of staff.
- Monitoring of employment statistics for the authority.
- To exercise discretion on behalf of the Council in the decision to award any enhanced pension rights.
- To select short lists of candidates and to appoint officers of the Council to posts at Director level (excluding the Head of Paid Service) in accordance with the Officer Employment Procedure Rules. To act as the interviewing panel for the Head of Paid Service (Chief Executive), making recommendations to Council for formal appointment.
- To determine formal applications by the Head of Paid Service, s151 Officer, Monitoring Officer and Corporate Directors for changes to their terms and conditions of employment, including flexible retirement requests.

### Statutory Officer Discipline

The role and responsibilities of the Personnel Committee with regard to Statutory Officer disciplinary action is to:

- Deal with minor instances of unsatisfactory conduct at an early stage.
- Ensure that the Statutory Officer clearly understands the standards of conduct expected of him/her.
- Carry out, or make arrangements for, an investigation when any breach of discipline is alleged.
- Ensure that the Statutory Officer subject to investigation is kept up-to-date with progress.
- Decide, in the most serious cases whether or not to suspend or (where the Statutory Officer has already been suspended by the Head of Paid Service or Monitoring Officer under their delegated powers) to continue the suspension of the Statutory Officer, in accordance with the Statutory Officer disciplinary policy.



- Report to Full Council in respect of a recommendation to dismiss, having convened a Panel comprising Independent Persons in accordance with the Officer Employment Procedure Rules.

## 2.14 Planning Committee Terms of Reference

(18 members based on proportional representation made up primarily of non-executive members, but with specific reservation of a place for the Executive Portfolio Holder holding the area of responsibility for planning matters. 12 named substitute members)

Except where there is a specific delegation to an Assistant Director:

- (a) To determine and advise on all planning applications, all special determination and prior approval categories and any local authority development proposals, subject to the following provisos:
  - That the Assistant Director Planning and Development may refer any application to Council for final determination, where the Committee is minded to approve or refuse that application if the decision is fundamentally against local and national planning policy and/or the decision is contrary to proposals formulated by the Executive or relevant Portfolio Holder.
  - That in accordance with the relevant Council Procedure Rule at least one third of Council Members have signed a statement to the effect that they are of the view that a particular application is of such special significance to the District that it ought to be determined by Council.
- (b) To authorise or determine:
  - Planning obligations;
  - All matters concerning public path orders required as a result of planning legislation;
  - Advertisement consents;
  - Conservation area consents and notices;
  - Revocation or modification of planning permissions by order under planning legislation;
  - Any enforcement action including in respect of advertisement contraventions;
  - Tree preservation orders;
  - Consent to carry out work to protected trees;
  - Listed building consents and notices;

- Certificates of alternative development;
  - Direct action by execution of works, taking steps and/or carrying out operations, by or on behalf of the Council under any current planning legislation, including the recovery of any costs or expenses;
  - Legal proceedings in respect of any breach of planning obligations;
  - Any other notices, orders, demands, permissions, consents and grants under current planning legislation; and
  - Observations, comments and representations on development proposals being determined by other bodies and/or in adjoining or nearby administrative areas.
- (c) To administer the registration and record keeping provisions contained in planning legislation.
- (d) To exercise the Council's statutory duties in respect of the Building Regulations and associated legislation.
- (e) To exercise the Council's statutory powers in respect of land drainage and associated legislation.
- (f) To do anything which is incidental, conducive or calculated to facilitate any of the Committee's functions or which are necessary for the discharge of the functions.
- (g) To exercise all powers, duties and functions of the Council contained in or referred to in the statutory provisions from time to time in force within the terms of reference of the Committee.

## 2.15 Shareholder Committee Terms of Reference

(A sub-committee of Executive comprising 5 Executive members who are precluded from being nominated to Director posts. No substitutes)

The role of the Shareholder Committee shall not be operational and shall be the means by which the Council shall:

- be the body for approving council nominated non-executive directors, and approving best practice policies in relation to such appointments, considering any reserved shareholder matters within the company articles;
- be responsible for agreeing and approving the framework within which the council interfaces with Council owned/influenced companies;
- exercise strategic functions flowing from the councils ownership of shares.

Day to day functions and liaison flowing from the Councils ownership of shares shall be delegated to the Chief Finance Officer (or in their absence

the Monitoring Officer), where necessary consulting members of the Shareholder Committee.

## **2.16 Standards Committee Terms of Reference**

(8 members based on proportional representation, with unnamed substitutes. The Standards Independent Persons have a standing invitation to attend meetings with no voting rights)

- The promotion and maintenance of high standards of conduct by members and co-opted members of the Council and the Town and Parish Councils in the Cherwell district.
- The making of recommendations to Council on the adoption, revision or replacement of a code of conduct for members and co-opted members.
- The approval and administration of arrangements under which allegations of breach of the code of conduct for members and co-opted members can be investigated and decisions on such allegations can be made.
- The determination of items (if any) that must be entered in the Council's register of members' interests over and above any that are legally required.
- The approval and administration of arrangements for the granting of dispensations to members and co-opted members so as to permit their participation in meetings despite the existence of a disclosable pecuniary interest.

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## **Part 3: Officer Scheme of Delegation**

(February 2023)

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## **1.1 Delegation of Functions**

This Scheme of Delegation is made under the powers contained in the Local Government Act 1972 (as amended), Section 101 and by reference to section 100G and the Local Government Act 2000, Sections 9E, 9EA and 9EB, the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) and all other enabling powers.

## **1.2 Introduction**

This Scheme of Delegation is part of the Cherwell District Council's Constitution and sets out the powers and functions delegated to specific officers. It shows the

ways in which the officers of the Council can make decisions and which decisions they have the power to make.

“Officers” is the term used to refer to the people employed, retained or appointed by the Council to advise and support councillors and implement their decisions. The term “officers” in this Constitution includes all the people who operate in this capacity including contractors, consultants and agency staff.

The Council operates a “cascade” principle of delegation to ensure that decisions are taken at the most appropriate level closest to those who will be affected. This means that the vast majority of the Council's decisions and actions will fall into the category of operational day to day decisions taken by its officers.

In order to ensure the smooth functioning of the Council and the efficient delivery of services, Council, the Leader and the Executive have delegated to officers all of the powers that they need to perform their roles. This Scheme describes powers and functions reserved to particular statutory or proper officers as well as the more general authority as granted by Council and the Executive to be able to implement decisions and to undertake and operate the Council's functions. Additional authority to act, or reservations to any authority granted, may be set out in a decision of the Council, a Committee or Executive or through a separate Leader's or Committee's Scheme of Delegation

Certain named officers have specific legal duties to ensure that the Council acts within the law, uses its resources wisely and exercises its powers properly. These officers are known as “Statutory” or “Proper” Officers and some have specific legal titles in addition to their job titles.

The way the Council structures its services and its officer arrangements changes from time to time to reflect changes in service delivery and best practice. The current arrangements include a Chief Executive/Head of Paid Service (as the most senior officer of the Council) supported by a number of Chief Officers.

## **Statutory Chief Officers**

Chief Executive (Head of Paid Service)

Monitoring Officer and Assistant Director of Law and Governance

Section 151 Officer and Assistant Director of Finance

## **Non-Statutory Chief Officers**

Corporate Director of Communities

Corporate Director of Resources.

The organisational structure of the Council shows more detail about the roles and responsibilities of the Corporate Directors and Assistant Directors supporting them to deliver all the Council's services.

The powers of this Scheme are delegated to the officers referred to by title within this Scheme. The delegations apply to whoever holds that post title at any time – not to the individual person. The powers are automatically transferred to any successor officer, to whom the functions are allocated following any reorganisation of the Council's management arrangements, irrespective of a change in the title/name of the officer post.

Whenever legislation is amended or replaced by new provisions, then the relevant delegated authority in this scheme applies to those new provisions. Whenever new legislation relevant or related to the functions exercised by the Director or the Assistant Director is introduced, that officer will have the delegated authority to exercise powers or otherwise take action under that legislation until such time as the Council, Executive, a committee or the Chief Executive decides to whom to allocate responsibility for the new legislation.

Under section 101 of the Local Government Act 1972 the Council may authorise an officer of the authority to commission and monitor work for and on behalf of the Council by people who are not officers of the authority and such people will be bound by this scheme, and the obligations contained in it, at all times when engaged on Council business

References to powers of 'the Council' include functions of the Executive.

## **1.2 General Delegation**

Subject to the forgoing this Scheme gives the power for the Chief Officers and Assistant Directors to take decisions in relation to all the functions in their areas of responsibility:

All delegations to officers are subject to:

- Statutory requirements
- Contract and Financial Procedure Rules
- Consideration of the policies and plans of the relevant Council
- The Code of Conduct and adopted protocols
- The requirements of Corporate Directors, Assistant Directors in relation to the overall management and co-ordination of the Council's affairs



- Adequate financial provision within approved revenue and capital budgets having been made for the likely financial consequences of any decision (subject to any discretion permitted by the Financial Procedure Rules).
- Any acceptance of quotations and tenders must be in accordance with the Council's Contract Procedure Rules
- Having regard to any report by the Head of Paid Service, the Monitoring Officer or the Officer designated under section 151 of the Local Government Act 1972

Where an officer has delegated powers, the Council or the Executive or a Committee (as appropriate) can still exercise that power in a particular case if it considers it appropriate to do so. Equally it is always open to an Officer not to exercise delegated powers but to refer the matter up as appropriate

### **1.3 Exclusions**

This Scheme does not delegate:

- Any matter which by law may not be delegated to an officer
- Any matter which is specifically excluded from delegation by this scheme, by a decision of the Council, the Executive or a Committee or Sub-Committee.

### **1.4 Authorisations to other Officers**

Officers with delegated powers may in writing authorise another officer or officers to exercise those powers. Such authorisations may be subject to limitations and conditions. The officer with the delegated powers must keep a register of all authorisations granted. All Local Schemes of Delegation (and any changes to them) must be notified to the Monitoring Officer and the s151 Officer. Where a function has been delegated to an officer, the person or body making the delegation may at any time take back responsibility for the function and may therefore exercise the function (make the decision) despite the delegation.

### **1.5 Reserve Delegations**

The delegated powers held by a post may be exercised by the line manager of that post (or by their line manager) if:

- that post is vacant.
- the post-holder is not at work for any reason.

### **1.6 Consultation**

Officers shall consult as appropriate and have due regard to the advice given. If for any reason it is not practical to consult a person required to be consulted in the exercise of a delegation, then the person with the delegated power must consult someone else whom they consider to be an appropriate substitute. In particular consultation must take place with legal, finance and human resources as appropriate.

### **1.7 Restriction on delegations to Assistant Directors**

Each delegation to an Assistant Director is subject to a limitation that it shall not be exercised if the Head of Paid Service, Corporate Director, the Monitoring Officer, or Section 151 Officer, has given a direction to that effect.

The Head of Paid Service or Corporate Director, may exercise any delegated power possessed by an Assistant Director whilst a direction is in force with respect to that delegation.

The Corporate Director or Assistant Director, or in the absence of a Corporate Director, an Assistant Director may exercise any delegated power possessed by the Chief Executive if that post is vacant or the post holder is absent.

### **1.8 Transfer of Functions**

Where the name of a post is changed, or its relevant functions become vested in a different post, any delegated powers possessed by the post shall be retained by the renamed post or transferred to the different post as the case may be. This includes any delegated powers vested in a post by resolution of the Council, the Executive or a Committee/Sub Committee.

The Monitoring Officer, in consultation with the Chief Executive, shall have authority to determine any amendments to the Officer Scheme of Delegations that are necessary to address (i) post titles changing (ii) current service responsibilities being revised (iii) new service responsibilities being introduced and/or (iv) new or existing powers being identified for or demanding allocation by the Monitoring Officer, pending update to Council at the first practicable opportunity.

Where a Division is restructured, the Chief Executive shall have authority to re-allocate the delegated powers to other posts and shall give notice of this to the Monitoring Officer . Any use of this delegated power will be reported to Council.

### **1.9 General Delegations to Chief Executive, Corporate Directors and Assistant Directors**

This Scheme gives the power for all Directors to take decisions in relation to all the functions in their areas of responsibility except where:

- (a) a matter is prohibited by law from being delegated to an officer, and
- (b) a matter has been specifically excluded from delegation by this scheme or delegation is otherwise limited, by a decision of the Council, the Executive, a Committee or Sub-Committee or by any other provisions contained in the Constitution.

This Scheme of Delegation is by exception, so all powers are vested in the Director with the management responsibility for the functions who may delegate further, in writing (and in line with any relevant scheme of training and qualification).

Any power delegated under this Scheme can be exercised by the relevant Director and in all cases by the Chief Executive personally.

Directors may appoint another officer as their deputy and such deputy shall have all the powers of a Director as set out in this Constitution. A deputy may be appointed in relation to all the areas of service delegated to the Director under this Constitution or in relation to a particular area of service only. A deputy may be appointed for a specific period of time (for example to cover the absence of a Director) or without time limitation. All such delegations should be notified to the Monitoring Officer. The appointment of a deputy shall not prevent the exercise by the Director of any delegation set out in this Constitution.

If there is any dispute or lack of clarity as to which Director has power to make decisions on specific areas of service, the Chief Executive shall have power to determine where the delegation should be exercised.

The following delegations shall apply to all Directors (and to any appointed deputies):

### **1.9.1 Urgent Action**

To act on behalf of the Council in cases of urgency in the discharge of any function of the Council for which their Directorate or Service has responsibility, other than those functions which by law can be discharged only by the Council or a specific committee. This delegation is subject to the conditions that any urgent action:

- (a) shall be reported to, and where practicable exercised in consultation with, the Executive, the appropriate Executive member or the appropriate committee; and
- (b) shall take account of the advice of the Monitoring Officer and the Section 151 Officer

### **1.9.2 Implementation of decisions**

To take all necessary actions (including the letting of contracts, undertaking statutory processes and incurring expenditure) to implement decisions of Executive and Council.

### **1.9.3 General operational**

To have overall responsibility for the operational management of the relevant area of service and for bringing forward such strategic plans and policies, and implementing all decisions, including the allocation of resources within approved estimates, as are necessary to exercise the functions for which the service is responsible.

### **1.9.4 Consultation**

To undertake and consider the outcome of statutory and non-statutory consultations on service provision.

To respond to Government consultations and consultations from other bodies, in consultation with the relevant Executive Portfolio Holder(s) or committee Chair(s).

To undertake all steps required to complete Government statistical returns.

### **1.9.5 Finance and Legal**

To manage the finance of their directorates to ensure value for money and the development of budget policy options with a detailed assessment of financial implications.

To enter into contracts and incur expenditure in accordance with the relevant Constitutional rules such as Financial Rules of Procedure, Contract Procedure Rules and the Leader's Financial Scheme of Delegation.

To determine the level of fees or charges payable in respect of any goods or services supplied, work undertaken or the loan or use of plant equipment or machinery subject to any statutory limitations and requirements.

### **1.9.6 Staffing**

In consultation with the Assistant Director Human Resources, the S151 Officer and the Monitoring Officer to deal with the full range of employment and staff management issues, below Director level including, but not limited to appointments, terms and conditions (other than those negotiated nationally) training, discipline, dismissal, performance, progression, promotion, shifts and working hours, grievance, grading, emoluments, expenses, allowances, sick pay, leave, equal opportunities and health and safety in accordance with approved policies and the Employment Procedure Rules.

In consultation with the Assistant Director Human Resources, the S151 Officer and the Monitoring Officer to determine new organisation structures and changes to the same.

### **1.9.7 Land and Assets**

To manage land, premises, vehicles, plant, equipment, machinery, stock, stores, supplies, materials, furniture appliances and uniforms necessary for the provision of services.

To administer the supply of goods and services to other public authorities and bodies under the Local Authorities (Goods and Services) Act 1970 and all other enabling legislation.

To make applications for planning permission and any other necessary applications for other consents required for the development of land.

### **1.9.8 Companies**

- To exercise powers relating to community interest companies and similar vehicles including participation and running of such companies

### **1.10 List of Management Team posts with specific delegated powers**

1. Head of Paid Service: Chief Executive (this post is appointed Electoral Registration Officer and Returning Officer)
2. Section 151 Officer and Assistant Director Finance
3. Monitoring Officer and Assistant Director Law and Governance
4. Corporate Director Resources
5. Corporate Director Communities
6. Assistant Director Customer Focus
7. Assistant Director Environmental Services
8. Assistant Director Growth and Economy
9. Assistant Director Human Resources and Organisational Development
10. Assistant Director ICT and Digital
11. Assistant Director Planning and Development
12. Assistant Director Property
13. Assistant Director Regulatory Services and Community Safety
14. Assistant Director Wellbeing and Housing

### **1.11 Delegation to Chief Executive**

This post is Head of Paid Service and has responsibility for the overall management of the staff who work for Cherwell District Council under section 4 of the Local Government Act 1989 (full details of the responsibilities are set out in the introduction to this constitution).

This post is responsible for ensuring the proper use of evaluation systems for determining what staff are paid and reporting as and when required on the number and grade of staff required.

#### **1.11.1 Emergencies**

If Cherwell District Council needs to act urgently in any matter (including without limitation, complying with the Emergency Plan, the Business Recovery or Business Continuity Plan or taking any action under new legislation) the Chief Executive may authorise any action taken or expenditure incurred as necessary.

If the Chief Executive is unwell, unobtainable, has an inability to act or where there is no Chief Executive in post, a Corporate Director or Assistant Director may act in their absence.

The Chief Executive, Corporate Director or Assistant Director may delegate responsibility to another nominated officer where appropriate.

All such action shall be reported to the relevant committee, Executive or Council as may be appropriate.

#### **1.11.2 Release of Information**

Determination of appeals/review requests from people dissatisfied with a decision not to release Council held information.

#### **1.11.3 Suspension or Dismissal**

The suspension or dismissal of a Corporate Director, or Assistant Director, subject to consultation with the Assistant Director Human Resources, the Section 151 Officer and the Monitoring Officer and subject to external professional advice being sought. No dismissal of the Monitoring Officer or the Section 151 Officer can take place other than via a decision of full Council. Please refer to Statutory Officer Disciplinary and Dismissal Policy and Procedure.

The Head of Paid Service and the Monitoring Officer shall each have authority to agree settlement agreements on the termination of employment of a statutory officer employed by the Council in consultation with the Leader of the Council.

#### **1.11.4 Anti-Social Behaviour**

Taking action under the Anti-Social Behaviour Act 2003, including the making of statutory orders, where the Chief Executive is specifically named as the relevant Council Officer within the Act.

### **1.12 Specific Council (non-executive) Delegated Powers to the Returning Officer and Electoral Registration Officer**

- Authority to take action, and make decisions, as necessary as Electoral Registration Officer and Returning Officer
- To appoint Deputy Electoral Registration Officer(s)
- Assigning officers in relation to requisitions of the Electoral Registration Officer
- To pay expenses properly incurred by the Electoral registration Officer
- Powers in respect of holding elections
- Power to fill vacancies in the event of insufficient nominations and make temporary appointments to Parish Councils
- Declaring vacancies in office in certain cases and giving notice of casual vacancies
- Consulting on proposed changes to the scheme of elections

- Duties relating to providing notice to the Electoral Commission and relating to publicity
- To amend the Council's Polling Districts and Polling Places Order as necessary, including designating new Polling Places as required where an existing Polling Place becomes unsuitable or unavailable.
- To adopt the election fees and charges schedule to reflect operational requirements

### **1.13 Corporate Directors and Assistant Directors**

#### **Urgency**

To take any decision, or exercise any power, which the Council has if the postholder considers that a decision is urgently necessary in the interests of the Council and the postholder consults the Leader of the Council, or in his/her absence the Deputy Leader of the Council (or in the absence of either or both such other Executive members as are considered most appropriate to the postholder) and the exercise of this power is reported to the Executive for information (for executive decisions) or consults the Chairman of the Council or appropriate Committee, or in their absence the Vice Chairmen of the Council or appropriate Committee (or in the absence of either or both such other Council or Committee members as are considered most appropriate to the postholder) and the exercise of this power is reported to full Council or the Committee for information (in the case of non-executive decisions).

#### **General**

All Corporate Directors and Assistant Directors shall be authorised to exercise powers and functions of the Council to the extent that they fall within the remit of their area of responsibilities and/ or Directorate:.

- To grant, renew, refuse or cancel any authorisation that may be required under the Regulation of Investigatory Powers Act 2000 so far as it affects their service area. This power may only be exercised by Corporate Directors, Assistant Directors, or by the Monitoring Officer, or the Chief Executive
- To respond to licensing applications in the Council's role as responsible authority.

When exercising delegated powers, Officers must:

- (a) comply with the law, the Council's Constitution and the Council's properly approved policies and procedures (in this order of priority) when discharging functions of the Council;
- (b) comply with any limitations or restrictions on their delegated powers contained in any Part of the Constitution;



- (c) seek appropriate legal, finance and other specialist advice. Officers must have regard to any advice received;
- (d) consult the Monitoring Officer and (except in the case of a decision of the s151 Officer) the s151 Officer before taking a delegated Key Decision;
- (e) be satisfied before taking a decision, that they are authorised to take the decision and make and retain an appropriate record (in accordance with corporate procedures) of the decision and their authority to take it;
- (f) unless permitted by the Chief Executive during a civil emergency, not commit the Council to a course of action that will result in a financial obligation beyond the approved budget (revenue or capital) of their Directorate or the Council.
- (g) not delegate powers to the Council's contractors, consultants or other third parties except where authorised in the Scheme of Delegation.

#### **1.14 Corporate Director Communities**

- Submission of representations to the Highway Authority on traffic management proposals affecting the district
- Making any non-substantive updates and corrections necessary to facilitate final publication of any policy documents following Executive approval
- To lead Local Plan making and the preparation of the Local Development Framework.
- Oversee the development and 'adoption' of Supplementary Planning Documents (SPDs).
- To maintain an up to date Local Plan and other development plan documents, Brownfield site register, Self-build register.
- To maintain Developer Contributions policies.
- Ensure the provision of policy advice on land use planning.
- Undertake the annual monitoring of plan delivery (AMRs).
- Undertake Infrastructure planning and preparation of associated funding bids.
- Preparation of the policy content of planning appeals.
- Oversee implementation of 'Duty to Cooperate' with neighbouring Councils.
- Oversee the development and 'making' of Neighbourhood plans.

#### **1.15 Corporate Director Resources**

The Corporate Director – Resources is designated under this Scheme to act as a shareholders' representative on behalf of the Council for a company in which the Council is a shareholder and is authorised to:

- (a) act as shareholders' representative in accordance with the Companies Act 2006;
- (b) to the extent that it is not the responsibility of the shareholder's committee, exercise all the Council's powers as a shareholder of the company, subject to any limitations in this Constitution; and
- (c) appoint a deputy shareholder's representative for any company for which they have been appointed shareholders' representative.

Any person appointed as a deputy shareholders' representative for a company is authorised to exercise the powers of the shareholders' representative in the absence or incapacity of the shareholder's representative or if there is no shareholder's representative appointed for the company.

#### **1.16 Section 151 Officer and Assistant Director of Finance**

Subject to the reservations and exceptions set out in this Scheme, the Assistant Director of Finance shall be authorised to exercise the functions, duties and powers of the Council as set out in any relevant legislation relating to functional areas of finance, audit and risk, revenues and benefits, which shall include but not be limited to the following:

- Local Government Finance Act 1992

Local Government Finance Act 1988. Power under section 92 of the Local Government Act 2000 to direct the appropriate Corporate Director or Assistant Director in consultation with the appropriate Portfolio Holder to make an ex gratia payment up to £5000 or to provide other benefits to remedy complaints within the framework of the Local Government Ombudsman Good Practice Remedies (February 2005) document where necessary in consultation with the Monitoring Officer.

- The power to opt to tax properties for VAT purposes
- Raising of loans to meet the capital requirements of the Council for such amounts and on such terms as are considered necessary, subject to the Council's Capital Programme decision on financing.
- Borrowing in sterling from banks up to a prescribed limit by way of overdraft
- Raising and repayment of temporary loans in sterling
- To accept terms and conditions attached to any government grants
- To enter into lease agreements
- The arrangement of all necessary insurances

- Refunds of rates on commercial industrial premises where clerical or arithmetical error has been made on rateable value or otherwise notified by the Valuation Office Agency (any successor thereof)
- Investment of all surplus Council funds in accordance with the Council's annual Treasury Management Policy and to exercise the Council's powers generally with respect to the investment of money
- The power to calculate the Council's council tax base for the purpose of the calculation of its council tax and submission of NNDR1 form (or any replacement thereof) to the Government.
- To exercise all the Council's powers and duties to bill, administer and collect the Council Tax, the National Non-Domestic Rates and outstanding community charge liability including the power to enforce collection and exercise the Council's discretion
- To exercise the Council's powers to authorise officers and agents to represent the Council in any court or tribunal or at any hearing on local taxation or benefit matters, and to serve warrants in respect of these matters
- To exercise all the Council's powers with respect to the administration of Housing and Council Tax benefits
- Award of discretionary housing payments up to £5000
- To make arrangements for the control of the Council's financial affairs generally
- To exercise the virement powers permitted by the Financial Procedure Rules
- Authority to write off up to £10,000 on business rates
- The writing off of any bad debts up to a maximum of £5,000
- The writing off of bad debts where debtor is bankrupt, insolvent or has ceased to trade
- To make amendments to the Council's discretionary rate relief criteria and policies in consultation with the Executive Portfolio Holder

#### **1.17 Monitoring Officer and Assistant Director Law and Governance**

Subject to the reservations and exceptions set out in this Scheme, the Monitoring Officer shall be authorised to exercise the functions, duties and powers of the Council as set out in any relevant legislation relating to the monitoring officer role, legal, democratic, elections and procurement services, which shall include but not be limited to the following:

On behalf of the Council.

- to institute, defend, participate in, appeal from, settle or abandon, prosecute or appear in any legal or other proceedings on behalf of the Council (including proceedings to seek warrants and all steps necessary to pursue or defend such legal proceedings).

- To authorise officers to appear in legal proceedings on behalf of the Council.
- To appoint instruct Counsel or external Solicitors on any matters likely to affect the interests of the Council and generally to administer the budget for the Legal Service.
- To sign and serve all notices prior to, or in the course of proceedings, in accordance with any statutory powers or any functions of the Council
- To nominate representatives to outside bodies where any vacancy arises after the annual Council meeting or before the first Thursday in May in any year, but only after consultation with the Chief Executive and the Leader of Council
- To approve reasons for the absence of Councillors from any meetings and the declaration of vacancies of any seats of the Council.
- To make changes in the membership of Committees and Sub-Committees occurring during the municipal year.
- Determination of ad hoc and permanent amendment to the list of “approved” duties as set out in the Members’ Allowances Scheme
- To authorise attendance by a Councillor at a national conference or seminar
- After a subcommittee hearing to accept or reject any proposals from the applicant in consultation with the Chairman of the relevant subcommittee
- Setting and reviewing charges for the supply of Council held information under the Freedom of Information Act 2000
- The setting of fees for the supply of background papers pursuant to the Local Government (Access to Information) Act 1985 as an exemption to the standard fee prescribed from time to time
- To take any action necessary to ensure compliance with legislation regarding data protection, freedom of information law or environmental information
- To exercise all of the Council’s relevant powers and discretions, and to perform all of the Council’s relevant duties, in relation to the law relating to the sale, mortgage and re-purchase of former Council houses
- To give or withhold consent which the Council has the right to give or withhold under a term in a contract
- The signing of certificates under the Local Government (Contracts) Act 1999
- To take all actions under the Town and Country Planning (Tree Preservation) (England) Regulations 2012
- To negotiate and enter into planning or other agreements regulating or controlling the use of development of land.
- To make minor amendments to planning or other agreements regulating or controlling the use or development of land where the determining body for any associated planning application is a committee.
- To issue, serve, modify or withdraw any enforcement action or notices under the Planning Acts, etc.

- To carry out or authorise the carrying out of works in default under any statutory provisions (including Notices concerning ruinous and dilapidated or dangerous buildings and neglected sites.
- To determine applications under the Local Government (Miscellaneous Provisions) Acts 1982 Section 37 in respect of Temporary Markets.
- To give, make and confirm any Order or Direction under the Planning Acts including Tree Preservation Orders (and associated applications for consent for works) and notification of works to trees in conservation areas.
- To exercise the Council's powers relating to temporary road closures.
- To negotiate, agree, signed, seal and/or execute any legal document on behalf of the Council including in an electronic form.
- To authorise the attendance of officers at Court under any statutory provision.
- To authorise service of any statutory requisition for information as to interests in land.
- Authorising amendments to the constitution where required by statutory changes or administrative error
- Where there is any confusion or doubt to determine which committee a matter shall be determined by
- Making orders granting parish meetings specific parish council powers
- Making of temporary appointments to parish councils
- Making of orders under section 39(4) of the Representation of the Peoples Act 1983 removing difficulties arising in respect of the election of Parish Councillors or the holding of a first meeting after an ordinary election or where a parish council is not properly constituted
- To approve street closure applications where there is no objection from any statutory consultee
- To administer the Council's arrangements for dealing with complaints of Member misconduct
- To authorise the Assistant Director Environmental Services to enter into a Traffic Penalty Tribunal (TPT) s.101 Joint Committee Agreement under the Local Government Act 1972
- To exercise the Council's powers with respect to rights of way.
- To determine Public Path Order applications. To make Public Path Orders and to confirm them where no objections or representations have been made within the statutory period, or where all objections and representations so made are withdrawn
- Submission of representations on public rights of way proposals affecting the district

### 1.18 Assistant Director Customer Focus

Subject to the reservations and exceptions set out in this Scheme, the Assistant Director Customer Focus shall be authorised to exercise the functions, duties and powers of the Council as set out in any relevant legislation relating to land charges, communications, customer Services, performance, risk and equalities, policy and transformation.

### 1.19 Assistant Director Environmental Services

Subject to the reservations and exceptions set out in this Scheme, Assistant Director of for Environmental Services shall be authorised to exercise the functions, duties and powers of the Council as set out in any relevant legislation relating to environmental and associated services, which shall include but not limited to the following:

- To exercise the Council's power with respect to nuisance parking.
- Authorising the temporary use of off-street parking areas for uses other than parking
- The issuing of parking permits and season tickets for off street parking and for residents parking schemes and Exemption Certificates for pedestrianized areas
- The enforcement of parking and other stationary traffic offences
- To make minor amendments to the Council's Off-Street Parking Orders subject to consultation with the Portfolio Holder
- To exercise the Council's powers with respect to abandoned shopping and luggage trolleys.
- To exercise the Council's powers with respect to the regulation of waste carriers.
- To exercise powers under the Environmental Protection Act 1990 to issue fixed penalties for littering and dog fouling
- To exercise the Council's powers to issue Fixed Penalty Notices for offences under Section 34 and Section 34(2A) of the Environmental Protection 1990 and pursuant to The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.
- To exercise the Council's powers under the Refuse Disposal (Amenity) Act 1978
- To exercise the Council's powers under the Local Government (Miscellaneous Provisions) Act 1976
- All matters relating to:
  - Abandoned vehicles
  - Cleansing of streets
  - Statutory notices on provision of dustbins

- Removal of obnoxious matter
- Discharge of agency powers under sections 132 and 149 of the Highways Act 1980, for the removal of unauthorised signs or marks on the highway
- Acquisition, management and hire of vehicles, plant and equipment, subject to the Council's Financial and Contract Rules of Procedure
- Taking action under the Clean Neighbourhoods Act and Environment Act 2005 where necessary in consultation with the Director Law and Governance who must be satisfied as to the evidence
- To exercise the Council's powers relating to controlled waste, graffiti, litter, rubbish or anything on land in the open air including abandoned vehicles. This power may also be exercised by the Assistant Director Planning and Development (with the exception of dealing with abandoned vehicles)
- Investigating and prosecuting offences under the Environmental Protection Act 1990 subject to the Assistant Director Law and Governance being satisfied as to the evidence
- The use of parks, open spaces and recreation areas for special functions
- The planting and maintenance of trees on Council-owned land or Council-controlled land
- The provision of advice relating to trees and recommending to the Assistant Director Planning and Development the making of Tree Preservation Orders in an emergency
- Dealing with applications for works to trees in Conservation Areas
- Approving the standards for adoption of open space land in planning agreements
- Managing the maintenance of monuments and public clocks in the Council's ownership
- The provision of street furniture on land other than recreational land
- The making of temporary traffic orders under section 21 of the Town Police Clauses Act 1847 relating to special events on the highway and the power to waive charges for the making of such orders in exceptional circumstances
- To take action under the Control of Pollution (Amendment) Act 1989 to deal with waste licence offences.
- To exercise the Council's powers for the control of pest and vermin, the prevention of damage by pests and the control of pigeons and birds in built up areas
- To exercise the Council's powers with respect to seizure of stray dogs, and dog control orders
- To exercise the Council's powers in respect of dogs considered to be dangerous or dangerously out of control under all relevant legislation including but not limited to the Dogs Act 1871 and Dangerous Dogs Act 1991 and Dogs (Fouling of Land) Act 1996. Authority to institute legal

proceedings to be exercised subject to the Director Law and Governance being satisfied as to the evidence and the process being followed

- To authorise officers to act for the purpose of enforcing the Microchipping of Dogs (England) Regulations 2015.
- Taking action under the Anti-Social Behaviour Act 2003 and any subsequent legislation falling within the service area, where necessary in consultation with the Assistant Director Law and Governance

### **1.20 Assistant Director Growth and Economy**

Subject to the reservations and exceptions set out in this Scheme, Assistant Director Growth and Economy shall be authorised to exercise the functions, duties and powers of the Council as set out in any relevant legislation relating to economic development, which shall include but not limited to the following

- To exercise the Council's powers to take steps to encourage visitors to the area in support of the local economy including the provision of tourist information where appropriate.
- To provide business and employment services, including apprenticeships, job clubs and business advice.

### **1.21 Assistant Director Human Resources and Organisational Development**

Subject to the reservations and exceptions set out in this Scheme, the Assistant Director Human Resources and Organisational Development shall be authorised to exercise the functions, duties and powers of the Council as set out in any relevant legislation relating to human resources and organisational development, which shall include but not limited to the following:

- To produce, implement and review the Council's policies relating to human resources.
- To comply with all legislation and government guidance on transparency in pay within the Council, including taking the annual Pay Policy Statement to Council
- To grant early retirement on medical grounds to employees in accordance with the Council's HR policies
- Approval of extensions to sick pay at full or half pay as provided for in the National Conditions of Service
- Issue of pensions protection certificates under Regulation 23 of the Local Government Pensions Scheme Regulations 1997 in consultation with the Director of Finance (not available from 1/4/2008 but updates on previously issued certificates may be requested)
- Setting aside the policy on recruitment of qualified staff where appropriate professional qualification is not readily accessible



- Authority to conclude settlement agreements with employees on matters of dispute relating to their employment in consultation with the Monitoring Officer and S151 officer on the amount of the settlement
- To take any necessary steps to secure the health and safety of employees, contractors, members and visitors when on the Council's premises or otherwise conducting the business of the Council.

## **1.22 Assistant Director Planning and Development**

Subject to the reservations and exceptions set out in this Scheme, the Assistant Director Planning and Development shall be authorised and has the full power to exercise the functions, duties and powers of the Council as set out in any relevant legislation, which are not specified in the Constitution or in law as having to be taken by elected members or another officer, implementing decisions and undertaking efficient management of the services, contracts and staff for which they are responsible in the functional areas of town and country planning, conservation, building control, which shall include but not be limited to the following:

### **Planning Applications and Related Matters**

- (a) All planning applications.
- (b) All applications for advertisement consent, Listed Building consent, Conservation Area consent, Hazardous Substance consent, and Tree Preservation Order consent.
- (c) All notifications in respect of planning related matters including Telecoms notifications, agricultural notifications, Trees in Conservation Area notifications and notifications of intention to demolish buildings.

### **Consultations**

- (a) Observations on applications submitted to other local planning authorities for their determination.
- (b) Observations on development proposed by other outside bodies referred to this Council as consultee authority.
- (c) Observations on development and ancillary works proposed by statutory undertakers, telecommunications code system operators and other organisations having permitted development rights under the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

### **Procedural Matters**

- (a) Finalising the conditions and reasons for refusal, which appear on

decision notices.

- (b) The preparation of legal agreements, in consultation with the Assistant Director Law and Governance.
- (c) Agreeing to accept or not accept minor amendments to planning permission.
- (d) Determining the need for information required to make a decision on a planning application including the need for, and scoping of, an Environmental Assessment.
- (e) Deciding the charge to be made for the provision of information where the normal scale of charges is inappropriate (e.g. information requiring research and/or to be used for commercial purposes).
- (f) Deciding the Council's preferred method for dealing with appeals (written representations, informal hearing or public inquiry) and their conduct.
- (g) Compliance with the departure procedures contained in the Town and Country Planning Development Plans (England) Direction 1992.
- (h) Determining the need for and making Tree Preservation Orders and confirming such Orders where there are no objections and determining the need for and issuing building preservation notices where urgently required.
- (i) To take any action which the Council has power to take to require the planting of any tree.
- (j) To serve compensation directions concerning applications for works under a tree preservation order.
- (k) To revoke or vary a tree preservation order.
- (l) To determine all applications for felling, topping, lopping or uprooting trees subject to a Tree Preservation Order
- (m) Determining whether planning permission, listed building consent, advertisement consent, tree preservation order consent and hazardous substances consent is required.
- (n) Authorising officers to enter land and make applications to the magistrates court for a warrant authorising entry where applicable in relation to any matter set out herein.

### **Enforcement**

- (a) Determining applications for certificates of lawfulness of existing use or development and certificates of lawfulness of proposed use or development in consultation with Assistant Director Law and

Governance.

- (b) Determining the need for and service of planning contravention notices.
- (c) Determining the need for and service of breach of condition notices.
- (d) Determining the need for and enforcement of control as to advertisements, the service of discontinuance notices and the removal or obliteration of unlawful placards or posters.
- (e) Determining the need for and service of enforcement notices and listed building enforcement notices.
- (f) Determining the need for and service of Stop Notices, Temporary Stop Notices and injunctions, if urgently required, and subject to the agreement of the Assistant Director Law and Governance.
- (g) In consultation with the Assistant Director Law and Governance to undertake prosecutions where applicable in relation to any matter set out hereunder, issuing notices under Section 16 of the Local Government (Miscellaneous Provisions) Act and Section 330 of the Town and Country Planning Act 1990 (as amended), and issuing notices in respect of derelict land under Section 215 of the Town and Country Planning Act 1990.
- (h) Determining the need for and taking direct action under Section 178 of the Town and Country Planning Act 1990 (as amended).
- (i) Determining the need for and carrying out urgent works and repairs under Section 54 Planning (Listed Buildings and Conservations Area) Act 1990.
- (j) Determining the need to and withdrawing any notice issued under subparagraphs b) to (g) above.

### **Rights of Way**

The determination of all non-executive decisions and carrying out of all functions relating to public paths and rights of way, including those specified in Schedule 1 of the Local Authorities (functions and responsibilities) (England) Regulations 2000 unless required to be determined by Committee in compliance with relevant legislation.

### Acceptance of Land

To exercise the Council's powers to accept the transfer of land, where the land is, or is to be, transferred to the Council under planning obligation or for another planning purpose

Notifications of Development and applications under Permitted Development Rights including Article 4 Directions

To take any action in response to notifications of proposed development required to be given before exercising permitted development rights, and to deal with any subsequent application for consent

To issue Article 4 Directions, in consultation with the Portfolio Holder

#### Hedgerows and High Hedges

To exercise the Council's powers with respect to hedgerows and high hedges including registration, administration and determination of notifications under the Hedgerow Regulations

All functions under Part 8 of the Anti-Social Behaviour Act 2003 relating to high hedges

#### **Conservation**

- To designate and review Conservation Areas in consultation with the relevant Portfolio Holder and approval of Conservation Area Appraisals and associated management plans in consultation with the Portfolio Holder
- To undertake listed buildings surveys
- Listed Buildings and Conservation Areas - to make any grant (of no more than £2,000) that the Council has power to make in connection with a listed building or another building of architectural or historic interest or conservation areas
- Provision of revisions to the Local List of Buildings of Architectural or Historic Interest and public consultation on such revisions subject to consultation with the Portfolio Holder

#### **Building Control**

##### Street naming and numbering

- Naming and numbering of streets, renaming of streets, the renumbering of streets, and the renumbering of properties, subject in all cases to consultation with the appropriate Ward Member(s) and, in the case of renaming where an objection has been received in response to the statutory notice, to consideration of the objection and final determination by the Portfolio Holder
- Numbering of properties
- Provision of nameplates

##### Building Regulation Matters

- Issuing of approvals or consents to plans submitted in accordance with the Building Regulations, rejection of those not in accordance with those Regulations and approval of applications for relaxation or dispensation from those Regulations
- Collection of charges payable under the Building Regulations and the repayment of charges where refunds are due

- Agreeing or challenging estimates submitted for calculating Building Regulation fees and charges
- Revision of Building Regulation fees and charges to ensure full cost recovery of the service subject to consultation with the Section 151 Officer
- Variation of individual charges from the prescribed scale of fees and charges, if required, subject to consultation with the Section 151 Officer
- To carry out the necessary statutory duties in respect of Initial Notices issued by the Approved Inspectors supervising work instead of the Council
- To deal with any consultation concerning the safety of any sports ground
- To exercise the Council's powers to require sufficient sanitary facilities to be provided in buildings
- To exercise the Council's powers to require taller chimneys to be erected following the erection of a building
- To exercise the Council's powers with respect to consents for cellars below subsoil water level
- To exercise the Council's powers to require the provision of entrances and/or exits or means of escape from premises
- To exercise the Council's powers to require the provision of food storage places in houses
- To exercise the Council's powers in relation to the use and ventilation of soil pipes
- Taking action in respect of dangerous structures
- Approval of temporary structures under the Public Health Acts and the Building Regulations and the renewal of such consents
- Service of all statutory notices and taking action when Building Regulations are contravened in consultation with the Monitoring Officer where this involves legal proceedings to ensure that they are satisfied as to the evidence
- Service of notice under the Building Act 1984, authorising works of demolition and to exercise the Council's powers with respect to demolition of buildings
- To serve notices under the Building Act 1984 in respect of breaches of building regulations and in respect of making safe dangerous structures
- To exercise the Council's powers with respect to ruinous, dilapidated or dangerous buildings or structures, or sites which are dangerous or detrimental to the amenity of the area
- To carry out the necessary statutory duties, in respect of Initial Notices issued by Approved Inspectors supervising work instead of the Council.
- To exercise the Council's powers to take enforcement action against people erecting unsafe structures used on public occasions.
- To maintain a register of Buildings at Risk

## Highways

- To consent to the stopping up of small areas of highway in consultation with the Ward Member where authorised to do so by legislation

### Specific limitations on delegated authority

Apart from the following:

1. All Major applications (full, outline) except for minor material amendments and the variations and removal of conditions.

Major applications are defined as;

- Applications for 10 or more dwellings
  - Applications for new buildings where the floor space to be created is over 1000sqm
  - Applications for commercial (non-householder) renewable energy schemes, including single wind turbines.
2. All recommendations to approve a significant departure from the adopted development plan or other Council approved policies and/or strategies

Whether an application is considered to be a 'significant' departure will be determined by the Assistant Director Planning and Development (or the line manager that is responsible for Development Management and reports to the Assistant Director Planning and Development in consultation with the Chairman of the Planning Committee (or Vice Chairman in the Chairman's absence).

When deciding if any departure is 'significant' the criteria that will be considered will include, but not be limited to, the following;

- All relevant policies in the development plan and whether the policies are up to date
  - Other policies, guidance and strategies
  - Government policy
  - Scale and type of development
  - Site history
  - Whether conditions or a legal agreement could address any potential conflict
3. Applications called in by a member of the Council within 21 days of the registration of an application subject to the following:
    - The call-in request must be for material planning reasons
    - The request must be made within 21 calendar days of the registration of the application as valid (the day after registration to count as day one)
    - The request must be made in writing or via an e-mail; the request must be sent to the Assistant Director Planning and Development (or the line manager that is responsible for Development Management and reports

to the Assistant Director Planning and Development) and the Chairman of the Planning Committee

- The request MUST contain all the relevant information

On receipt of the call-in request the Assistant Director Planning and Development (or the line manager that reports to the Assistant Director Planning and Development and is responsible for Development Management) will either agree, or refuse, the request in consultation with the Chairman of the Planning Committee (Vice Chairman in the Chairman's absence). The criteria for deciding whether to allow a call-in request will include, but not be limited to,

- whether material planning reasons have been supplied,
- views of parish or town council,
- level of public interest,
- scale and type of development,
- site history,
- statutory time frame for decision,
- relevant development plan policies, council guidance and strategies
- whether the committee could legitimately reach another conclusion than the one reached by officers and/or the extent to which they are considered to have the potential to "add value" to the final scheme.

The Councillor who called in the application is encouraged to attend, or send another nominated member to speak

4. Applications submitted by;

- Any Officers with management responsibility in a personal capacity
- Officers employed in the Development Management Service
- Councillors (other than applications relating to works to trees)
- A member of staff or Councillor acting as agent or advisor or consultant.

5. Applications affecting the Council's own land or where the Council is the applicant (other than applications for works to trees advertisements or for public information purposes)

6. Any application which the Assistant Director Planning and Development considers should be referred to the Planning Committee (in consultation with the Planning Committee Chairman (Vice Chairman in the Chairman's absence)) because of its controversy or significance.

When deciding if an application is controversial or significant, the criteria that will be considered will include, but not be limited to, the following;

- Consultation responses
- Representations
- Level of public interest

- Relevant development plan and other Council policies, guidance and strategies
- Government policy
- Scale and type of development
- Site history
- Whether the Planning Committee could realistically and legitimately take a different view from the officer's recommendation and/or the extent to which they are considered to have the potential to 'add value' to the final scheme.

#### **Other**

- To sign Completion Certificates and Occupation Certificates
- To issue community protection notices
- To agree statements of common ground that may be necessary with developers and statutory bodies as part of the 'development consent' process

### **1.23 Assistant Director Property**

Subject to the reservations and exceptions set out in this Scheme, Assistant Director Property shall be authorised to exercise the functions, duties and powers of the Council as set out in any relevant legislation relating to Property Services, which shall include but not limited to the following

- Day to day estates management of the Council's investment portfolio of land and buildings including lease renewals, surrenders, assignments and rent reviews and any role in community land trust developments
- Agreements to the grant or acquisition of easements and wayleaves (to an unlimited value) subject to consultation with the portfolio holder
- Agreements to the grant or acquisition of leases and licences up to a value of £100,000 per annum.
- Agreements to purchases and sales of land up to a consideration of £250,000 subject to consultation with the Portfolio Holder
- Variation or release of restrictive covenants up to a value of £250,000 subject to consultation with the Portfolio Holder
- Settlement of compensation claims submitted on behalf of or received by the Council relating to the use of statutory powers to acquire an interest in land
- Submitting and settling appeals on rating assessments



- Agreement to waive right of pre-emption reserved in the sale of Council property in consultation with the Portfolio Holder
- To take any necessary steps to secure the health and safety of employees, contractors, members and visitors when on the Council's premises or otherwise conducting the business of the Council

#### **1.24 Assistant Director Regulatory Services and Community Safety**

Subject to the reservations and exceptions set out in this Scheme, the Assistant Director Regulatory Services and Community Safety shall be authorised to exercise the functions, duties and powers of the Council as set out in any relevant legislation relating to regulatory services and community safety, which shall include but not be limited to the following

- To exercise all the Council's powers with regard to Primary Authority Status
- To exercise the Council's powers with respect to securing the safety of food throughout the food chain, including imported food, and the condition of food premises (including, but not limited to, powers of licensing and registration)
- To exercise the Council's powers with respect to the control of infectious and notifiable diseases
- To exercise the Council's powers to take steps to prevent or remedy any statutory or public nuisance (including noise nuisance)
- To exercise the Council's powers with respect to regulation of processes, and the control of emissions, with a potential impact on the environment (including the issue and revocation of any consent, licence, or permit and taking any action to enforce the provisions of this)
- To exercise the Council's powers with respect to Sunday trading
- To appoint inspectors and authorised officers (including for the issue of fixed penalty notices) under any legislation their service areas
- To exercise the Council's powers and duties with respect to:
  - scrap metal dealers and motor salvage operators
  - to control distribution of free literature
  - tattooing, ear and body piercing and electrolysis
  - pleasure boats
  - loudspeakers in streets
  - the burning of crop residues
  - noise from certain premises at night
  - alarm notification areas
  - sex establishments

- To exercise the Council's powers for the prevention of smoking in designated places and vehicles
- To exercise the Council's powers with respect to persons on land without the owners' consent. This power may also be exercised by the Assistant Director Property, Investment and Contract Management where appropriate
- To exercise the Council's powers:
  - concerning the condition of any drain or private sewer
  - to secure that any building has adequate or improved drainage and/or sanitary conveniences
  - concerning the condition of any cesspool
  - concerning the use and ventilation of soil pipes
  - concerning the remedial work including the service of notices in relation to rainwater pipes, soil pipes and ventilating shafts and the apportionment and recovery of costs
  - concerning the alteration of a drainage system of premises
  - concerning the drainage and condition of yards and passages
  - with respect to the provision of washing and sanitary facilities
  - to loan temporary sanitary conveniences where necessary
- To exercise the Council's powers with respect to the licensing of caravan sites, camping sites and moveable dwellings
- To exercise the Council's powers with respect to filthy or verminous premises, articles or persons. NB this power is also exercisable by the Assistant Director Wellbeing and Housing
- To exercise the Council's powers with respect to water supplies, including private water supplies
- To exercise the Council's powers relating to controlled waste, graffiti, litter, rubbish or anything on land in the open air. This power may also be exercised by the Assistant Director Environmental Services, who also has responsibility for abandoned vehicles
- To exercise powers under the Environmental Protection Act 1990 to issue fixed penalties for littering and dog fouling. This power may also be exercised by the Assistant Director Environmental Services
- To exercise the Council's powers with respect to the control of noise levels on construction or demolition sites
- To exercise the Council's powers with respect to the enforcement of the law about health and safety at work etc.
- To exercise the Council's powers with respect to smoke emissions from chimneys and premises

- To exercise the Council's powers with respect to the control of emissions from furnaces
- To exercise the Council's powers to determine chimney heights
- To exercise the Council's powers with respect to obtaining information about air pollution or other information to protect the environment
- To exercise the Council's powers with respect to ruinous and dilapidated buildings, dangerous buildings and the demolition of buildings
- To exercise the Council's powers to prevent pollution of land, water or air or harm to human health
- To exercise the Council's powers with respect to the review and assessment of air quality
- To exercise the Council's powers in respect of registration of users of radioactive material
- To exercise the Council's powers with respect to the identification and remediation of contaminated land
- To exercise the Council's powers in respect of exhumation, burial of the dead and burial grants to assist with cost of burials where there are no relatives who will fund the cost
- To deal with all matters, and exercise the Council's powers, including enforcement, under the Gambling Act 2005
- To deal with all matters, and exercise every function, and power, including enforcement, relating to hackney carriage, private hire drivers, proprietors and vehicles, and private hire operators
- To deal with all matters, and exercise the Council's powers, including enforcement, in respect of animal welfare, the licensing of animals and animal associated activities
- To deal with all matters, and exercise the Council's powers, including enforcement, under the Licensing Act 2003
- To deal with all matters, and exercise the Council's powers, including enforcement, under street trading legislation
- To deal with all matters, and exercise the Council's powers, including enforcement, under the legislation relating to street and house to house collections
- Authorising the siting of market stall spaces and the letting of such spaces subject to the necessary planning and highways consents

- To exercise powers to permit third parties to place objects over or on the public highway, under section 115 of the Highways Act 1980
- To exercise the Council's functions with respect to watercourses and land drainage, including the power to serve statutory notices
- In accordance with the Civil Contingencies Act 2004 to develop plans to help prevent emergencies or control or mitigate their effects.
- Taking action under the Anti-Social Behaviour Act 2003 and any subsequent legislation falling within the service area, where necessary in consultation with the Assistant Director Law and Governance.

### **1.25 Assistant Director Wellbeing and Housing**

Subject to the reservations and exceptions set out in this Scheme, Assistant Director Wellbeing and Housing Services shall be authorised to exercise the functions, duties and powers of the Council as set out in any relevant legislation relating to housing and wellbeing services, which shall include but not limited to the following:

- To nominate persons for tenancies or long leases granted by registered social landlords in accordance with the priority given by the allocation scheme adopted by the Council.
- To determine all applications for persons presenting themselves to the Council as homeless and to determine how any duty which the Council may have to such persons is performed and to keep the policy on homelessness under review
- To decide housing register and homelessness appeals where the relevant housing manager has been personally involved with making the decision which is the subject of the appeal
- To exercise all the Council's powers with respect to the statutory housing register
- To manage the hostels for the homeless, including granting and terminating tenancies and licences and evicting occupiers
- To provide housing advice services to the public
- To exercise the Council's powers with respect to the provision of affordable housing by registered social landlords
- To respond to consultations by Homes England/relevant government agency concerning its development programme
- To exercise powers with respect to persons on land owned by Cherwell without permission

- To exercise powers with respect to bringing private sector empty dwellings back into use
- To exercise powers with respect to the provision of advice about facilities/services for the disabled
- To exercise powers to provide works of maintenance and improvement to properties owned by, or rented to, the elderly or disabled
- To exercise powers with respect to the overcrowding of housing accommodation
- To exercise powers with respect to houses in multiple occupation
- To exercise powers to secure the repair, maintenance, demolition, closure and improvement of sanitary conditions of dwellings
- To exercise powers with respect to private sector housing accommodation
- Service of statutory notices under housing legislation where required in cases of urgency
- To exercise all powers under the Housing Act 2004
- To provide housing accommodation during private improvement works
- To authorise those officers or agents or consultants acting on behalf of the Council who may exercise statutory powers of entry or statutory powers to require the production of documents under the Housing Acts
- To exercise the Council's powers with respect to filthy or verminous premises, articles or persons. NB this power is also exercisable by the Assistant Director Regulatory Services and Community Safety
- To exercise the Council's powers for the control of pest and vermin, the prevention of damage by pests in respect of residential properties NB. This power is also exercised by the Assistant Director Regulatory Services and Community Safety and the Assistant Director Environmental Services.
- To exercise the Council's powers to take steps to prevent or remedy any statutory or public nuisance in relation to residential premises.
- To exercise the Council's powers in respect of the condition and occupation of canal boats in its area, including powers of entry and inspection.
- Granting of housing advances in accordance with the approved scheme and ancillary matters and the granting in exceptional cases, of housing advances not in accordance with approved schemes subject to consultation with the Portfolio Holder
- To promote group repair and area renewal schemes

- To exercise powers with respect to grants including disabled facility grants, for improvement and maintenance of housing. This includes the amendment or minor revision of grant policy in consultation with the Portfolio Holder subject to there being no budgetary impact arising
- To exercise powers for making loans including, but not limited to, the Flexible Home Improvement Loans Limited
- Authorisation of legal proceedings for offences under the Rent Act, the Landlord and Tenant Act, the Protection from Eviction Act and the Housing Acts subject to the Assistant Director Law and Governance being satisfied as to the evidence
- Service of Notices relating to additional shared ownership shares
- To amend the Council's Housing Allocations Policy in consultation with the Executive Portfolio Holder and associated documents as necessary and which do not trigger the statutory obligation to consult the persons affected by the changes pursuant to section 168(3) of the Housing Act 1996
- To enter into leases of private sector housing accommodation to provide accommodation for homeless persons
- To set the House in Multiple Occupation (HMO) Licence Fee in accordance with the Housing Act 2004 and Orders under it
- To set the recoverable costs in accordance with the Housing Act 2004 and Orders under it
- To agree and enter into amendments to the Nominations Agreement for Housing Allocations that are deemed to be necessary and do not constitute a major policy change, in consultation with the Portfolio Holder for Housing
- Allocation of grants to a value of £20 000 and in the case of Disabled Facilities Grants up to a value of £30,000.
- Implementation of powers under the Crime and Disorder Act 1998
- To provide, maintain and develop a wide range of sporting, play and cultural activities for the benefit of the community.
- Taking action under the Anti-Social Behaviour Act 2003 and any subsequent legislation falling within the service area, where necessary in consultation with the Assistant Director Law and Governance
- All functions under Part 8 of the Anti-Social Behaviour Act 2003 (relating to high hedges) NB see also powers under development management
- To carry out and determine reviews of Assets of Community Value as required.
- To determine and list Assets of Community Value (ACV).

- To appoint inspectors and authorised officers (including for the issue of fixed penalty notices) as required by legislation for the purposes of public protection and protecting public space.
- To determine applications for Council grants up to a value of £20,000
- Responsibility for running the Cherwell Community Lottery

## **1.27 Schedule of Proper Officer Appointments**

### **1.27.1 Head of Paid Service**

This post has responsibility for the overall management of the staff who work for the authority under section 4 of the Local Government and Housing Act 1989 (full details of the responsibilities are set out in the introduction to this Constitution).

This post is responsible for ensuring the proper use of evaluation systems for determining what staff are paid and reporting as and when required on the number and grade of staff required.

### **1.27.2 Section 151 Officer**

This post has day to day responsibility for the Council's financial affairs under Section 151 of the Local Government 1972 and Section 114 of the Local Government Finance Act 1988 and provides strategic financial advice to the Council. Full details of the responsibilities are set out in the introduction to this Constitution.

### **1.27.3 Monitoring Officer**

This post is responsible for the Council's Code of Conduct and advising the Council's Standards Committee on any potential breaches. Full details of the responsibilities are set out in the introduction to this constitution.

### **1.27.4 Electoral Registration Officer and Returning Officer**

- Authority to take such action and make such decisions as are necessary as Electoral Registration Officer and Returning Officer / Acting Returning Officer (for Parliamentary elections) / Deputy Returning Officer (for County Council elections) / Counting Officer (for referenda), Ballot Holder (for Business Improvement District elections).
- Assigning Officers in relation to requisitions of the Electoral Registration Officer
- Providing assistance to the Returning Officer at Parliamentary and County Council elections and to the Chief / Regional Counting Officer for referenda.
- Power to fill vacancies in the event of insufficient nominations and make temporary appointments to Parish Councils.

- Declaring vacancies in office in certain cases and giving notice of casual vacancies.
- Consulting on proposed changes to the scheme of elections
- Duties relating to providing notice to the Electoral Commission and relating to publicity.

### 1.28 Proper Officers and Authorised Officer Appointments

The Council designates Proper Officers to carry out functions allocated by law. Power to appoint Proper Officers is delegated to the Chief Executive, following consultation with the Monitoring Officer, unless legislation requires the appointment to be made by Full Council.

The relevant postholders listed below have been appointed as Proper Officers for the purposes of the adjacent legislative provisions.

An officer with line management responsibility for an officer listed in the list of Proper Officer and Authorised Officer appointments may exercise the power in the absence of the Proper Officer/Authorised Officer.

The Proper Officer (Medical) shall be such officer as the Health Protection Agency may wish to appoint.

The Section 151 Officer shall act as the Proper Officer in respect of any other statute where specific arrangements for financial matters have not been made under this scheme.

The Monitoring Officer shall act as the Proper Officer for any other legislative provisions where specific arrangements have not been made under this scheme.

<b>Legislation Act</b>	<b>Section</b>	<b>Purpose of appointment</b>	<b>Proper Officer / Authorised Officer</b>
<b>Landlord and Tenant Act 1927</b>	S.23	To serve and receive notice on behalf of the Council	Assistant Director Wellbeing and Housing
<b>Public Health Act 1936 (as amended)</b>	S.45	To serve notice on owners of buildings with defective sanitary conveniences capable of repair	Assistant Director Wellbeing and Housing
	S.50	To serve notice on owners of overflowing or leaking cesspools	Assistant Director Wellbeing and Housing



<p><b>NB prospectively removed by Control of Pollution Act 1974 s.109(2) but not yet in force</b></p>	<p>S.79</p>	<p>To serve notice to require removal of noxious matter</p>	<p>Assistant Director Regulatory Services and Community Safety</p>
	<p>S.83</p>	<p>Service of any Notices for the taking of any other action for the cleansing of filthy or verminous premises.</p>	<p>Assistant Director Wellbeing and Housing  Assistant Director Regulatory Services and Community Safety</p>
	<p>S.84</p>	<p>To serve notice requiring remedial action where there are filthy and verminous premises, persons or articles</p>	<p>Assistant Director Wellbeing and Housing  Assistant Director Regulatory Services and Community Safety</p>
	<p>S.85 (see also s.35 Public Health Act 1961</p>	<p>Remedial action where there are filthy and verminous premises, persons or articles</p>	<p>Assistant Director Wellbeing and Housing  Assistant Director Regulatory Services and Community Safety</p>
	<p>s.275</p>	<p>By agreement to carry out works in default on sewers or drains</p>	<p>Assistant Director Regulatory Services and Community Safety</p>
	<p>S.287</p>	<p>Power to enter premises</p>	<p>Assistant Director Wellbeing and Housing  Assistant Director Regulatory Services and Community Safety</p>

<b>Prevention of Damage by Pests Act 1949</b>	S.2 – S.7	Duty to control rats and mice in district	Assistant Director Wellbeing and Housing Assistant Director Regulatory Services and Community Safety
	S.22	Powers of entry	Assistant Director Wellbeing and Housing Assistant Director Regulatory Services and Community Safety
<b>National Assistance (Amendment) Act 1951</b>	S.1(1)	Certification of the need for a person in need of care and protection to be removed to suitable premises without delay	Medical Officer/Community Physician
	S.1(3)	The person who may make application to court of summary jurisdiction or to a single justice to obtain an order authorising the removal of a person in need of care and protection	Medical Officer/Community Physician
<b>Landlord and Tenant Act 1954</b>	S.66	To serve and receive notices on behalf of the Council	Assistant Director Wellbeing and Housing Assistant Director Regulatory Services and Community Safety
<b>Milk and Dairies (General) Regulations 1959 (as amended)</b>	Reg.20	Milk treatment orders	Medical Officer/Community Physician
<b>Public Health Act 1961</b>	S.34	Accumulation of rubbish	Assistant Director Regulatory Services and Community Safety Assistant Director Environmental

			Services
	S.36, SS.83, 84 and 85 (2) Public Health	Service of any Notices for the taking of any other action for the cleansing of filthy or verminous premises including power to require vacation of premises during fumigation.	Assistant Director Wellbeing and Housing Assistant Director Regulatory Services and Community Safety
	S.37	Prohibition of sale of verminous articles	Assistant Director Wellbeing and Housing Assistant Director Regulatory Services and Community Safety
<b>Local Government Act 1972</b>	S.13 (3)	Appointment as a Parish Trustee	Monitoring Officer
	S.83 (1) to (4)	Witness and receipt of declaration of acceptance of office	Chief Executive Monitoring Officer
	S.84 (1)	Receipt of notice of resignation of Councillor	Chief Executive
	S.88 (2) and Schedule 12	Convening a meeting of Council to fill casual vacancy in the office of Chairman	Chief Executive
	S.89 (1) (b)	Notice and filling of casual vacancy	Returning Officer
	Local Elections (Parishes and Communities) Rules 1986	Request for an election to fill a casual vacancy in respect of parish councils	Returning Officer
	S.96 (1) and (2)	Receipt of notices and recordings of disclosures of interests	Monitoring Officer
	S.99	Convening of meetings	Chief Executive Monitoring Officer

	S.100 and Schedule 12A	Access to information	Monitoring Officer
	S.100 (except 100D)	Admission of public (including press) to meetings	Chief Executive Monitoring Officer
	S.100D	Listing background papers for reports and making copies available for the public to look at	Monitoring Officer
	S.100D (1)A	Compilation of lists of background papers	Each Director and Assistant Director for their service area reports
	Section 100D (5)A	Identification of background papers	Each Director and Assistant Director for their service area reports
<b>Local Government Act 1972</b>	S.115 (2)	Receiving money due from officers	Section 151 Officer
	S.146(1)(a) and (b)	Declarations and certificates with regard to transfer of securities	Section 151 Officer
	S.151	Financial administration	Section 151 Officer
	S.173 - S178	Keeping of records of Members' Allowances	Section 151 Officer
	S.191	To receive applications to undertake OS work under the Ordnance Survey Act, 1841	Assistant Director Planning and Development
	S.204	Receipt of Licensing applications and make the appropriate representations in respect of the same	Assistant Director Planning and Development
	S.210	To exercise powers in respect of charities	Monitoring Officer
	S.214(3) and Article 9 of the Local	To grant exclusive rights of burial and sign the necessary certificate.	Monitoring Officer

	Authorities' Cemeteries Order 1974		
	S.223	Authorisation (appearance by persons other than solicitors in legal proceedings)	Monitoring Officer
	S.225	Deposit of documents	Chief Executive
	S.228	Inspection of documents	Monitoring Officer
<b>Local Government Act 1972</b>	S.228(3)	Accounts for inspection by any member of the Council	Section 151 Officer
	S.229(5)	Certification of photographic copies of documents	Monitoring Officer
	S.234	Authentication of documents	Monitoring Officer
	S.236(9) and (10)	Sending of copies of byelaws to parish councils, parish meetings and county council	Monitoring Officer
	S.238	Certification of byelaws	Chief Executive Monitoring Officer
	S.251 and Schedule 29	Exercise all functions of any enactment passed before or during the same session of Parliament as the passing of the LGA 1972	Monitoring Officer
	S.270	Except in the case of financial powers or matters, to act as the Proper Officer in respect of any other statute where specific arrangements have not been made in the Scheme	Monitoring Officer
	Various Sections	Any requirement in relation to parish authorities specified in the Act (or other legislation).	Monitoring Officer
<b>Local Government Act</b>	Schedule 12 para 4 (2)	Signing of summons to Council meeting	Chief Executive Monitoring Officer

<b>1972</b>	(b)		
	Schedule 12 Para 4 (3)	Receipt of notice regarding address to which summons to meeting is to be sent	Chief Executive Monitoring Officer
	Schedule 14 Para 25	Certification of resolution passed under this paragraph	Monitoring Officer
	Schedule 16 Para 28	Deposit of lists of buildings of special architectural or historic interest	Assistant Director Planning and Development
	Schedule 16 S.191(2)	Applications under Section 1 of the Ordnance Survey Act 1841	Assistant Director Planning and Development
		The purposes of issuing planning decision notices and for all building regulation purposes	Assistant Director Planning and Development
	Schedule 16	Receipt of deposit lists of protected buildings	Assistant Director Planning and Development
	Schedule 29	Adaptations, modifications and amendments of enactments.	Monitoring Officer
	Part VA	Access to information	Monitoring Officer
<b>Health and Safety at Work Act 1974</b>	S.19 – S.25 / 39	Appointment of and termination of appointment of Inspectors and various enforcement powers	Assistant Director Regulatory Services and Community Safety
<b>Local Government Act 1974</b>	S.30 (5)	To give notice that copies of a Local Commissioner's (Ombudsman) report are available	Monitoring Officer
<b>Control of Pollution Act 1974</b>	S.60 – S.61	Construction site noise	Assistant Director Regulatory Services and Community Safety
<b>Local Land Charges Act 1975</b>	S.9	To act as local registrar for the registration of local land charges and the issue of official search certificates	r Assistant Director Customer Focus

<b>Local Government (Miscellaneous Provisions) Act 1976</b>	S.16	Requests to obtain particulars of persons interests in land	Assistant Directors
	S33	Restoration of supply of water, gas or electricity	Assistant Director Wellbeing and Housing
	S.41 (1)	To certify copy resolutions, orders, reports and minutes and copy instruments appointing officers to perform certain functions	Monitoring Officer
<b>Local Authorities Cemeteries Order 1977 (as amended)</b>	Article 10	To sign exclusive rights of burial	Monitoring Officer
<b>Refuse Disposal (Amenity) Act 1978 (as amended)</b>	S.2A	Fixed penalty notice in respect of abandoned vehicles	Assistant Director Environmental Services
<b>Local Government (Miscellaneous Provisions) Act 1982</b>	S.13 – S.17	Skin piercing	Assistant Director Regulatory Services and Community Safety
	S29	Protection of buildings	Assistant Director Wellbeing and Housing Assistant Director Planning and Development (depending on type of premises)
	S.27	Repair of drains, private sewers etc.	Assistant Director Regulatory Services and Community Safety
	S.35	Blocked private sewers	Assistant Director Regulatory Services and Community Safety
<b>Local Government (Miscellaneous Provisions) Act</b>		Control of sex establishments	Assistant Director Regulatory Services and Community Safety

<b>1982</b>			
<b>Representation of the People Act 1983</b>	S.28	Acting Returning Officer at Parliamentary Elections	Returning Officer
	S.67(1)	Receipt of appointment of election agents	Returning Officer
	S.67(6)	Publication of names and addresses of agents	Returning Officer
	S67(7)(b)	Appropriate officer for local election purposes	Returning Officer
	S.81(1)	Receipt of return of election expenses	Returning Officer
	S.82(1)	Receipt of declaration of election expenses	Returning Officer
	S.87A(2)	Delivery of copy of returns to Electoral Commission	Returning Officer
	S89(3)	Copy and inspections of returns and declarations.	Returning Officer
	S.131	Providing accommodation for holding election count	Returning Officer
<b>Building Act 1984</b>	S.59 – S.61	Authorisation of repair, reconstruction or alteration of drains	Assistant Director Regulatory Services and Community Safety , Assistant Director Property, Assistant Director Wellbeing and Housing
	S.64 – S.65	Replacement of sanitary conveniences	Assistant Director Regulatory Services and Community Safety  Assistant Director Property  Assistant Director Wellbeing and Housing
	S76	Defective premises (expedited procedure relating to s80 EPA 1990)	Assistant Director Property  Assistant Director Planning and



			Development Assistant Director Wellbeing and Housing
	S.78	To act as “the surveyor” empowered to take and authorise emergency action in respect of damaged and dangerous buildings.	Assistant Director Property  Assistant Director Planning and Development
	S.84	Paved yards	Assistant Director Property  Assistant Director Planning and Development
	S.93	Authentication of documents	Monitoring Officer
	S.95	Power to enter premises	Assistant Director Property  Assistant Director Planning and Development  Assistant Director Wellbeing and Housing
	S.97	Power to execute work	Assistant Director Property  Assistant Director Planning and Development  Assistant Director Wellbeing and Housing
<b>Public Health (Control of Disease) Act 1984</b>	S.11	Cases of notifiable disease and food poisoning to be reported	Medical Officer/Community Physician
(as amended by the Health and Social Care Act 2008)	S.11	To receive certificates from medical practitioners concerning patients suffering from notifiable diseases and to take all other action necessary relating to those certificates	Assistant Director Regulatory Services and Community Safety

	S.18	Obtaining information from any occupier of premises concerning any person suffering from a notifiable disease or food poisoning	Assistant Director Regulatory Services and Community Safety
	S.20	Stopping of work to prevent spread of disease	Medical Officer/Community Physician
	S.21	Exclusion from school of child liable to convey notifiable disease (as amended by s.45 of 2008 Act)	Medical Officer/Community Physician
	S.22	List of pupils at schools having case of notifiable disease (as amended by s.45 of 2008 Act)	Medical Officer/Community Physician
	S.23	Exclusion from places of entertainment	Medical officer/community physician
	S.24	Control of infected articles intended to be washed at laundry or wash houses	Assistant Director Regulatory Services and Community Safety
	S.25	Library books to be disinfected or disposed of	Assistant Director Regulatory Services and Community Safety
	S.26	Infectious matter not to be placed in dustbins	Assistant Director Regulatory Services and Community Safety
	S.29	To issue certificates in respect of houses or rooms to be let after being properly disinfected following a case of a notifiable disease	Medical Officer/Community Physician
	S.31	Certification by officer of need for disinfection of premises	Assistant Director Regulatory Services, Medical Officer
	S.32	Certification by officer of need to remove person from infected house	Assistant Director Regulatory Services, Medical officer

	S.34	Duty of owner etc. of public convenience	Assistant Director Environmental Services
	S.35	To obtain a Justice's Order requiring a person to be medically examined	Medical Officer/Community Physician
	S.36	Medical examination of group of persons believed to comprise carrier of notifiable disease	Medical Officer / Community Physician
	S.37	To obtain a Justice's Order requiring a person with notifiable disease to be removed to hospital	Medical Officer / Community Physician
	S.38	To obtain a Justice's Order requiring detention in hospital of a person with a notifiable disease	Medical Officer / Community Physician
	S.39 – S.40	Getting a warrant to examine residents of a common lodging house	Medical Officer / Community Physician
	S.42	Closure of common lodging house on account of notifiable disease and certifying a common lodging house to be free from infection	Medical Officer / Community Physician
	S.43	Certifying that the body of someone who dies in hospital from a notifiable disease must not be moved except taken to a mortuary or immediately buried or cremated	Medical Officer / Community Physician
	s.45	Power to require children are kept from school, require contact lists of pupils and to decontaminate premises or articles. Power to seek Justice's Order in respect of quarantine, isolation or destruction etc (a Part 2A Order)	Assistant Director Regulatory Services and Community Safety

	S.48	Removal of body to mortuary or for immediate burial and certifying that it would be a health risk to keep a body in a building	Medical Officer / Community Physician
	S.49 – S.52	Regulations concerning canal boats	Assistant Director Wellbeing and Housing  Medical Officer / Community Physician
	S.59	Authentication of documents relating to matters within their province	Assistant Director Wellbeing and Housing  Medical Officer/Community Physician
	S.61	Power of entry	Assistant Director and Housing  Medical Officer / Community Physician
<b>Food Act 1984</b>	S.8	Enforcement of provision relating to working conditions	Assistant Director Regulatory Services and Community Safety
	S.28	Service of notice to prevent spread of disease by ice-cream	Assistant Director Regulatory Services and Community Safety
	S.31	Service of notice requiring food not to be used for human consumption where it appears to be infected	Assistant Director Regulatory Services and Community Safety
<b>Housing Act 1985</b>	S.265	Demolition Order	Assistant Director Wellbeing and Housing
	S.289	Clearance Area Declaration	Assistant Director Wellbeing and Housing
	S.300	Determination to Purchase	Assistant Director Wellbeing and Housing
	S.319	Power of entry	Assistant Director Wellbeing and Housing
	S.606	Submitting reports on particular houses or areas	Assistant Director Wellbeing and Housing

<b>Local Elections (Principal Area) Rules 1986</b>	All	All functions	Returning officer
<b>Local Elections (Parishes and Communities) Rules 1986</b>	Rules 46, 47 and 48	Keeping documents after an election and making them available for the public to look at	Returning Officer
<b>Public Health (Infectious Diseases) Regulations 1988</b>	Reg.6	Special reporting of infectious diseases	Medical Officer / Community Physician
	Reg.8	Statistical returns	Medical Officer / Community Physician
	Reg.9	Prevention of spread of disease	Medical Officer / Community Physician
	Reg.10	Immunisations and vaccination	Medical Officer / Community Physician
	Reg.11	Measures against rats	Medical Officer / Community Physician
	Schedule 3	Typhus and relapsing fever	Medical Officer / Community Physician
	Schedule 4	Food poisoning and food borne infections	Medical Officer / Community Physician
<b>Local Government and Finance Act 1988</b>	S.112 – S.115, S.115A	Responsible officer for the purposes of the financial administration of the Council's affairs	Section 151 Officer
	S.116	Responsibility for notifying the external auditor of arrangements for a meeting to consider a report from the Chief Finance Officer under this Act	Section 151 Officer
<b>Local Government and Housing Act 1989</b>	S.2(4)	Maintenance and review of the Council's List of Politically Restricted Posts	Assistant Director Human Resources and Organisational Development
	S.4	Functions as Head of Paid Service.	Head of Paid Service

	S.5	Functions of Monitoring Officer within the meaning of this section of the Act	Monitoring Officer
	S.15 - 17	Allocating seats on Committees	Assistant Director Law and Governance
	S.18	Arrangements in respect of the Scheme of Members' Allowances	Section 151 Officer / Director Law and Governance
	S.19	Arrangements in respect of the Register of Members' interests	Assistant Director Law and Governance
	Part 7	Declaration of Renewal Areas	Assistant Director Wellbeing and Housing
<b>Environmental Protection Act 1990 (as amended)</b>	S.6 – S.15	Prescribed processes	Assistant Director Environmental Services
			Assistant Director Regulatory Services and Community Safety
	S.78	Contaminated land	Assistant Director Regulatory Services and Community Safety
	S.79 – S.82	Statutory nuisance	Assistant Director Regulatory Services and Community Safety
Assistant Director Wellbeing and Housing			
Assistant Director Environmental Services			
	S.88	Fixed penalty notices for leaving litter	Assistant Director Environmental Services  Assistant Director Regulatory Services and Community Safety
	S.149 – S.150	Officer responsible for dealing with stray dogs in the area and maintaining a	Assistant Director Environmental Services

		register of dogs seized	
	Schedule 3	Powers of entry	Assistant Director Environmental Services  Assistant Director Regulatory Services and Community Safety  Assistant Director Wellbeing and Housing
<b>Food Safety Act 1990</b>	S.9	Seizure of food	Assistant Director Regulatory Services and Community Safety
	S.29 – S.30	Sampling food	Assistant Director Regulatory Services and Community Safety
	S.11, S37 – S.39	Improvement / prohibition notices	Assistant Director Regulatory Services and Community Safety
	S.49(3)	To sign documents on behalf of the authority	Assistant Director Regulatory Services and Community Safety
<b>Town and Country Planning Act 1990</b>	S.215	Waste land	Assistant Director Planning and Development
<b>Local Government (Committees and Political Groups) Regulations 1990</b>	Regs.8, 9, 10, 13 and 14	Dealing with political balance on committees and nominations to political groups	Monitoring Officer
<b>Water Industry Act 1991</b>	S.80 – S.83	Private water supply	Assistant Director Regulatory Services and Community Safety
<b>Clean Air Act 1993</b>	S.1 – S.2	Prohibition of dark smoke	Assistant Director Regulatory Services and Community Safety
	S.51 and S.56	To exercise all functions conferred by these sections	Assistant Director Regulatory Services and Community Safety
<b>Criminal Justice</b>	S.77 – S.80	Removal of unauthorised	Assistant Director

<b>and Public Order Act 1994</b>		encampments	Property Assistant Director Planning and Development
<b>Environment Act 1995</b>	S.80	Local air quality management	Assistant Director Regulatory Services and Community Safety
	S.84  S.108	Air quality management areas  To carry out registered keeper detail checks	Assistant Director Regulatory Services and Community Safety  Assistant Director Environment
<b>Dogs (Fouling of Land) Act 1996</b>	S.4	To issue fixed penalty notices	Assistant Director Environmental Services  Assistant Director Regulatory Services and Community Safety
<b>Housing Grants, Construction and Regeneration Act 1996</b>	Part 1	Disabled Facilities Grants	Assistant Director Wellbeing and Housing
<b>Noise Act 1996 (as amended)</b>	S.8	Fixed penalty notices in respect of noise nuisance	Assistant Director Regulatory Services and Community Safety
<b>Party Wall Act 1996</b>	S.10(8)	To act as the 'appointing officer' as required by of the Party Wall Act 1996	Assistant Director Planning and Development
	S.10	To select a third surveyor, if required, during a neighbour dispute about building projects	Assistant Director Planning and Development
<b>Local Government (Contracts) Act 1997</b>	S.3	Signing certificates in respect of Certified Contracts	Monitoring Officer
	S.4	To maintain a register of certificates in respect of Certified Contracts to be open to public inspection	Monitoring Officer



<b>Data Protection Act 1998</b>	All	Ensuring compliance with the statutory provisions and principles of the Act	Monitoring Officer
<b>Crime and Disorder Act 1998</b>	S.5	To work in partnership with the police and other responsible bodies to reduce crime	Assistant Director Regulatory Services and Community Safety
	S.17	To consider crime and disorder implications of any decisions	Assistant Director Regulatory Services and Community Safety
	S.115	Power to disclose information in the interest of community safety and other purposes of the Act	Assistant Director Regulatory Services and Community Safety
<b>Local Government Act 2000</b>	S.34	Determine whether a petition is valid	Electoral Registration Officer
	S.81	Establishment and maintenance of the Register of Members' Interests including voting co-opted members	Monitoring Officer
	S.99 and S.100	Regarding Members' allowances and pensions and having regard to all relevant regulations, including The Local Authorities (Members' Allowances) (England) Regulations 2003, and The Local Government Pension Scheme and The Discretionary Compensation (Local Authority Members in England) Regulations 2003	Monitoring Officer
	Various	Dealing with the holding of referenda	Returning Officer / Electoral Registration Officer
		All other responsibilities in the Act and any subordinate legislation	Monitoring Officer
<b>Freedom of Information Act</b>	S.36	Application from exemption	Monitoring Officer

<b>2000</b>		disclosure	
	All others	All responsibilities associated with the act	Monitoring Officer
<b>Regulation of Investigatory Powers Act 2000 (RIPA)</b>	S.27 – S.29	Designation of officer empowered to grant authorisations for the carrying out of directed surveillance and authorize the use of covert human intelligence sources under the Act	Directors, Monitoring Officer, Chief Executive in accordance with Council's RIPA policy  Chief Executive to authorise operations against children and vulnerable adults
<b>Local Authorities (Standing Orders) (England) Regulations 2001</b>	Schedule 1Part II	Giving notice of appointments and dismissal of officers to the Executive in accordance with the Regulations	Monitoring Officer
<b>Private Security Industry Authority Act 2001</b>		Enforcement of actions by licensed door supervisors	Assistant Director Regulatory Services and Community Safety
<b>Criminal Justice and Police Act 2001</b>	S.19(2)	Power of closure where the sale of alcohol is not in accordance with any authorisation	Assistant Director Regulatory Services and Community Safety
<b>The Representation of the People (England and Wales) (Amendment) Regulations 2002</b>	Reg.107	Decisions on whether or not any particular proposed use of the electoral register meets the legislative requirements	Monitoring Officer
<b>Money Laundering Regulations 2003</b>	Reg 7	Nominated officer to receive disclosures about suspected money laundering	Section151 Officer
<b>Anti-Social Behaviour Act 2003 (as amended)</b>	S.30	Approval for dispersal orders	Assistant Director Regulatory Services and Community Safety
	S.40	Immediate closure if there is a public nuisance caused by noise and closure is	Assistant Director Regulatory Services

		necessary to prevent it	and Community Safety
	S.43	To issue penalty notices for graffiti and flyposting	Assistant Director Planning and Development, Assistant Director Environmental Services
<b>Accounts and Audit Regulations 2003</b>	All Regs	All responsibilities	Section 151 Officer or person nominated by them under Section 114 of the Local Government Finance Act 1988 where the Chief Finance Officer is unable to act
<b>Housing Act 2004</b>	S.239	Determining if a survey or examination is necessary	Assistant Director Wellbeing and Housing
	Part 1	Enforcement of Housing Standards	Assistant Director Wellbeing and Housing
	Part 2	Licensing of HMOs	Assistant Director Wellbeing and Housing
	Part 3	Selective Licensing of Residential Accommodation	Assistant Director Wellbeing and Housing
	Part 4	Additional controls in relation to residential accommodation	Assistant Director Wellbeing and Housing
	Part 6	Other provisions about housing	Assistant Director Wellbeing and Housing
	Part 7	Supplementary and final provisions	Assistant Director Wellbeing and Housing
<b>The Clean Neighbourhoods and Environment Act 2005</b>	Part 2	Nuisance parking	Assistant Director Environmental Services
	Part 3	Litter	Assistant Director Environmental Services
	Part 4	Fly posting	Assistant Director Environmental Services

	S.59	Dog control fixed penalty notices	Assistant Director Environmental Services
<b>Food Hygiene Regulations 2006</b>	Reg.6	Hygiene improvement notice	Assistant Director Regulatory Services and Community Safety
	Reg.7	Hygiene prohibition orders	Assistant Director Regulatory Services and Community Safety
	Reg.8	Hygiene emergency prohibition orders	Assistant Director Regulatory Services and Community Safety
	Reg.9	Remedial action/detention notice	Assistant Director Regulatory Services and Community Safety
	Reg.12	Food sampling	Assistant Director Regulatory Services and Community Safety
	Reg.14	Powers of entry	Assistant Director Regulatory Services and Community Safety
	Reg.17	Food premises registration	Assistant Director Regulatory Services and Community Safety
<b>Smokefree (Premises and Enforcement) Regulations 2006</b>		Enforcing smokefree legislation in premises and vehicles	Assistant Director Regulatory Services and Community Safety
<b>Criminal Justice and Police Act 2006</b>	S.14	Broader definition of S.17 of the Crime and Disorder Act 1998, to consider crime and disorder implications of any decisions, to include anti-social behaviour	Assistant Director Regulatory Services and Community Safety
<b>Health Protection (Notification) Regulations 2010</b>	S.22	To share depersonalised data  All local authority responsibilities under these regulations	Assistant Director Regulatory Services and Community Safety

<p><b>Local Authorities (Executive Arrangements)</b></p> <p><b>(Meetings and Access to information (England) Regulations 2012</b></p>		<p>All local authority responsibilities under these regulations</p>	<p>Monitoring Officer</p>
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## Part 4. Council Bodies Rules

(March 2024)

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#### **4.1 Meetings, Committee and Sub Committee Definition**

In these Procedure Rules the words Meeting, Committee and Sub Committee mean meetings formally constituted under the Local Government Act 1972 as amended.

#### **4.2 Meetings – Dates and Times**

Meetings of Council, Committees or Sub-Committee shall be held each year on such dates and times as decided by the Council.

No alterations to the dates or time of meetings shall take place unless Council, the Committee or Sub-Committee agrees an ad hoc change or the Chairman of the relevant Committee or Sub-Committee, after consultation with the Assistant Director Law and Governance concurs with either a cancellation, or an alternative date or time.

The Council will give at least five clear days' notice of any meeting to members of that meeting and to the public by posting details of the meeting at the Council's main offices,



except where a meeting is called at shorter notice.

#### **4.3 Filming, Recording and Broadcasting Meetings**

Meetings of the Council, Committees, sub-committees and the Executive and its committees shall for the duration of the public part of the meeting be open to being filmed, recorded and/or broadcast (by social media or otherwise), in accordance with the Openness of Local Government Bodies Regulations 2014 subject to compliance with the Council's procedure for permitting such activity to ensure that this does not disrupt or affect the efficient and effective transaction of business.

#### **4.4 Appointment of Special Committees and Sub-Committees**

Council and Committees may from time to time appoint Committees and Sub-Committees respectively. They may appoint any of their Members to such Committees and Sub-Committees subject to any statutory provision and may co-opt where that is authorised by statute. Such Committees/Sub-Committees shall report to the appointing body but shall not have power to transact any business without express authority from the appointing body or by virtue of this constitution.

Where Special Committees are formed, the Council will decide whether to appoint Substitute members to the Committee at the time it makes the appointments.

#### **4.5 Membership**

The membership and substitute members of Council Committees shall be agreed at Annual Council.

If a casual vacancy arises on a Committee, the Assistant Director Law and Governance shall notify the relevant Political Group which is responsible for the appointment to the seat which has been vacated. The nomination by the Political Group shall be considered at the next ordinary meeting of Council, with any change in the appointment of Substitute members to the Committee.

#### **4.6 Quorum**

No business shall be transacted at any meeting of the Council, Committees and of Sub-Committees unless one third of the whole number of members of Council, Committee or Sub-Committee is present.

In the case of committees and sub committees this shall not be less than three members. The quorum for the Licensing Sub-Committee shall be in accordance with the Licensing Sub-Committee Procedure Rules.

If at the time set for the start of a meeting there is not a quorum, the meeting shall not commence until a quorum is present, but if after fifteen minutes there is no quorum the

meeting shall be abandoned and a new meeting date shall be arranged.

If during any meeting a quorum is not present the Chairman shall adjourn the meeting for fifteen minutes. If, after fifteen minutes there is still no quorum the meeting shall stand adjourned to a date and time announced by him/her at the time the meeting is adjourned or shall be included on the agenda for the next ordinary meeting.

#### **4.7 Chairman**

Every Council meeting shall at its first meeting elect a Chairman and Vice-Chairman for the year.

In the case of the Executive, the Leader of the Council (Chairman of the Executive) is appointed by Council and the Deputy Leader of Council (Vice Chairman of the Executive) is appointed by the Leader of the Council.

If at any meeting the Chairman is absent, the Vice-Chairman shall preside. If both the Chairman and Vice-Chairman are absent another Member at the meeting shall preside.

Any power or duty of the Chairman in relation to the conduct of a meeting may be exercised by the person presiding at the meeting.

In the event of a Chairman resigning or intending to resign notice of resignation shall be given at a meeting of the Committee and an election to fill the vacancy made at the first meeting after that.

#### **4.8 Attendance at Executive, Committees and Sub-Committees by those who are not Members**

A Member of the Council may attend any meeting of Executive or the Council of which they are not a member:

- as an observer, without a right to vote or speak, or
- to make a statement (and answer any resulting questions) on an issue on the agenda that directly affects their ward. At the discretion of the Chairman of the meeting they may also be allowed to participate in any debate.

Such attendance shall not be allowed if the matter is one where the Member would be required to declare a disclosable pecuniary interest. In such a case the Member may ask another Member to attend or address the meeting on their behalf.

Members of the public may attend all meetings subject only to the exceptions in these rules.

#### **4.9 Substitutes**

The Terms of Reference for each Committee and Sub-Committee will state whether Substitute members may be appointed and what eligibility restrictions if any shall apply. Substitute members will either be named or unnamed:

- **Unnamed substitutes** are any eligible member of the relevant political group.
- **Named Substitutes** must be members of the relevant political group and be appointed by Council.

If a member of a Committee or Sub-Committee is unable to attend a meeting or there is a vacant seat, a duly appointed Substitute from the appropriate political group shall be entitled to attend, speak and vote at the meeting. This substitution shall apply for the whole duration of the meeting.

No Member shall be entitled to act as a Substitute for more than one member at any one meeting.

The name of the Substitute must be notified to the Assistant Director Law and Governance before the start of the meeting, and shall be reported to the meeting and recorded in the Minutes

#### **4.10 Attendance at Committees and Sub-Committees of the Leader of the Council and Leaders of Political groups who are not Members**

In addition to their rights as elected member under this constitution, the Leader of the Council and Leaders of Political Groups, shall be entitled to attend and speak at Committees and Sub-Committees with the exception of the Licensing, Planning and Standards Committee.

The Leader of the Council and Leaders of Political Groups may arrange for another Member to represent them at any such meeting they are entitled to attend, such attendance shall be notified to the Assistant Director Law and Governance prior to the commencement of the meeting and shall be recorded in the Minutes of the meeting.

#### **4.11 Exclusion of the Press and Public to Meetings**

##### **4.11.1 Confidential Information – requirement to exclude public**

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.

##### **4.11.2 Exempt information – discretion to exclude public**

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.

Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a

presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

Exempt information means information falling within the categories in the following table. Each of these categories has a paragraph number specified in the table, and are subject to the qualifications and interpretation which follow the table.

Paragraph Number	Category
1	Information relating to any individual
2	Information which is likely to reveal the identity of an individual
3	Information relating to the financial or business affairs of any particular person (including the authority holding that information)
4	Information relating to any consultations or negotiations, or contemplated negotiations, in connection with any labour matters arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority
5	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings
6	Information which reveals that the authority: <ul style="list-style-type: none"> <li>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</li> <li>(b) to make an order or direction under any enactment.</li> </ul>
7	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime

#### 4.11.3 Public Interest Test

Information which falls within any of paragraphs 1 to 7 above, and is not prevented from being exempt by virtue of the following two qualifications is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

#### 4.11.4 Qualifications

##### General

Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.

##### Paragraph 3

Information falling within paragraph 3 above is not exempt information if it is required to be registered under:-

- the Companies Act 1985;
- the Friendly Societies Act 1974;
- the Friendly Societies Act 1992;
- the Industrial and Provident Societies Acts 1965 to 1978;
- the Building Societies Act 1986; or
- the Charities Act 1993.

Interpretation

“*employee*” means a person employed under a contract of service.

“*financial or business affairs*” includes contemplated, as well as past or current, activities.

“*labour relations matter*” means any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 [10] (matters which may be the subject of trade dispute, within the meaning of that Act); or any dispute about a matter falling within paragraph (a) above. For the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority.

“*office holder*”, in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority.

“*registered*” in relation to information required to be registered under the Building Societies Act 1986, means recorded in the public file of any building society (within the meaning of the Act).

#### **4.11.5 Exclusion of Public Access to Reports**

If the Assistant Director Law and Governance or any Deputy Monitoring Officer in their absence thinks fit, the Council may exclude access by the public to reports which in their opinion relate to items during which, the meeting is likely not to be open to the public. Such reports will be marked “Not for publication” together with the category of information likely to be disclosed.

## **4.12 Agendas**

### **4.12.1 Ordinary Meetings**

In the absence of a specific agenda set out in the relevant Committee Procedure Rules, the agenda for meetings shall be to:-

- elect a person to preside if the chairman and vice-chairman are not present;
- receive any apologies for absence;
- receive any declarations of interest from members;
- receive any announcements from the chairman
- report any petitions and requests to address the meeting on an item on the agenda, or to receive an address, any other business on the agenda (not applicable to Licensing and Standards Committees, petitions not applicable to Planning Committee)
- deal with any business remaining from the last meeting;
- approve the minutes of the last meeting;
- consider any urgent items of business as agreed by Chairman
- consider ordinary business
- pass a resolution to exclude the public for any items involving the likely disclosure of exempt or confidential information
- any other exempt business on the agenda

The Chairman, or the meeting by resolution, may vary the order of business.

#### **4.12.2 Special or Extraordinary Meetings**

The order of business at a special or extraordinary meeting shall be:-

- (a) To elect a person to chair the meeting if the Chairman and Vice-Chairman are absent.
- (b) To receive apologies for absence.
- (c) To consider the business of the meeting and of any motion or report which it is intended the meeting should consider as set out in the summons,

Those listed below may require the Chief Executive to call a special or extraordinary meeting of the Council:-

- the Council by resolution;
- the Chairman of the Council;
- the Monitoring Officer;
- any five Members of the Council if they have signed a requisition presented to the Chairman of the Council and he/she has failed to call a meeting within seven working days.

Those listed below may require the Chief Executive to call a special or extraordinary meeting of a Committee or Sub-Committee:

- the Chairman of a Committee or Sub-Committee

- a quorum of the Committee or Sub-Committee if they have signed a requisition

#### 4.13 Urgent Business

No business shall be transacted at a meeting other than that specified in the agenda

Where an urgent matter within the terms of reference of that meeting is notified to the Assistant Director Law and Governance prior to the start of the meeting, they will inform the Chairman who will decide whether the matter should be considered at the meeting as a matter of urgency

#### 4.14 Agendas, Minutes and Reports

Any member of a Committee may require the Chief Executive to make sure that an item is placed on the agenda of the next available meeting for consideration, subject to any exclusions as set out in the procedure rules.

The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five clear days before the meeting, except where a meeting is called at shorter notice. If an item is added to the agenda later, the Chief Executive will make each such report available to the public as soon as the report is completed and sent to Members.

All agendas, minutes, reports and other documents of the Council, Committees and Sub-Committees shall be available on request to all Members of Council and to any other person on payment of a charge for postage and any other costs for at least six years, or in the case of background papers four years, following the date of the meeting. The Chief Executive may supply to the public any other documents supplied to Members in connection with an item

They shall be treated as confidential in so far as they may relate to meetings or parts of meetings which are not open to the public, unless and until such a time as they may become public in the ordinary course of the Council's business.

After any meeting of the Council or of its committees, the Chief Executive or, where no Officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as practicable.

The minutes of every meeting shall be sent to each Member of the meeting before the next meeting and shall be taken as read. No discussion shall take place upon the minutes (including matters arising) except upon their accuracy, and any question of their accuracy shall be considered and voted upon.

Minutes of meetings shall be signed at the next ordinary meeting. Members may ask questions on Minutes relating to their accuracy, Members cannot use this facility as a means to re-open debate on an issue or to alter a previous decision.

#### 4.15 Background papers

The Officer producing a report will set out in that report a list of background papers relating to the subject matter of the report which in their opinion, have been relied on to a material extent in preparing the report.

Background papers do not include published works or in respect of Executive reports, the advice of a political advisor.

Background papers which disclose exempt or confidential nature will be marked as such and will not be publicly available.

The Council will make background papers available for four years after the date of the meeting, and all background papers shall be published at the same time as the report in which they are referred to

#### 4.16 Petitions

The Council welcomes petitions and recognises them as a way in which people can let us know their concerns or the strength of public feeling.

##### 4.16.1 Guidelines

Petitions may be submitted regarding any matter which relates to an improvement in the economic, social or environmental well-being of the authority's area and/or to which its partner authorities could contribute.

The following issues are excluded and outside the scope of petitions as defined above:

- matters under any other enactments e.g. petitions requesting and elected Mayor
- any matter relating to a planning decision, including about a development plan document or the community infrastructure levy
- any matter relating to an alcohol, gambling or sex establishment licensing decision
- any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to review or right of appeal conferred by or under any enactment.

Petitions which are considered to be vexatious, abusive or otherwise inappropriate by the Monitoring Officer will not be accepted.

The Monitoring Officer shall determine whether a petition is valid.

The Monitoring Officer or Full Council may at their discretion decide to instruct officers to verify the signatures on a petition, in order to ensure that they are genuine.

In the period immediately before an election or referendum the Monitoring Officer may decide that petitions will be dealt with differently in order to comply with guidance on purdah.

##### 4.16.2 Paper Petitions



Petitions submitted to the council must:

- consist of 10 or more signatures
- include a clear and concise statement covering the subject of the petition. It should state what action the petitioners wish the council to take
- include the name and address and signature of any person supporting the petition

Petitions should be accompanied by the contact details including an address, for the petition organiser. If the petition does not identify a petition organiser, we will contact signatories to the petition to agree who should act as the petition organiser.

The council will acknowledge receipt of a petition to the petition organiser within 10 working days and details of received petitions will be published on the council's website.

#### **4.16.3 E-petitions**

The council welcomes e-petitions which are created and submitted through our website. E-petitions will follow the same guidelines as paper petitions.

E-petition organisers will need to provide their name and contact details.

When an e-petition is created it may take five working days before it is published online. This is because we have to check that the content of the e-petition is suitable before it is made available for signature. Once published, the e-petition will be available online for signature for 28 calendar days.

When an e-petition has closed for signature, it will automatically be deemed to be submitted and dealt with according to the number of signatures. The e-petition organizer will receive an acknowledgement and be advised of the process to be followed.

#### **4.16.4 Council response to a petition**

The council will inform the petition organiser if the council can do or has done what is requested or what steps the council plans to take.

The response to a petition will depend on what a petition asks for and how many people have signed it, but may include one or more of the following:

- taking the action requested in the petition
- considering the petition at a council meeting
- holding an inquiry into the matter
- undertaking research into the matter
- holding a public meeting
- holding a consultation
- holding a meeting with petitioners
- referring the petition for consideration by the council's Overview and Scrutiny Committee
- calling a referendum

- writing to the petition organiser setting out our views about the request in the petition

In addition to these steps, the council will consider all the specific actions it can potentially take on the issues highlighted in a petition.

#### Full Council Debates and Officer Evidence

Petitions that have 1500 or more signatures will trigger a debate at full Council. This will normally take place at the first available meeting. Petition organisers will be given 5 minutes to present their petition and the petition will be discussed by council for a maximum of 15 minutes. Council may decide:

- to take the action as set out in the petition
- not to take the action for the reasons put forward in the debate
- to commission a further investigation
- to make recommendations to the Executive

Petition organisers will receive written confirmation of decisions which will also be published on the council website.

#### Evidence to the Overview Scrutiny Committee

Petitions that request a senior officer (Assistant Directors, Directors, Corporate Directors and Chief Executive) to give evidence to the Overview and Scrutiny Committee must receive 750 or more signatures. The Overview and Scrutiny Committee may decide to ask a more appropriate officer as well as a relevant Member to attend. Up to three working days before the meeting, Petition organisers may submit questions to the Chairman of the meeting.

#### **4.16.5 Right of Review**

The petition organiser has the right to request the Council's Overview and Scrutiny Committee to review the way the council has dealt with a petition if they feel this has not been appropriate. This review will normally take place at the first available meeting.

The Overview and Scrutiny Committee may decide to:

- take no further action
- instigate an investigation
- make recommendations to the Executive
- refer the issue to Council for consideration

The petition organiser will be informed of the results within 5 working days.

#### **4.16.6 Presenting Petitions to Meetings**

Petitions may be presented to all Council meetings except Appeals, Joint Appeals, Planning, Licensing and Standards Committees and their Sub-Committees.

A request to present a petition must be received by the Assistant Director Law and Governance at least 10 working days before the meeting.

Any question as to the relevance of any petition shall be determined by the Chairman of the meeting without debate.

When petitions are presented the presenter shall have the right to briefly announce the subject of the petition and address the meeting upon it for a maximum of 5 minutes.

If the petition is directly relevant to an item before the meeting or that is due to come before the meeting it shall be referred without debate for consideration to a relevant council meeting or officer, who shall respond to the petition and report back to the referring body:

- taking the action requested in the petition
- considering the petition at a Council meeting.
- holding an inquiry into the matter
- undertaking research into the matter
- holding a public meeting
- holding a consultation
- holding a meeting with petitioners
- referring the petition for consideration by the council's Overview and Scrutiny committee
- calling a referendum (where legislation permits)
- writing to the petition organiser setting out our views about the request in the petition.

In the case of referral to another council meeting the person who presented the petition shall be able to address the meeting when the matter referred to in the petition is considered.

#### **4.17 Addresses**

Addresses may be presented to all meetings of Council except Appeals, Joint Appeals, Planning, Licensing and Standards Committees and their Sub-Committees by:

- A Local Government elector for the area,
- A person who is wholly or mainly resident in the area,
- A Council Taxpayer or National Non-Domestic Ratepayer for the area

Addresses must be on an item on the Agenda before the meeting and not exceed 5 minutes. No person will be allowed to address more than one meeting on any particular issue, except in the case where a Planning decision has been referred to Council for consideration.

Requests to address and the reasons for the address must be received by the Assistant Director Law and Governance not later than noon on the working day before the meeting.

The Chairman of the meeting shall determine where on the agenda the address shall be made. The Chairman may require that where there are a number of persons wishing to present similar views on the same issue that an address is made by a single spokesperson, on behalf of all such persons. The Assistant Director Law and Governance will notify persons who are not allowed to address a meeting of that fact and of the reasons for the decision.

Addresses shall not be permitted on the following matters:

- planning applications or any other planning, licensing or standards committee matter involving an individual or applicant for any permission;
- any matter involving negotiations which the Council is engaged in;
- any matter where the Council is involved in negotiation or litigation;
- any matter involving exempt or confidential information as set out in the introduction to this constitution
- any other matter which the Assistant Director Law and Governance considers is inappropriate following consultation with the Chairman

Public speaking on planning applications being considered by Planning Committee is permitted in certain circumstances. Details of how to address Planning Committee are set out in Part 14 of this Constitution, Planning Committee Procedure Rules.

#### **4.18 Motions**

Motions may be submitted by Members for debate at a Council meeting on any issue over which the meeting has power or which affects the District.

Motions must be received in writing, including from a known or recognised e-mail address, by the Assistant Director Law and Governance by noon on the eighth working day before the meeting. Motions will be published on the agenda for which they have been submitted.

Notwithstanding the deadline for motions, Members are encouraged to submit motions early and to discuss potential motions with officers to enable a review in case of any budgetary implications.

If a submitted motion is not proposed either by the Member who has given the notice or by some other Member with their written authority it shall be abandoned and must be submitted afresh if it is to be considered at any future meeting.

If a motion is referred to the Executive or any Committee or Sub-Committee of which the proposer is not a Member, he/she shall be given notice of the meeting at which it is proposed to consider the motion and shall have an opportunity of explaining it, but shall not have a right to vote on it.

Motions will be dealt with at the meeting in the order that they are received. The

Chairman will determine whether motions can be considered consecutively where they cover similar matters.

#### **4.18.1 Scope**

A motion should not exceed 250 words. It shall include nothing that is vexatious or frivolous and must be factually accurate.

#### **4.18.2 Motions with Budgetary consequences**

Any motion on notice or amendment which would require an additional significant expenditure (significant is defined as expenditure of £10,000 or more) in the current budget of the council or capital expenditure of the Council, or would involve capital expenditure, shall, when formally proposed and seconded, be immediately adjourned.

The motion will be considered at the next ordinary meeting of the Council in order that the Executive, relevant Committee and/or statutory officers may report on the potential impact and consequences.

Where a motion has been deferred for budgetary reasons, the Member who submitted the motion, may amend the motion before it is considered by Council.

An urgent motion which cannot wait till the next ordinary meeting of the Council, may, be debated at the meeting of the Council at which it is proposed. The Chairman of the Council will decide whether the item is of an urgent nature after consulting with the Chief Executive and Leader of the Council.

#### **4.18.3 Motions Without Notice**

The following motions may be moved without notice:-

- The appointment of a Chairman in the absence of the Chairman and Vice-Chairman.
- A motion relating to the accuracy of the Minutes of the meeting
- The referral of an issue to the Executive, a Committee or Sub-Committee
- The appointment of a Committee, a representative of the Council on any body or at any meeting, in relation to any agenda item or on the recommendation of any Committee.
- Adoption of recommendations of the Executive, Committees and any consequent resolutions.
- That the meeting be adjourned.
- That a Procedure Rule or Rules be suspended
- That a Procedure Rule or Rules be reinstated
- That the press and public be excluded
- That the press and public be re-admitted
- That a Member be not further heard
- That the order of the agenda items be varied.

- That a motion be withdrawn.
- A motion which is deemed urgent by Chairman under Section 100B(4) of the Local Government Act 1972 be considered.
- That a motion be taken in specified parts
- A procedural motion

#### **4.19 Rescission of Resolution**

No motions to rescind or vary an agreed decision or a motion which has been voted on and lost within the preceding six months shall be allowed, except in the following circumstance:

A motion to rescind or vary an agreed decision or a motion which has been voted on and lost within the preceding six months shall be allowed, if it has the signature or e-mail from a known or recognised source of 8 Members and is received by Assistant Director Law and Governance by noon on the eighth working day before the meeting.

When such a motion has been considered, it shall not be open to any Member to propose a similar motion for a further period of six months.

The above provision shall not apply to motions which are moved following consideration by the Executive or a Committee, nor shall it prevent the Executive or a Committee or Sub-Committee varying or rescinding a decision which has been taken under delegated authority within the preceding six months.

#### **4.20 Postponing a Decision to Rescind or vary a Resolution**

When a Council meeting has passed a motion to vary or rescind a resolution, it may be postponed by a notice signed or by e-mail from a known or recognised source by 8 Members of the Council, which shall be received by the Assistant Director Law and Governance by noon on the day following the meeting at which the resolution to rescind or vary the decision was passed.

Upon receipt of such a notice the decision referred to and to be subject to variation or rescission shall be suspended and the issue referred to Council for resolution.

#### **4.21 Presentations and Presentation of Reports to Council Meetings**

A Council meeting (with the exception of meetings of Council where the suspension of the Meeting Procedure Rules shall be required), may, prior to entering debate on any issue, receive a report presented by an officer, Member or presentation from an officer or other invited stakeholder. Members may then ask questions of the presenter through the Chairman.

## 4.22 Rules of Debate

At Council every Member shall be seated except the one who is addressing Council. When the Chairman rises no one else shall continue standing, or rise from their seat.

At Committees and Sub-Committees all Members shall be seated and only one Member at a time, as directed by Chairman, shall speak. When the Chairman wishes to speak no one else shall continue speaking.

### 4.22.1 Proposer Speech

The proposer of a motion or amendment shall first state the precise wording or effect of the motion or amendment which shall not be further explained or discussed unless it has been formally seconded.

Motions and amendments must be submitted in advance of the Council meeting in line with the deadlines in this Constitution. Any amendments to recommendations shall, if required by the Chairman, be reduced to writing, handed to the Chairman and read before it is moved.

### 4.22.2 Secunder Speech

Every motion shall be formally seconded before it is discussed or put to the meeting. The seconder of a motion may reserve their speech for a later period in the debate and can speak at any point in the debate by raising their hand. This does not however mean they must be the penultimate speaker before the proposer sums up and other speakers can address the meeting after the seconder.

### 4.22.3 Speeches by Others and Amendments

A Member who speaks shall address the Chairman and direct their speech strictly to the motion or amendment under discussion or to a point of order relating to procedure. A Member shall not speak more than once on any motion or amendment.

“Friendly amendments process”: A Member may alter a Motion of which s/he has given notice to accept an amendment to their motion with the consent of Council. The meeting’s consent will be signified without discussion. Only alterations which can be made as an amendment may be made.

No Member shall propose or second more than one amendment on any one motion. The seconder of an amendment may reserve their speech for a later period in the debate on the amendment.

Any Member of the Council wishing to propose an amendment to a submitted motion for consideration at a meeting of Council must give notice to the Assistant Director Law and Governance as to the proposed wording of the amendment to the motion in writing or from a known or recognised email address before 12noon on the second working day before the Council meeting. Amendments will be published in the afternoon of the working day before the meeting.

An amendment must be relevant to the motion on which it is moved and may only:

- leave out words.
- leave out words and insert or add others.
- insert or add words.
- refer any motion, issue, or part of an issue, to an appropriate body, meeting or individual for consideration or reconsideration. No further amendment may be moved, if this amendment is agreed

An amendment may not amount to a direct negative of the motion or nullify the motion.

It shall include nothing that is vexatious or frivolous and must be factually accurate.

The amendment must not take the original Motion over 250 words.

If an amendment is rejected, other amendments submitted may be debated on the original motion.

If an amendment is carried, the motion, as amended, shall take the place of the original motion, and shall become the motion upon which any further amendments submitted may be moved.

No further amendment shall be moved until the Council has disposed of any amendment previously moved.

#### **4.22.4 Leader of the Council/ Relevant Committee Chairman Right of Reply**

The Leader of the Council (in respect of motions concerning Executive functions) or relevant Committee Chairman (in respect of motions concerning non-executive functions) shall be entitled to a right of reply.

#### **4.22.5 Proposer Rights of Reply**

In a debate upon a motion the proposer of the original motion may reply at the close of the debate upon the motion and shall strictly confine him/herself to answering the previous speakers and shall not introduce any new matter.

In a debate upon an amendment, the proposer of the amendment and the proposer of the original motion may both reply at the close of the debate upon the amendment, the proposer of the amendment shall reply first before the proposer of the original motion. Both shall, in replying, confine themselves to answering previous speakers and shall not introduce any new matter.

Once the proposer of an amendment commences speaking, only the proposer of the motion may subsequently speak.

Once the proposer of the motion commences speaking, no further speakers will be heard.

In all cases a decision shall be taken without further discussion after the reply of a proposer of a motion.

#### **4.22.6 Withdrawal of Motion**

A Member may withdraw a motion which s/he has moved, with the consent of both the



meeting and the Seconder. The consent of the meeting will be signified without discussion. No Member may speak on the motion after the proposer has requested permission to withdraw it, unless permission is refused.

#### **4.22.7 Point of Order**

A Member may raise a point of order at any time. The Chairman shall hear it immediately. A point of order may only relate to an alleged breach of these procedure rules or the law. The Member must indicate the rule or law and the way in which s/he considers it has been broken. The ruling of the Chairman (to be made after the taking of advice from the Chief Executive or in their absence the most senior officer present) on the matter shall be final.

#### **4.22.8 Personal Explanation**

A Member may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the member which may appear to have been misunderstood in the present debate. the ruling of the Chairman (to be made after the taking of advice from the Chief Executive) on the admissibility of a personal explanation shall be final.

#### **4.22.9 Procedural Motions**

A Member who has not spoken on the question before the meeting may, with the consent of the Chairman, propose without comment, any one of the following procedural motions:-

- that the meeting move straight to the vote.
- that the debate be adjourned
- that the meeting proceed to next business

Once seconded, the Chairman shall immediately put the procedural motion to the vote.

If a procedural motion that the meeting move straight to the vote is carried the Chairman shall first call upon the proposer of the amendment (if any), and then on the proposer of the original motion under discussion to reply, and shall then put the motion under discussion to the vote.

If the procedural motion that the debate be adjourned or that the meeting be adjourned is carried, the motion under discussion shall be adjourned to the next meeting, or the meeting shall stand adjourned as the case may be, without the proposer of the motion, or the proposer of the amendment if any being called upon to reply.

If the procedural motion to proceed to next business is carried the Chairman shall call upon the proposer of the amendment (if any), and then on the proposer of the motion under discussion to reply, and shall then put the motion under discussion to the vote.

#### **4.22.10 Limitations on Speaking**

Motion of which Notice has been given	(1) Proposer	5 minutes
	(2) Secunder (Right to Reserve)	3 minutes
	(3) Others	3 minutes
	(4) Leader of the Council in respect of motions concerning Executive functions, or the Chairman of the relevant Committee in respect of motions concerning non-executive functions.	3 minutes
	(5) Proposer	3 minutes
Amendment to a motion	(1) Proposer of Amendment	5 minutes
	(2) Secunder (Right to Reserve)	3 minutes
	(3) Others	3 minutes
	(4) Proposer of Amendment	3 minutes
	(5) Proposer of Original Motion	3 minutes

#### 4.22.11 Length of Speeches as part of Budget Setting

At the Full Council meeting at which the budget for the forthcoming financial year is set, the length of speeches for the proposer of the budget, Group Leaders and proposers of amendments shall be 10 minutes. This is applicable only when introducing and proposing the budget, Group Leaders responding to the budget and proposer of amendments.

The length of speeches at all other times and for all other speakers is as set out a paragraph 4.22.10.

#### 4.23 Chairman's Decision

The decision of the Chairman on any matter upon which it is necessary for him/her to rule in respect to the rules of debate or any other matter relating to the conduct of meetings shall be final and shall not be open to discussion.

#### 4.24 Voting

Every matter will be decided by a simple majority, except in the case of voting on appointments. Every question shall be determined by a show of hands of those Members present and voting. Members must be seated in their places in the meeting room when voting. Individual Members shall have the right to have their votes for or against a motion, or the fact that they have abstained from voting recorded in the Minutes of the meeting at which the vote is taken, provided they request that this be done immediately after the vote is taken.

#### **4.25 Recorded Vote**

If, before the vote is taken, two Members request a recorded vote the names for and against the motion or amendment and the names of Members abstaining shall be taken down in writing and entered in the Minutes. A recorded vote shall always be taken when the Council is considering a motion to set an annual budget (including any amendment motions in connection therewith) or a motion to set the council tax or issue a precept.

#### **4.26 Voting on Appointments**

Where there are more than two persons nominated for any position to be filled by the Council and of the votes given there is not an overall majority in favour of one person, the name of the person having the least number of votes shall be struck off the list and a fresh vote taken and so on until a majority of votes is given in favour of one person.

#### **4.27 Suspension and Amendment of Rules**

Any Meeting Procedure Rules (with the exception of the right for a Member to have the details of their vote or abstention recorded in the minutes) may, by a simple majority be suspended at any meeting with regard to any item of business to be transacted. The duration of the suspension shall be clearly stated.

#### **4.28 Prevention of Disorderly Conduct**

##### **4.28.1 Members**

At a meeting of the Council if any Member persistently:

- disregards the ruling of the Chairman and/or
- behaves irregularly, improperly or offensively and/or
- wilfully obstructs the business of the meeting

the Chairman may adjourn the meeting for such a period as is considered appropriate to resolve the issue, alternatively,

the Chairman of the Council or any other Member at the discretion of the Chairman may propose that the Member named be not further heard. Upon being seconded it shall be

immediately put to the meeting and decided without discussion. If it is carried the Member named shall not speak further at the meeting.

#### **4.28.2 Members of the Public**

If a Member of the public interrupts the proceedings at any meeting or causes disruption or disturbance while filming, recording or broadcasting the meeting, the Chairman shall warn him. If he continues the interruption, the Chairman shall request him to leave the Meeting Room. If he does not leave, the Chairman shall either adjourn the meeting or order their removal from the meeting room.

In case of general disturbance in any part of the meeting room open to the public, the Chairman shall order that part to be cleared.

#### **4.28.3 General Disturbance**

In the event of a general disturbance which in the opinion of the Chairman renders the due and orderly dispatch of business impossible, the Chairman may adjourn or suspend the meeting of the Council until the disturbance is brought under control, or for such period of time as he shall deem appropriate and the meeting shall thereupon be adjourned or suspended accordingly.

## **Overview & Scrutiny Procedure Rules (March 2024)**

### **4 (a) Overview and Scrutiny Committee**

#### **1. Preamble**

- 1.1 The Meeting Procedure Rules [ ] set out the rules and procedures that apply to all of the Council meetings.
- 1.2 If there is any conflict between the wording of the Meeting Procedure Rules and this Appendix will prevail.

#### **2. Scope of Role**

- 2.1 The Overview and Scrutiny Committee will be appointed to discharge the functions conferred by Section 21 of the Local Government Act 2000 or Regulations under Section 32 of the Local Government Act 2000.
- 2.2 Members and Officers must have regard to the Council's Scrutiny Guidance for Members or any replacement of such guidance from time to time in force ("the Guidance").

#### **3. Membership**

- 3.1 12 members based on proportional representation with unnamed substitutes. However, no Member may be involved in scrutinising a decision in which they have been directly involved. Executive members may not sit on or substitute on Overview and Scrutiny Committee.
- 3.2 Unnamed substitutes are permitted (excluding Task and Finish/*Working* Groups). Substitutes will have all the powers and duties of any ordinary member of the meeting. Substitutes for the Overview and Scrutiny Committee will not be able to exercise any special powers or duties exercisable by the person they are substituting.

#### **4. Appointment of the Chairman**

- 4.1 The Chairman of the Overview and Scrutiny Committee will be appointed by the Committee and may be from any political group. The election of the Chairman will take place outside of the full Council meeting. The Guidance sets out the pre appointed process to assist members in selecting the most suitable candidate.

## **5. Terms of Reference**

### **5.1 Functions**

Within its scope and terms of reference, the Overview and Scrutiny Committee may:

- (a) review and monitor the performance of the Council's services;
- (b) review and/or scrutinise policies, proposals, decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (c) make reports and/or recommendations to the Council and/or the Executive in connection with the discharge of any functions;
- (d) consider any matter affecting the area or its inhabitants;
- (e) exercise the right to Call-in, for reconsideration, decisions made, but not yet implemented by the Executive.
- (f) consider matters arising from a Councillor Call for Action (CCfA) under Section 119 of the Local Government and Public Involvement in Health Act 2007 and Regulations thereunder; and
- (g) undertake the functions of the Council's crime and disorder committee for the purposes of Section 19 of the Police and Justice Act 2006, including CCfA relating to crime and disorder matters.

### **5.2 Specific Functions**

- (a) **Scrutiny** - Within its scope and terms of reference Scrutiny may:
  - (i) review and scrutinise the decisions made by and performance of the Executive and/or Committees and the appropriate Officers both in relation to individual decisions and over time;
  - (ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service area;
  - (iii) question Members of the Executive and/or Committees and appropriate Officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;

- (iv) make recommendations to the Executive and/or appropriate Committees and/or Council and/or any external bodies arising from the outcome of the scrutiny process;
  - (v) review and scrutinise the performance of major partnerships and other public bodies in the area and invite written reports and/or request them to address the Committee and local people about their activities and performance;
  - (vi) require Members of the Executive, the Chief Executive, Corporate Directors, Directors and Assistant Directors to attend to answer questions and give evidence on receipt of at least 5 days' written notice.
  - (vii) question and gather evidence from any person *who is* not a Member or an Officer of the Council, with their consent;
- (b) **Advisory and Review** – Within its scope and terms of reference the Overview and Scrutiny Committee may:
- (i) assist the Council and the Executive in the development of its Policy Framework by in-depth analysis of policy issues,
  - (ii) conduct research, community and other consultation in the analysis of policy issues and possible options
  - (iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options,
  - (iv) make recommendations to Executive and/or appropriate Committees and/or Council and/or any external bodies arising from the outcome of the scrutiny process.
  - (v) review and scrutinise the performance of major partnerships and other public bodies in the area and invite written reports and/or request them to address Councillors and local people about their activities and performance.
- (c) **Annual Report** – The Overview and Scrutiny Committee will report annually to Council on function on their workings and make recommendations for future work programmes and amended working methods if appropriate.

- (d) **Work Programme** – The Overview and Scrutiny Committee will exercise overall responsibility for the Overview and Scrutiny Work Programme and for ensuring that this is sustainable with regard to the support and resources that are available to it and that is considered in conjunction with other committees of the Council and their respective work programmes in order to minimise duplication of effort.

## **6. Proceedings**

**6.1** In these procedure rules the terms ‘overview and scrutiny’ and ‘overview and scrutiny meeting’ shall be used to refer to the Overview and Scrutiny Committee, and Task and Finish / Working Groups collectively.

**6.2** Overview and Scrutiny Committee shall as a general principle meet in public, unless considering information described as ‘exempt’ as described in the meeting procedure rules of this Constitution. This does not preclude but encourages flexible and innovative working such as the delegation of tasks to a Member or a small informal working group of Members meeting out of the public arena, consultations or any other form of working. Such working will be reported back to the relevant overview and scrutiny meeting.

**6.3** For the purposes of this part of this Constitution, “the party whip” means any instruction given by or on behalf of a Political Group to any Councillor who is a member of that Political Group as to how that Councillor shall speak or vote on any matter before the Council or any Committee or Sub-Committee, or the application or threat to apply any sanction by the Political Group in respect of that Councillor should they speak or vote in any particular manner.

Overview and Scrutiny members, in the performance of Overview and Scrutiny duties, should not be subject to a party whip. Where an overview and scrutiny member is subject to a party whip, they must declare this at the beginning of the meeting and it will be recorded in the minutes.

**6.4** The Overview and Scrutiny Committee will meet regularly on dates to be determined by Council on an annual basis.

They may agree to hold additional meetings as required

### **Overview and Scrutiny Groups**

**6.5** The Overview and Scrutiny Committee may appoint Groups (each of a maximum 12 members) for a fixed period, on the



expiry of which they shall cease to exist. The number of Groups active at any one time will be kept under review by the Overview and Scrutiny Committee.

- 6.6** The Overview and Scrutiny Committee will decide whether a Group should be formal – a Task and Finish Group (subject to proportionality and Access to Information rules) and report directly to Executive, Full Council or Overview and Scrutiny or, informal – a Working Group (not subject to proportionality and Access to Information rules) and report back to the Overview and Scrutiny Committee.
- 6.7** The Chairmen of formal Task and Finish Groups will be appointed by the Task and Finish Groups, from amongst their number and may be from any political group.
- 6.8** The Chairmen of informal Working Groups are appointed by the Chairman of Overview and Scrutiny and may be from any political group
- 6.9** At the first meeting of the Overview and Scrutiny Committee following Annual Council and on the establishment of a new Group, the Overview and Scrutiny Committee shall, in respect of each Group, appoint one of its number to sit on each Group. The Chair of each group will act as the designated link member, who will:
- Provide expertise, assistance and guidance.
  - Liaise with the Chair and Vice-Chair of Overview and Scrutiny on progress
  - Keep the Overview and Scrutiny Committee updated on progress.
  - Help facilitate the smooth running of the overview and scrutiny function.
  - Be a full member of the Task and Finish Group.

The political groups will allocate members to formal Task and Finish Groups according to proportionality, which shall be appointed under delegated authority by the Director: Law and Governance in consultation with the Chairman, or in their absence the Vice-Chairman, of the Overview and Scrutiny Committee.

Formally constituted Task and Finish Groups will be subject to these Overview and Scrutiny Procedure rules and Access to Information rules. Substitutes will not be permitted.

Groups may be established to undertake specific project work, policy development, a specific task, consultation, review investigation or

similar activity. Groups will normally only make one final report during their lifetime.

At the first meeting of each new Group, they will carry out a stakeholder analysis exercise to determine who should be involved with their work and who should give evidence and who should be consulted. It will also highlight potential co-optees.

Groups may appoint any number of people (excluding members of staff or other Councillors) as non-voting co-optees to assist in any item of business, as they deem appropriate.

Each Group will also be required to agree a detailed work plan to enable them to complete their task within the agreed timescale.

Each Group shall determine the frequency, times and venues of their own meetings, in accordance with the timetable for the completion of their task as set out in their terms of reference.

## **7. Evidence - Documents**

**7.1** Overview and scrutiny members will be entitled to copies of any document which is in the possession or control of the Executive (or its committees) or individual Portfolio Holders and which contains material relating to:

- any business transacted at a meeting of the Executive (or its Committees); or
- any decision taken by an individual member of the Executive
- any decision made by an officer of the authority under the Executive arrangements

**7.2** Overview and scrutiny members will not be entitled to:

- any document that is in draft form;
- any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; or
- the advice of a political adviser.

Nothing prevents more detailed liaison between the Executive and overview and scrutiny as appropriate depending on the particular matter under consideration.

## **8. Evidence - Verbal**

- 8.1** Any person, including Members and Officers, may be invited to attend, present evidence or share their expertise with any overview and scrutiny meeting in accordance with these rules. Requests for Officers to attend should be made through the Head of Paid Service.
- 8.2** The Overview and Scrutiny Committee may scrutinise and review decisions made, or actions taken in connection with the discharge of any Council functions within its terms of reference. As well as reviewing documentation, in fulfilling the scrutiny role, it may require any member(s) of the Executive, Chairman of a Committee, Ward Member and/or Corporate Leadership Team to attend to explain, answer questions, or give evidence in relation to matters within their remit regarding:
- any particular decision or series of decisions;
  - the extent to which the actions taken implement Council policy; and/or
  - the performance of any Council service within their remit;

and it is the duty of those persons to attend if so required.

Where any member of the Executive, Chairman of a Committee, Ward Member and/or *Corporate* Leadership Team is required to attend an overview and scrutiny meeting under this provision, the Chairman of that meeting will inform the Head of Paid Service.

This power may be exercised by the Chairman of the Overview and Scrutiny Committee in advance of a meeting.

The Head of Paid Service shall inform the Executive Member, Ward Member and/or appropriate Officer in writing, giving reasonable notice of the meeting at which, they are required to attend.

The notice will state the nature of the item on which they are required to attend to give account and whether any papers are required to be produced.

Where papers are required to be produced then the Executive Member, Ward Member or appropriate Officer concerned, will be given sufficient notice to allow for preparation of that documentation.

Where, in exceptional circumstances, the Executive Member, Chairman of a Committee, Ward Member and/or appropriate Officer is unable to attend on the required date, then the Overview and Scrutiny Committee shall in consultation with the Executive Member, Ward Member or appropriate officer, arrange an alternative date for attendance or in the case of officers request a suitable replacement to be agreed by the Head of Paid Service.

**8.3** The Overview and Scrutiny Committee may invite any person to address it, to discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and representatives from other parts of the public sector and shall invite such people to attend. Attendance under this paragraph is entirely optional.

- Power to issue an invitation may be exercised by the Chairman of the Overview and Scrutiny Committee in advance of a meeting.
- As a general principle overview and scrutiny meetings, including Call-in meetings, should be open to any interested Councillor or group of Councillors such as a relevant Task and Finish / Working Group and their attendance encouraged and contributions welcomed at the discretion of the Chairman.

## **9. Reports**

**9.1** The Overview and Scrutiny Committee will be responsible for setting its own annual work programme within the terms of reference set out in this Constitution.

All Councillors, the Chief Executive, Corporate Directors, Directors, Assistant Directors and the public may put forward issues for inclusion in the overview and scrutiny work programme. Issues will be assessed by the Committee to determine the salience of the issue based on risk management, corporate priorities and other relevant factors.

**9.2** Any member of the Overview and Scrutiny Committee shall be entitled to give notice to the Chief Executive that they wish an item relevant to the Committee terms of reference at the first available meeting. The meeting will determine whether the issue should be included in its work programme based on its relevance as compared to the priorities as set out in the overview and scrutiny work programme.

Any elected Member of the Council may give written notice to the Monitoring Officer that they wish a local matter relating to the work of the authority to be considered for inclusion in the overview and scrutiny work programme. If the Monitoring Officer receives such a notification, then they will refer the request to the first available meeting of the Overview and Scrutiny Committee who will determine if, when and how the item will be considered based on its relevance as compared to the priorities as set out in the overview and scrutiny work programme and inform the Democratic and Elections team accordingly so that it can be included in the overview and scrutiny work programme.

The Overview and Scrutiny Committee is not obliged to pursue a matter referred by a Member but it must let that Member know the reasons for its decision. When deciding how to proceed, the Overview and Scrutiny Committee may consider representations from the Member who referred the matter, and to take into account the extent to which that Member has exercised their function as a Ward Member to resolve it. Where the Overview and Scrutiny Committee does pursue a matter, it shall report its findings and any recommendations back to the Member who raised the matter.

The Overview and Scrutiny Committee shall respond, as soon as its work programme permits, to requests from the Council and Executive to undertake a piece of work on their behalf in line with the procedure above. Where the Overview and Scrutiny Committee does so, it shall report its findings and any recommendations back to the Executive or Council. Council or Executive shall consider the report of the Overview and Scrutiny Committee at its first available meeting.

- 9.3** Once the Overview and Scrutiny Committee has completed its deliberations on any matter, it will forward a copy of its final report to the Chief Executive who will allocate it either to the Executive, Council, relevant committee, relevant partner authority or external body according to the contents of the report.

The Overview and Scrutiny Committee must give the Executive, Council, relevant committee, relevant partner authority or external body notice in writing specifying the steps which must be taken within two months of receiving the report or recommendations or, if later, the notice. These steps include responding to the report or recommendations and, if these documents have been published by the overview and scrutiny committee, publishing the response.

The Executive, Council, relevant committee, relevant partner authority or external body must comply with the notice where it is legally obliged to do so.

## **10. Report to Council- Key Decision**

- 10.1** If the Overview and Scrutiny Committee thinks that a key decision has been taken which was not included in the

- Executive Work Programme (including the 28 day notice); or
- the subject of the general exception procedure; or
- the subject of an agreement with the Overview and Scrutiny Committee

Chairman, or the Chairman of the Council under the special urgency rules;

the committee may require the Executive to submit a report to the Council within such reasonable time as the committee specifies.

The power to require a report rests with the committee, but is also delegated to the Chief Executive, who shall require such a report on behalf of the committee when so requested by the Chairman. Alternatively, the requirement may be raised by resolution passed at a meeting.

- 10.2 In relation to the development of the Council's approach to ~~other~~ matters not forming part of the Budget and Policy Framework, the overview and scrutiny committees may hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations, subject to finance being available. They may invite witnesses to attend to address them on any matter under consideration.

Once it has formed recommendations on proposals for policy development, the Overview and Scrutiny Committee will prepare a formal report for consideration by the Executive or Council.

Executive or Council shall consider the report of the Overview and Scrutiny Committee at their first available meeting.

The Overview and Scrutiny Committee will have access to the Executive Work Programme (including the 28 day notice) and timetable for decisions. Even where an item is not the subject of detailed proposals from overview and scrutiny following a consideration of possible policy/service developments, the Overview and Scrutiny Committee will be able to respond in the course of the Executive's consultation process in relation to any key decision.

## **11. Decisions of the Executive**

- 11.1 A summary notice of decisions made under the Executive arrangements shall generally be published on the next working day (or in any event as soon as

possible) after the decision has been made and shall be circulated to all Members of the Council. This shall include a record of the decision and the date it was made, the reasons for the decision, any alternative options considered and rejected by members in making the decision, a record of any conflict declared by the decision maker or member of the decision making body and any dispensations granted.

- 11.2** Details of any decision made, decisions taken at meetings of the Executive, or a committee of the Executive, and any decisions taken by individual Portfolio Holders or any key decisions taken by officers will normally be published by 5pm on the next working day after they have been made. This decision notice will be made publicly available and all Members of the Council will receive notification (normally by e-mail) of the decisions taken.

The notice will specify that the decision will come into force and take effect at noon on the fourth working day following publication of the decision, unless it is called-in.

**12. Non-Implementation of Decisions Pending Possible Call-in**

Except where the Call-In procedure does not apply, Executive Decisions shall not be capable of implementation until either:

- the time for a Call-In request has expired without such a request being made; or
- the Call-In procedure in the following rules has been followed.

**13. Call-in – Application and Process**

- 13.1** The Chief Executive shall call in a decision for scrutiny if so requested in writing, by e-mail or by text from a known or recognised source by any 5 non-executive members of the Council within the specified timescale.

However, if at any point during a municipal year the total number of opposition Councillors is 5 or less, the total number of non-executive members required to call in a decision shall be the total number of opposition Councillors less two. This reduced number will apply to any call-in, regardless of the political affiliation of the members concerned.

In all cases the request for call-in must set out the reasons for the request.

A request to call-in a decision may only be nullified by agreement of all the call-in signatories.

On receipt of a call-in request, the Chief Executive shall call-in the decision

and notify the decision taker and Chairman of the Overview and Scrutiny Committee of the call-in.

The call-in procedures set out below shall not apply where the decision being taken by the Executive, individual Portfolio Holder, Committee, Sub-Committee or officer is urgent. A decision is urgent if any delay is likely seriously to prejudice the Council's or the public's interest.

The record of the decision and the notice by which it is made public shall state whether, in the opinion of the decision-making person or body, the decision is an urgent one and therefore not subject to call-in. In all cases, the Chief Executive must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency and, if agreed, shall circulate the decision electronically to members of Executive and overview and scrutiny.

The Chief Executive shall then ask the Chairman of the Overview and Scrutiny Committee to agree to call-in being waived. In the absence of the Chairman, the Vice-Chairman's consent shall be required, and in the absence of the Vice-Chairman, the Chairman of Council.

#### **14. Call-in - Review**

- 14.1 The Overview and Scrutiny Committee must consider the decision within 10 days of the decision to call-in, and if necessary, it may be dealt with as an item of urgent business at a scheduled meeting of the Overview and Scrutiny Committee within that period. If the Overview and Scrutiny Committee does not meet within 10 days and consider the matter, the decision shall take effect on the expiry of that period.

#### **15. Call-in - Procedure**

- 15.1 In considering a Call-in decision the Overview and Scrutiny Committee will follow this protocol:

##### Before Receipt of Call-In

Overview and scrutiny support officers will work with the call-in signatories to complete the reasons for call-in. Completed reasons for call-in will be received by the Chief Executive, who will then consider whether to call-in the decision.

##### After Receipt of Call-In and before the meeting



The Chief Executive will confirm the validity of the call-in and advise all Councillors and the Leadership Team of the call-in request.

The Chief Executive will determine which Portfolio Holder should attend the call-in, which officer should accompany them and which officer they appoint to advise the Overview and Scrutiny Committee on the call-in.

Overview and scrutiny support officers will meet with the call-in signatories, to clarify the procedure, consider how they will present the call-in and prevent duplication. Overview and scrutiny support officers will brief the Chairman on the call-in.

### Documents

The agenda will contain:

- This call-in Protocol
- The call-in request
- The Portfolio Holders' decision statement or minutes
- The original report(s) upon which the decision was made
- (In the case that either the minutes or report are exempt a public summary of information will be provided as far as is possible).

Any other document that the Chief Executive, Portfolio Holder or call-in signatories feel would assist the Committee in considering the call-in.

### At the start of the meeting

The Chairman will outline the procedure for the meeting, setting the tone and approach that will be taken.

### The meeting

The spokesperson(s) for the Councillors who have made the call-in request (who shall be seated together) should outline the reasons for the call-in. Each speaker will be time limited to 5 minutes.

The relevant Portfolio Holder explains the rationale for the decision and may be supported by officers and the Leader of the Council as appropriate. They shall also be seated together. Each speaker will be time limited to 5 minutes.

Councillors who have made the call-in request have the opportunity to question the Portfolio Holder.

Other members of the Overview and Scrutiny Committee have the opportunity to question the Portfolio Holder.

At the discretion of the Chairman, other Members present may have the opportunity to question the Portfolio Holder or make a brief statement.

At the discretion of the Chairman, anyone else present may have the opportunity to make a statement (limited to 5 minutes) on the issue.

The Portfolio Holder or will have a right of reply to any brief statement made on the issue.

Before forming a decision, the Chairman may decide to adjourn the meeting in order to allow the call-in signatories to reflect on the evidence received and to consider any proposals they wish the Committee to consider.

The Overview and Scrutiny Committee will debate the issue. Only members of the Committee and the Officer appointed by the Chief Executive to advise the Overview and Scrutiny Committee on the call-in may speak.

If there is no proposal the Chairman or another Member may propose a motion which can be voted on in the normal way.

#### Options available to the Overview & Scrutiny Committee

There are only three options available to the Overview and Scrutiny Committee when they are considering a call-in:

- Let the decision stand
- Refer the decision back to the decision taker, stating their concerns and the decision that the Committee wish the decision taker to make.
- Refer the decision to full Council if the decision is contrary to the policy framework or contrary to or not wholly consistent with the budget.

Additionally the Overview and Scrutiny Committee may make other recommendations as a result of the call-in to relevant bodies, which shall be considered after a decision has been reached on the call-in.

## **16. Review of Decision**

- 16.1** The Overview and Scrutiny Committee upon hearing a call-in may decide to let the decision stand, refer the decision back to the decision maker for

reconsideration or, exceptionally, refer the decision to full Council if it is of the view that the decision is contrary to the Council or policy framework, or not wholly consistent with the budget.

If the Overview and Scrutiny Committee refers a decision back to the decision maker for reconsideration, they must set out in writing the reasons for their concerns and their preferred course of action.

If, for any reason, either the Overview and Scrutiny Committee or the decision maker fails to meet and carry out their obligations under this process or in the event of any situation not foreseen in this procedure, the issue will be referred to full Council for the process to be resolved. Implementation of the decision will be postponed until Council has determined how it shall be resolved.

If the Overview and Scrutiny Committee decides not to refer a decision back to the decision maker or to Council, the decision shall take effect immediately at the conclusion of the meeting at which the call-in has been considered.

The call-in procedure is not intended to be used to challenge decisions as a matter of course, and should not be abused in order, for example, simply to cause delay in implementing decisions. Some councils limit the no of calls in to eg 6 per year

## **17. Referral back to Executive/Decision Maker**

**17.1** Reconsideration by the decision maker shall take place at the next scheduled meeting of the Executive or a Committee of the Executive. In the case of decisions taken by individual Portfolio Holders, the date of reconsideration will be set by the relevant Portfolio Holder in consultation with the Chief Executive and the Leader of the Council. In the case of delegated decisions taken by officers, the decision shall be referred back to the Portfolio Holder in the first instance for reconsideration. Portfolio Holders have the option of forwarding any decision referred to them to the full Executive for reconsideration.

If, on reconsideration by the decision maker, the original decision is upheld or the recommendations of the Overview and Scrutiny Committee are accepted then the decision shall take effect immediately and shall not be subject to a further call-in period.

If the Overview and Scrutiny Committee is considering a called-in matter where the decision taker is recommending to Council, it may formulate

alternative proposals for Council to consider.

In the case of a called-in decision being referred to Council, if Council decides that the called-in decision was contrary to the policy framework or not wholly consistent with the budget it shall decide on the issue in question.

If the Council decide that the called-in decision was not contrary to the policy framework or consistent with the budget then no further action is necessary and the decision will take effect on the date of the Council meeting.

- 17.2** Where the Overview and Scrutiny Committee is of the opinion that an executive decision is, or if made would be, contrary to the policy framework, or contrary to or not wholly in accordance with the Council's budget, then it shall seek advice from the Monitoring Officer and/or Section 151 Officer.

In respect of functions which are the responsibility of the Executive, the Monitoring Officer's report and/or Section 151 Officer's report shall be to the Executive with a copy to every member of the Council. Regardless of whether the decision is delegated or not, the Executive must meet to decide what action to take in respect of the Monitoring Officer's report and/or Section 151 Officer's report.

If the Monitoring Officer or the Section 151 Officer concludes that the decision was a departure, the Executive must prepare a report to Council.

If the Monitoring Officer or the Section 151 Officer concludes that the decision was not a departure, the Executive must prepare a report to the Overview and Scrutiny Committee.

If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer and/or Section 151 Officer is that the decision is or would be contrary to the policy framework or contrary to or not wholly in accordance with the budget, the Overview and Scrutiny Committee may refer the matter to Council.

In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council shall meet within 10 days of the request by the Overview and Scrutiny Committee.

## Part 5: Council Procedure Rules

(February 2023)

- 6.1 Agenda for Ordinary Meetings of Council**
- 6.2 Annual Council Meeting**
- 6.3 Appointment of Committees**
- 6.4 Receiving of Minutes and Executive Portfolio Holder Decisions by Council**
- 6.5 Recommendations from Committees**
- 6.6 Written Questions**
- 6.7 Determination of Planning Applications**
- 6.8 Finish Time of full Council**

The following Procedure Rules shall apply to meetings of full Council.

### 6.1 Agenda for Ordinary Meetings of Council

The agenda for ordinary meetings shall be to:-

- elect a person to preside if the Chairman and Vice-Chairman are not present;
- receive any apologies for absence;
- receive any declarations of interest from Members;
- receive any announcements from the Chairman of the Council and/or the Leader;
- to report any petitions and requests to address the Council on an item on the agenda, or to receive an address, from an organisation, which is of importance to the District;
- consider any other business or motions which the Chairman has decided are urgent and which are not included in the agenda;
- approve the minutes of the last meeting;
- receive minutes from the Executive, a verbal update from the Leader of the Council on Executive key decisions taken since the last meeting which were not included in the published Executive Work Programme; receive a record of decisions made by Executive Portfolio Holders and minutes from Council Committees
- receive questions including written questions and answers submitted by Members, questions to the Leader of the Council (including any matters arising from the minutes of Executive) and questions to Committee Chairmen on Committee minutes
- consider and resolve any issues called in to the Council in accordance with the Constitution;
- receive reports from the Executive and Council's Committees and receive

- questions and answers on those reports;
- consider any other business on the agenda;
- if necessary, pass a resolution to exclude the press and public for any items involving the likely disclosure of exempt or confidential information
- receive any minutes and reports from the Executive and Committees as appropriate containing exempt or confidential information and receive questions and answers on any of those minutes and reports
- consider any other exempt or confidential business on the agenda
- If necessary, pass a resolution to readmit the press and public
- consider motions of which notice has been given in the order in which they have been received;

The Chairman, or the meeting by resolution, may vary the order of business.

## 6.2 Annual Council Meeting

The Annual Council Meeting will take place within 21 days of the retirement of the outgoing councillors, on a date to be decided by the Council as part of its overall programme of meetings.

The agenda for the Annual Council Meeting will be to:-

- receive apologies for absence;
- receive any declarations of interest;
- approve the Minutes of the last meeting;
- receive any announcements from the Chairman;
- elect the Chairman of Council;
- elect the Vice-Chairman of Council;
- note the results of the District Elections, if held, and the constitution of Political Groups and Group Leaders and elect the Leader of the Council if required
- conduct any business concerning the establishment of and appointments to the Executive including receiving confirmation of the appointment of Deputy Leader and the allocation of functions to Portfolio Holders by the Council Leader;
- conduct any business concerning the establishment of and appointments to:
  - the Overview and Scrutiny Committee;
  - the Standards Committee;
  - such other Committees as the Council consider appropriate.
- consider any other business set out in the agenda for the meeting;
- if necessary, pass a resolution to exclude the public for any items involving the likely disclosure of exempt or confidential information
- receive any Minutes and reports from the Executive and Committees as appropriate containing exempt or confidential information and receive questions and answers on any of those minutes and reports

- consider any other exempt or confidential business on the agenda

### 6.3 Appointment of Committees

Appointments to Committees shall hold office no later than the next Annual Council Meeting. The Council shall at the Annual Meeting

- decide which Committees to establish for the municipal year
- decide the number of members to serve on each Committee
- decide allocation of seats to Political Groups
- decide which Committees the Substitute Member scheme will or will not apply to
- except where the appointment to Committees is exercisable only by the Executive, appoint members to Committees in accordance with the wishes of Political Groups subject to statutory requirements
- appoint, as appropriate any Substitute members to Committees

The Council:-

- may at any time dissolve or, on the nomination of any of the political groups, alter the membership of a Committee;
- may at any time modify or revoke the powers or duties of any Committee.
- shall ensure that every Member serves on at least one Committee unless any Member shall signify their wish to forego such right.
- may, at any time, decide that Members of a particular Committee or Sub-Committee may not serve as Members or Substitutes of another specified Committee or Sub-Committee, in view of the conflict of interest which would arise from serving on both Committees and Sub-Committees.

### 6.4 Receiving of Minutes and Executive Portfolio Holder Decisions by Council

The Minutes of the Executive Committees and Executive Portfolio Holder Decisions shall be submitted to Council at the first opportunity. The Leader of the Council, or in their absence another Member of the Executive, shall formally propose the adoption of the minutes with one proposal to cover all Executive minutes and Portfolio Holder decisions and a further proposal to cover all other committee minutes.

Questions may be asked on the minutes to Committee Chairmen and Executive Portfolio Holders, and additionally to the Leader of the Council on any matter within the remit of the Council. Such questions shall be clearly stated and will be answered without discussion. The Member putting the question may ask a supplementary question providing it is relevant to the reply and does not introduce any new matter.

No notice is required to ask a question of the Leader or a Committee Chairman on the Minutes.

### **6.5 Recommendations from Committees**

Recommendations requiring the approval of Council shall be presented to Council by the way of a report giving the background to the recommendation. Questions may be asked, statements made in debate and amendments proposed.

### **6.6 Written Questions**

A Member may ask the Leader of the Council, Executive Portfolio Holder, or Committee Chairman any question or make a statement relating to the business of the meeting or portfolio for which they are responsible

Questions and statements must be received by the Assistant Director Law and Governance before twelve noon on the eighth working day before the meeting. The written question will be published with the agenda for the meeting. A written response to the question will be published as a supplement to the agenda on the afternoon of the working day before the meeting.

A Member who has received a written reply to a question may ask a supplementary question provided it is relevant to the reply and does not introduce any new matter. The Member to which the question was addressed may reply to such supplementary question or may undertake to reply in writing.

### **6.7 Determination of Planning Applications**

A Planning application may be referred to full Council for determination where a notice, or an e-mail from a known or recognised source, signed by one third or more of Members has been received by the Assistant Director Law and Governance.

A Planning application may only be referred to full Council on the grounds that it is of such special significance to the District that it ought to be determined by full Council and if it has already been considered by Planning Committee or an Officer under their delegated authority and no decision notice has been issued.

The Chief Executive shall place the item on the agenda for the next ordinary meeting of Council. If there is no convenient ordinary meeting at which the application could be considered, the Chief Executive, in consultation with the Chairman of the Council, shall call an Extraordinary meeting of Council at which the application will be considered.

Council shall consider a report prepared by the appropriate Officer and circulated to



all Members with the agenda. Officers shall be able to address the meeting of Council to present the report, answer any questions and to advise Members on the application of planning policy.

The Chairman of Planning Committee (or in their absence the Vice-Chairman or other committee members) which would have otherwise determined the application shall propose a motion in respect of the referred matter for Council to debate.

The motion proposed as above shall be duly seconded as required by the normal rules of debate. Amendments may be moved on the motion as regulated by the rules of debate, but it shall not be possible to propose or amend a motion so as to refer the planning application in question to any Committee or Sub-Committee.

At the conclusion of the debate upon the motion, the Chairman of Planning Committee or, in default, the Vice-Chairman of that Committee, shall reply and shall strictly confine themselves to answering the previous speakers, and shall not introduce any new matter.

Where the Council, is minded to approve or refuse an application contrary to policy / recommendation, clear planning reasons for doing so shall be identified at the meeting by the proposer of the motion to the satisfaction of the Chairman before the vote is taken on whether to grant or refuse planning permission.

Any Member of the Council participating in the determination of a planning application by full Council, must receive training in planning matters in accordance with the adopted Planning Code of Conduct prior to the relevant Council meeting.

## **6.8 Finish Time of full Council**

Meetings of Council will finish at 11pm. The meeting will not however conclude mid-way through an item of business.

The Chairman of the Council has discretion to continue the meeting to conclude business, if, in the opinion of the Chairman, this would be appropriate.

Any motions not considered would be carried forward to be considered at the next scheduled Full Council meeting, at which motions are included on the agenda.

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## Part 6: Executive Procedure Rules

(February 2023)

- 7.1 The Executive Work Programme (including the 28 day notice)**
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- 7.14 Budget and Policy Framework**
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  - 7.14.2 Decisions outside the Budget or Policy Framework**
  - 7.14.3 In-year changes**
  - 7.14.4 Urgent changes**
  - 7.14.5 Virement**

The arrangements for the discharge of executive functions are set out in the Executive Terms of Reference (Part 2 of the Constitution).

### **7.1 The Executive Work Programme (including the 28 day notice)**

#### **7.1.1 Contents**

The work programme will:

- contain matters which there is reason to believe will require a key decision to be

taken (as set out in the Executive Terms of Reference and below at 7.2) during the period covered by the work programme

- contain wherever possible any other items of future Executive business which the council is aware of
- also provide notice of any item of business which is likely to be considered following the exclusion of the press and public.

The work programme will be available at the council offices (during the hours the offices are open) and published on the website.

The work programme will describe the following particulars in so far as the information is available or might reasonably be obtained:

- the matter in respect of which a decision is to be made;
- the name and title of the individual making a decision, if any and where the decision taker is a body, its name and details of membership;
- the date or the period within which, the decision will be taken;
- the steps any person might take who wishes to make representations to the Executive or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- a list of the documents submitted to the decision taker for consideration in relation to the matter if any and the address from which they may be obtained.
- whether it is intended to consider any of the items in private (as exempt or confidential business)

### **7.1.2 Period**

The programme will cover the next period of four months, beginning with the first day of the coming month. The Work Programme must be published at least 28 days before the start of the period covered.

## **7.2 Definition of Key Decision**

(This is also set out at Part 2 of this Constitution and the published Forward Plan)

A Key Decision is a 'significant' decision that is legally within the power of the Council to make, is not precluded by statute from being made under the Executive arrangements and is not otherwise retained for decision by Council or delegated to a Committee of Council or Officer by this Constitution.

Significance - A decision is significant if it meets the financial and/or community impact criteria:

### **Financial**

A decision that will result in the Council:

- Incurring potential revenue expenditure or savings above an amount to be determined by Council annually
- Incurring potential capital expenditure or savings above an amount to be determined by Council annually
- Procuring or awarding any Contract having a total value exceeding £500,000.

and/or

### **Community Impact**

A decision that is significant in its effects on communities living or working in an area comprising two or more Wards in the area of the Council. That is a decision where:

- A significant number of users of the service in the Ward(s) will be affected and/or
- An impact that will last for a number of years, or be permanent; and /or
- A significant impact on communities in terms of environmental and social well-being.

The following are not regarded by the Council to constitute key decisions:

- Implementing approved budgets or policies and strategies where there is little or no further choice involved and the main decision has already been taken by the Council in agreeing the budget and policy framework.
- Implementing approved actions and targets in annual service plans.
- Decisions by the Assistant Director of Finance which are part of the ordinary financial administration of the Authority, notably those relating to investments, within the agreed Treasury Management policy.
- Implementing projects for which specific conditions have been attached by external funders, such as the Government or European Union.
- The award of contracts for the provision of works, goods and services, within an agreed policy and budget and where a decision has been made.
- Changes arising from amendments to statute where there is little or no discretion.

### **7.3 Key Decisions not Included in the Work Programme**

If a matter which is likely to be a Key Decision has not been included in the Work Programme, the decision may still be taken if:

- the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next forward plan.
- the Chief Executive has informed the Chairman of the Overview and Scrutiny Committee, or in their absence each member of that Committee, in writing of the matter about which the decision is to be made and that a notice is made available to the public at the offices of the Council and published on the website which shall include details of why it was not possible to provide 28 day notice; and
- at least 5 clear days have elapsed since the Chief Executive provided the information as set out above.

#### **7.4 Urgent Key Decisions not Included in the Work Programme**

If by virtue of the date by which a decision must be taken the above provision cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chief Executive obtains the agreement of the Chairman of the Overview and Scrutiny Committee that the taking of the decision is urgent and cannot be reasonably deferred. If there is no Chairman of the Overview and Scrutiny Committee, in their absence the Chairman of the Council, or in their absence the Vice-Chairman of Council will suffice.

All Members will be notified as soon as reasonably practicable when this provision is utilised and a notice will be made available to the public at the offices of the Council and published on the website which shall include details of why it was urgent and could not be reasonably deferred;

The Leader of the Council will report details of any key decision taken which was not included in the published Executive Work Programme to the next available meeting of the Council. If the next meeting of the Council is within 7 days of receipt of the written notice the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual or body making the decision.

#### **7.5 Confidential or Exempt Business not included in the Work Programme**

If an item of business in respect of which it is anticipated that the relevant part of the meeting of the Executive or one of its Committees will be held in private because of the likely disclosure of confidential or exempt Information has not been included in the Work Programme with such an indication the item may only be discussed in private if the Chief Executive has obtained the prior agreement of the Chairman of the Overview and Scrutiny Committee. However this does not preclude the relevant meeting from resolving to exclude the public for a relevant item of business which it was not anticipated would be considered in private if It

becomes apparent at the meeting that confidential or exempt information would otherwise be disclosed.

## **7.6 Agendas for Executive Meetings**

An agenda will be published at least 5 clear days before the meeting setting out any business to be transacted in private (exempt or confidential), the reason why it is exempt or confidential and any representations received and response given regarding these.

At each meeting of the Executive the following business will be conducted:

- elect a person to preside if the Chairman and Vice-Chairman are not present;
- receive any apologies for absence;
- receive any declarations of interest from members;
- to report any petitions and requests to address the meeting on an item on the agenda, or to receive an address;
- consider any urgent items of business as agreed by Chairman;
- approve the minutes of the last meeting;
- deal with any business remaining from the last meeting;
- any other business on the agenda, including referrals from Council, Committees, Executive Portfolio Holders;
- pass a resolution to exclude the public for any items involving the likely disclosure of exempt or confidential information;
- any exempt business on the agenda;

The Chairman, or the meeting by resolution, may vary the order of business.

## **7.7 Rights to Request or Require an Agenda Item**

### **7.7.1 Members of Council**

Any Member of the Council may ask the Leader to put an item on the agenda of an Executive meeting for consideration. If the Leader agrees the item will be considered at the next available meeting of the Executive.

The agenda for the meeting will give the name of the Member who asked for the item to be considered and they will be invited to attend the meeting, to be able to address the Executive.

If an item is requested for inclusion on the agenda by a member of the Council (including a member of the Executive), then it will be included with such information as is available at the time, but it shall only be considered and decided if it is

possible to produce a full report containing relevant information to enable a decision to be properly made.

The Executive will be able to defer any matter added to its agenda in this way, to enable a proper report to be prepared and, if this is the case, the matter will normally be considered at the next meeting.

If there are several such items on the Executive's agenda it may decide to defer consideration of any of them, as it sees fit.

#### **7.7.2 Head of Paid Service, Monitoring Officer and Section 151 Officer**

The Head of Paid Service, Monitoring Officer and/or the Section 151 Officer may include an item for consideration on the agenda of an Executive meeting. The Monitoring Officer and Section 151 Officer may require the Chief Executive to call such a meeting in pursuance of their statutory duties.

In other circumstances, where any two of the Head of Paid Service, Section 151 Officer and Monitoring Officer are of the opinion that a meeting of the Executive needs to be called to consider a matter that requires a decision, they may jointly include an item on the agenda of an Executive meeting.

If there is no meeting of the Executive soon enough to deal with the issue in question, then the person(s) entitled to include an item on the agenda may also require that a meeting be convened at which the matter will be considered.

### **7.8 Volume of Business**

If the volume of business for a meeting of the Executive is considered to be excessive, the Leader may defer consideration of items to a later meeting with the exception of:

- items referred to the Executive by Council or the Overview and Scrutiny Committee, if the Council or Overview and Scrutiny Committee has requested they be dealt with at that meeting.
- reports of Statutory Officers unless the relevant Officer concurs.

Deferred items will be dealt with at the next ordinary Executive meeting or a Special Meeting convened for the purpose within 4 weeks.

### **7.9 Notice of Decisions made under Executive Arrangements**

A summary notice of decisions made under the Executive arrangements shall generally be published on the next working day (or in any event as soon as possible) after the decision has been made and shall be circulated to all Members of the Council. This shall include a record of the decision and the date it was made, the reasons for the decision, any alternative options considered and rejected by



members in making the decision, a record of any conflict declared by the decision maker or member of the decision making body and any dispensations granted.

## **7.10 Minutes of Executive Meetings**

The minutes will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting, any conflicts of interest declared and any dispensations granted.

## **7.11 Executive Portfolio Holder Decisions**

### **7.11.1 Reports**

Executive Portfolio Holders will receive reports on issues where they are asked to make a non key decision. Such reports shall be sent to the Executive Portfolio Holder and published 5 days before any decision may be made. Reports shall be publicly available unless they contain exempt or confidential information.

### **7.11.2 Decision Notice**

As soon as reasonably practicable after an Executive Portfolio Holder decision has been taken on a non key decision (by the Executive Portfolio Holder or by an officer through delegation), they will instruct the relevant Officer to prepare and publish a record of the decision, a notice of the reasons for it, any alternative options considered and rejected, any conflict of interest declared by a consulted member and any dispensations granted

### **7.11.3 Access to Documents**

The provisions with regard to accessing agendas, minutes and background papers (as set out in the meeting procedure rules) and the provisions with regard to accessing documents in the control of the Executive (as set out in these procedure rules) shall apply to documents relating to Executive Portfolio Holder Decisions.

## **7.12 Consultation**

All reports to the Executive must contain details of the nature and extent of consultation with stakeholders and the Overview and Scrutiny Committee, and the outcome of that consultation. The level of consultation required will be appropriate to the nature of the matter under consideration.

## **7.13 Access to Documents under the Control of the Executive**

All Members of the Council will be entitled to inspect any document which is in the possession or under the control of the Executive and/or contains material relating to any business to be transacted or previously transacted (including officers acting

under delegation) unless:

- it contains exempt information falling within the categories of exempt information or confidential information; in which case the Member will need to demonstrate 'a need to know', or
- it contains the advice of a political adviser.

## **7.14 Budget and Policy Framework**

### **7.14.1 Process for developing the Policy Framework**

The **Executive Work Programme (including the 28 day notice)** will set out the timetable for making proposals to the Council to develop the budget and policy framework and the arrangements for consultation. Four months' notice (and at least 6 weeks) will normally be provided.

At the end of that period, the Executive will then draw up proposals having regard to the consultation responses received. If the Overview and Scrutiny Committee wishes to respond to the Executive in that consultation process then it may do so. The report will reflect the comments made by consultees (in particular Overview and Scrutiny) and the Executive's response to them.

The proposals will be referred to Council for decision at the earliest opportunity.

### **7.14.2 Decisions outside the Budget or Policy Framework**

If the Executive or any Committees of the Executive discharging executive functions wish to make such a decision, they shall take advice from the Monitoring Officer and/or the Section 151 Officer as to whether the decision they wish to make would be contrary or not wholly in accordance with the policy framework, or budget.

If the advice of either of those Officers is that the decision would not be in line with the existing budget and/or policy framework, then the decision must be referred by that body or person to the Council for decision, except in the circumstances as set out below:

### **7.14.3 In-year changes**

The Executive may make in-year changes to the Budget and Policy framework in the following circumstances only:

- Changes which will result in the closure or discontinuance of a service or part of service or level of service to meet a budgetary constraint;
- Changes which may be necessary to ensure compliance with the law, ministerial direction or government guidance;
- Changes which may vary or develop the policy framework provided they are consistent with its principles and which, with any virement or supplementary expenditure, that may be possible under the Council's Financial Procedure

Rules, be implemented within budget for the year, provided such changes do not commit the Council to expenditure in subsequent financial years.

#### **7.14.4 Urgent changes**

A decision outside the budget and/or policy framework may be made under the Executive arrangements, if it is not practical to convene a quorate meeting of full Council and if the Chairman of the Overview and Scrutiny Committee (or in their absence the Chairman of Council) agrees.

The reason why it is not practical to convene a quorate meeting of full Council and the consent of the Chairman of the Overview and Scrutiny Committee to the decision being taken as a matter of urgency must be noted in the record of the decision.

Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

#### **7.14.5 Virement**

The Executive arrangements discharging functions to implement Council policy shall not exceed those budgets allocated to each budget head. However, they shall be entitled to vire across budget heads in accordance with the rules specified by the Council's Financial Procedure Rules.

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## Part 7: Appeals Panel Procedure Rules

The Appeals Panel shall follow the Procedure Rules as set out below:

- An appeal will be initiated by the appellant requesting and providing in writing the reasons for their appeal.
- All reasonable efforts will be made to arrange a convenient date and time for the appeal within the prescribed timescales. The failure of a party to attend an appeal shall not prevent the appeal from being considered at the Appeal Panel's discretion.
- The Panel will comprise three members of the appointed membership of the Appeals Panel.
- The appellant and respondent will provide any documentation they wish the Panel to consider prior to the deadline for agenda publication as notified by the Democratic and Elections Team / HR.
- Supplementary documentation produced after this time will only be admitted at the discretion of the Panel and with agreement of all parties to the appeal.
- Both the appellant and the respondent may be accompanied by a representative who may assist or speak on behalf of them at the appeal.
- Before the meeting both parties will wait outside the meeting room (virtual meeting).
- The Democratic Support Officer, the HR advisor and Legal advisor (if required) (who will all previously not have been involved with the appeal at a previous stage) will brief the Panel. The advisors to the Panel may at any point during the appeal seek clarification on any issue with regard to the appeal and will provide procedural guidance to the Panel.
- Both parties to the appeal will be admitted to the room (virtual Meeting).
- The Chairman will introduce those present.
- The procedure will be outlined by the Democratic Support Officer and questions on the procedure will be invited.
- The appellant and their representative will make their case.
- The appellant may be questioned by the respondent and then the Panel
- The respondent will make their case.
- The respondent may be questioned by the appellant and then the Panel.
- In making their case witnesses may be called by the appellant and/or the respondent.
  - Witnesses must be notified to the Democratic and Elections Team prior to appeals papers being served.
  - Witnesses may be questioned by all parties and then the panel.

- Witnesses will only be admitted to the appeal for the duration of their evidence.
- The respondent will have an opportunity to sum up.
- The appellant will have an opportunity to sum up.
- Both parties will be asked to leave.
- The Panel will then decide whether to ask the parties to wait whilst a decision is reached or confirm that a letter will be sent confirming the outcome.
- The Committee will make their decision.
- The Panel may readmit both parties to give their decision.
- A formal letter will be sent to all parties confirming the decision of the Panel, as well as confirming any further rights of appeal. A copy will be retained by the Head of Paid Service.

## Part 8: Licensing Committee Sub-Committee Procedure Rules

(December 2020)

### 10.1 Licensing Sub Committee

### 10.2 Licensing Hearing Procedure

#### 10.2.1 Licensing Objectives

#### 10.2.2 Procedure

### 10.3 Licensing Review Hearing Procedure

#### 10.3.1 Licensing Objectives

#### 10.3.2 Procedure

#### 10.3.3 Note

### 10.4 Gambling Hearing Procedure

#### 10.4.1 Licensing Objectives

#### 10.4.2 Procedure

### 10.5 Gambling Review Hearing Procedure

#### 10.5.1 Licensing Objectives

#### 10.5.2 Procedure

### 10.6 Hackney Carriage and Private Hire Vehicle Appeals Procedure

### 10.1 Licensing Sub Committee

The Licensing Subcommittee will be made up of any 3 Members to be drawn from the membership of the parent Committee.

Members will not be selected from the ward in which a premise subject to the hearing is located and will not have an interest or pre-determined position in the matter under consideration which could prejudice their judgement.

Members must have received appropriate training and must have taken a non-committal approach to any lobbying in respect of the matter to be heard, otherwise they may not participate in the hearing.

The procedures followed for Licensing and Gambling matters are determined by the Licensing Act 2003 and the Gambling Act 2005.

The Sub-committee will follow the procedures set out in statute when determining these matters.

In all other cases the sub-committee will follow council meeting procedural rules as set out in the Local Government Act 1972.

### 10.2 Licensing Hearing Procedure

#### 10.2.1 Licensing Objectives

In making their decision the members of the hearing must consider the four

Licensing Objectives:

- the Prevention of Crime and Disorder;
- Public Safety
- the Prevention of Public Nuisance; and
- the Protection of Children from Harm

**10.2.2 Procedure**

- The Democratic Support Officer opens the meeting and asks for nominations for Chairman for the meeting.
- Once appointed, the Chairman, Members of the Sub Committee, Officers and all parties present introduce themselves.
- The Chairman confirms that all parties have received all of the necessary papers from the Council.
- The Chairman outlines the procedures to be followed.
- The Chairman will ask the parties if they have any questions on the procedure.
- Members consider any request by any party for permission for another person to appear at the hearing.
- The Chairman confirms with the parties that they are ready to proceed with the Hearing.
- The Chairman invites the Licensing Officer to outline the application and the representations that have been received. The applicant or their representative is given the opportunity to seek clarification from the Licensing Officer on any matters included in their report
- Through the Chairman, Members clarify any points with the Licensing Officer regarding the report.
- The Chairman asks the applicant if they wish to address the Committee on any issues arising from what the Licensing Officer said.
- The Chairman invites the applicant or their representative to address the Sub-Committee.
- The Chairman asks the Licensing Officer and any parties making representations if they wish to put questions to the applicant.
- Through the Chairman, Members put questions to the applicant.
- The Chairman invites the parties making representations or their representative to address the Sub-Committee.
- The Chairman asks the Applicant or their representative and the Licensing Officer if they wish to put questions to the parties making representations.



- Through the Chairman, Members put questions to the parties making representations.
- The Chairman asks the parties making representations to clarify anything arising during the presentation of their representations.
- The Chairman invites each party to make their closing addresses.
- The Chairman asks all parties to confirm that they are satisfied that they have said all they wish to say.
- The Chairman will inform everyone attending the Hearing that the Sub-Committee will retire with the Democratic Support Officer and the Legal Officer in order to deliberate, seek any necessary legal advice and make their decision in private session.
- The Chairman will confirm whether parties should wait whilst a decision is reached or confirm that a letter will be sent confirming the outcome.
- When the decision has been reached, the Sub-Committee may readmit all parties to give their decision.
- A formal letter will be sent to all parties to communicate the determination of the application and the reasons for that determination.

### **10.3 Licensing Review Hearing Procedure**

#### **10.3.1 Licensing Objectives**

In making their decision the members of the hearing must consider the four Licensing Objectives

- the Prevention of Crime and Disorder;
- Public Safety
- the Prevention Public Nuisance; and
- the Protection of Children from Harm

#### **10.3.2 Procedure**

- The Democratic Support Officer opens the meeting and asks for nominations for Chairman for the meeting.
- Once appointed, the Chairman, Members of the Sub Committee, Officers and all parties present introduce themselves.
- The Chairman confirms that all parties have received all of the necessary papers from the Council.
- The Chairman outlines the procedures to be followed.
- The Chairman will ask the parties if they have any questions on the procedure.

- Members consider any request by any party for permission for another person to appear at the hearing.
- The Chairman confirms with the parties that they are ready to proceed with the Review Hearing.
- The Chairman invites the Licensing Officer to outline the application for review of the Premises Licence and the representations that have been received. The applicant for review and the Premises Licence Holder or their representative(s) are given the opportunity to seek clarification on matters included by the Licensing Officer in their report.
- Through the Chairman, Members clarify any points with the Licensing Officer regarding the report.
- The Chairman invites the applicant for review or their representative to address the Sub-Committee
- The Chairman asks the Premises Licence Holder or their representative and the Licensing Officer if they wish to put questions to the applicant for review.
- The Chairman asks the parties making representations (if any) if they wish to put questions to the applicant for review.
- Through the Chairman, Members put questions to the applicant for review
- The Chairman asks the applicant for review to clarify anything arising during the presentation of their representations.
- The Chairman invites the parties making representations or their representative(s) to address the Sub-Committee
- The Chairman asks the Premises Licence Holder or their representative if they wish to put questions to the parties making representations.
- The Chairman asks the applicant for review or their representative and the Licensing Officer if they wish to put questions to the parties making representations.
- Through the Chairman, Members put questions to the parties making representations.
- The Chairman asks the parties making representations to clarify anything arising during the presentation of their representations.
- The Chairman invites the Premises Licence Holder or their representative to address the Sub-Committee in response to the application for review.
- The Chairman asks the applicant for review or their representative if they wish to put questions to the Premises Licence Holder.
- The Chairman asks the parties making representations (if any) and the

Licensing Officer if they wish to put questions to the Premises Licence Holder.

- Through the Chairman, Members put questions to the Premises Licence Holder.
- The Chairman asks the Premises Licence Holder to clarify anything arising during the presentation of their response.
- The Chairman invites each party to make their closing addresses
- The Chairman asks all parties to confirm that they are satisfied that they have said all they wish to say.
- The Chairman will inform everyone attending the Review Hearing that the Sub-Committee will retire with the Democratic Support Officer and the Legal Officer in order to deliberate, seek any necessary legal advice and make their decision in private session.
- The Chairman will confirm whether parties should wait whilst a decision is reached or confirm that a letter will be sent confirming the outcome.
- When the decision has been reached, the Sub-Committee may readmit all parties to give their decision.
- A formal letter will be sent to all parties to communicate the determination of the application and the reasons for that determination.

### **10.3.3 Note**

- Where a statement from a proposed witness is served on the licensing authority and all other relevant parties at least 14 days prior to the date notified for the hearing of the review, that witness statement will be taken as fact unless written notice requiring the attendance of that witness is given to the party putting forward the witness and to the licensing authority at least five working days prior to the hearing.
- When a written statement from a witness has previously been circulated to the Sub-Committee and all other parties that statement will be taken as read at the hearing. The party putting forward the witness may ask questions of the witness to bring out the salient points in the statement.

## **10.4 Gambling Hearing Procedure**

### **10.4.1 Licensing Objectives**

In making their decision the members of the hearing must consider the three Gambling Licensing Objectives

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way; and
- Protecting children and other vulnerable persons from being harmed or

exploited by gambling.

#### **10.4.2 Procedure**

- The Democratic Support Officer opens the meeting and asks for nominations for Chairman for the meeting.
- Once appointed, the Chairman, Members of the Sub Committee, Officers and all parties present introduce themselves.
- The Chairman confirms that all parties have received all of the necessary papers from the Council.
- The Chairman outlines the procedures to be followed.
- The Chairman will ask the parties if they have any questions on the procedure.
- Members consider any request by any party for permission for another person to appear at the hearing.
- The Chairman confirms with the parties that they are ready to proceed with the Hearing.
- The Chairman invites the Licensing Officer to outline the application and the representations that have been received. The applicant or their representative is given the opportunity to seek clarification on any matters raised by the Licensing Officer in their report
- Through the Chairman, Members clarify any points with the Licensing Officer regarding the report.
- The Chairman asks the applicant or their representative if they wish to address the Committee on any issues arising from what the Licensing Officer said.
- The Chairman invites the applicant or their representative to address the Sub-Committee.
- The Chairman asks the parties making representations or their representative and the Licensing Officer if they wish to put questions to the applicant.
- Through the Chairman, Members put questions to the applicant.
- The Chairman invites the parties making representations or their representative to address the Sub-Committee.
- The Chairman asks the applicant or their representative and the Licensing Officer if they wish to put questions to the parties making representations.
- Through the Chairman, Members put questions to the parties making representations.
- The Chairman asks the parties making representations to clarify anything arising during the presentation of their representations.

- The Chairman invites each party to make their closing addresses.
- The Chairman asks all parties to confirm that they are satisfied that they have said all they wish to say.
- The Chairman will inform everyone attending the Hearing that the Sub Committee will retire with the Democratic Support Officer and the Legal Officer in order to deliberate, seek any necessary legal advice and make their decision in private session.
- The Chairman will confirm whether parties should wait whilst a decision is reached or confirm that a letter will be sent confirming the outcome.
- When the decision has been reached, the Sub-Committee may readmit all parties to give their decision.
- A formal letter will be sent to all parties to communicate the determination of the application and the reasons for that determination.

## **10.5 Gambling Review Hearing Procedure**

### **10.5.1 Licensing Objectives**

In making their decision the members of the hearing must consider the three Gambling Licensing Objectives

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way; and
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

### **10.5.2 Procedure**

- The Democratic Support Officer opens the meeting and asks for nominations for Chairman for the meeting.
- Once appointed, the Chairman, Members of the Sub Committee, Officers and all parties present introduce themselves.
- The Chairman confirms that all parties have received all of the necessary papers from the Council.
- The Chairman outlines the procedures to be followed.
- The Chairman will ask the parties if they have any questions on the procedure.
- Members consider any request by any party for permission for another person to appear at the hearing.
- The Chairman confirms with the parties that they are ready to proceed with the Review Hearing.

- The Chairman invites the Licensing Officer to outline the application for review of the Premises Licence and the representations that have been received. The applicant for review and the Premises Licence Holder or their representative(s) are given the opportunity to seek clarification on matters included by the Licensing Officer in their report.
- Through the Chairman, Members clarify any points with the Licensing Officer regarding the report.
- The Chairman invites the applicant for review or their representative to address the Sub-Committee.
- The Chairman asks the Premises Licence Holder or their representative and the Licensing Officer if they wish to put questions to the applicant for review.
- The Chairman asks the parties making representations (if any) or their representative(s) if they wish to put questions to the applicant for review.
- Through the Chairman, Members put questions to the applicant for review
- The Chairman asks the applicant for review to clarify anything arising during the presentation of their representations.
- The Chairman invites the parties making representations or their representative to address the Sub-Committee
- The Chairman asks the Premises Licence Holder or their representative if they wish to put questions to the parties making representations.
- The Chairman asks the applicant for review or their representative and the Licensing Officer if they wish to put questions to the parties making representations.
- Through the Chairman, Members put questions to the parties making representations.
- The Chairman asks the parties making representations to clarify anything arising during the presentation of their representations.
- The Chairman invites the Premises Licence Holder or their representative to address the Sub-Committee in response to the application for review.
- The Chairman asks the applicant for review or their representative if they wish to put questions to the Premises Licence Holder.
- The Chairman asks the parties making representations (if any) or their representative(s) and the Licensing Officer if they wish to put questions to the Premises Licence Holder.
- Through the Chairman, Members put questions to the Premises Licence Holder.

- The Chairman asks the Premises Licence Holder to clarify anything arising during the presentation of their response.
- The Chairman invites each party to make their closing addresses
- The Chairman asks all parties to confirm that they are satisfied that they have said all they wish to say.
- The Chairman will inform everyone attending the Review Hearing that the Sub-Committee will retire with the Democratic Support Officer and the Legal Officer in order to deliberate, seek any necessary legal advice and make their decision in private session.
- The Chairman will confirm whether parties should wait whilst a decision is reached or confirm that a letter will be sent confirming the outcome.
- When the decision has been reached, the Sub-Committee may readmit all parties to give their decision.
- A formal letter will be sent to all parties to communicate the determination of the application and the reasons for that determination.

#### **10.6 Hackney Carriage and Private Hire Vehicle Appeals Procedure**

- The Democratic Support Officer opens the meeting and asks for nominations for Chairman for the meeting.
- Once appointed, the Chairman, Members of the Sub Committee, Officers and all parties present introduce themselves.
- The Chairman confirms that all parties have received all of the necessary papers from the Council.
- The Chairman outlines the procedures to be followed.
- The Chairman confirms the appellant has received all of the necessary papers from the Council.
- The Chairman will ask the appellant if they have any questions on the procedure.
- The Chairman will confirm with the appellant that they are ready to proceed with the hearing.
- The Chairman will invite the Licensing Officer to outline the reasons for refusal, revocation or suspension of the Hackney Carriage/Private Hire Drivers Licence to the appellant.
- The appellant or their representative are given the opportunity to seek clarification on matters included by the Licensing Officer in their report.
- Through the Chairman, Members of the Committee may clarify any points with the Licensing Officer regarding the refusal.

- The Chairman asks the appellant or their representative if they wish to address the Committee. The Chairman asks the Licensing Officer if they wish to put any questions to the appellant.
- Through the Chairman, Members put any questions to the appellant.
- The Chairman asks the appellant or their representative if they wish to clarify any points and briefly summarise their appeal.
- The Chairman will confirm with everyone that they have said everything they wish to say.
- The Chairman will inform everyone attending the appeal that the Committee will retire with the Democratic Support Officer and the Legal Officer in order to deliberate, seek any necessary legal advice and make their decision in private session.
- The options open to the Sub-Committee are, in broad terms:
  - Uphold the decision of the Assistant Director: Regulatory Services in their capacity as Licensing Officer and refuse, revoke or suspend the grant of a Hackney Carriage/Private Hire Drivers Licence.
  - Rescind the decision of the Assistant Director: Regulatory Services in their capacity as Licensing Officer and grant the Hackney Carriage/Private Hire Drivers Licence.
- When the decision has been reached the Chairman will address the appeal and outline the process thereafter concerning written confirmation.



## Part 9: Planning Committee Procedure Rules

(Reviewed December 2020)

### 11.1 Membership

### 11.2 Requests by the Public to Address the Planning Committee

### 11.3 Site Visits

#### 11.3.1 Formal Site Visits Authorised by Committee

#### 11.3.2 Before the Site Visit

#### 11.3.3 Who May be Present and Take Part in the Proceedings

#### 11.3.4 Conduct of visits

#### 11.3.5 General matters

#### 11.3.6 Unaccompanied Site Visits

### 1.4 Referral of applications to Council by the Assistant Director Planning and Development

### 1.5 Member Call-In

### 11.1 Membership

In accordance with Government guidance, it is Council policy that every member of the Council must receive formal training in the planning system before serving on Planning Committee. Similarly, any present or newly elected Member participating in the determination of a planning application by full Council, must receive such training prior to such participation.

The Chairman of Council or of Planning Committee as the case may be, will be cognisant of those Members who have not undertaken training and will rule accordingly if Members who have not been trained seek to participate in determining planning applications.

Planning Committee membership must be made up primarily of non-executive members, but with specific reservation of a place for the Lead Member for Planning.

### 11.2 Requests by the Public to Address the Planning Committee

- Members of the public, including the applicant (or their representative), representatives from the relevant Town or Parish Council, local interest groups and local civic societies, and the local district Ward Member, if not a member of Planning Committee, may address Planning Committee during consideration of any application for planning permission. There is no separate County councillor speaking category and county councillors may therefore only address Planning Committee by registering within one of the permitted categories having met the

requirements to register.

2. The following groups may address the meeting for up to five minutes each:
  - Objectors
  - Applicant and/or Supporters

Where more than one person has registered to speak in any of the above groups of speakers, the five minute period shall be shared. In such circumstances, Objectors are encouraged to appoint a spokesperson. If no spokesperson is nominated, Objectors will be heard in the order in which they have registered until the five minute period has elapsed. The Applicant (or their agent) will speak first in their five minute period followed by any other supporters until the five minute period has elapsed.

3. The deadline to register to speak at Planning Committee is midday on the last working day before the committee meeting. Requests must be made to the Democratic and Elections Team in writing, by email or telephone.

Applications to speak at Planning Committee will only be accepted by persons who have made written representations on an application as part of the consultation process or the applicant or the applicant's agent.

Persons who have registered to speak may appoint someone to speak on their behalf provided that the person who has registered to speak notifies the Democratic and Elections Team before the Planning Committee commences.

4. Persons registering to speak must provide the name of the person wishing to speak, a contact telephone number, the application they wish to speak on, whether they will be speaking in support or objection to the application and the capacity in which they are registering. Persons registering to speak should also confirm if they are willing for the Council to share their contact details with other speakers so that arrangements can be made to nominate a spokesperson if necessary.
5. When there is a linked or duplicate application each speaker can only speak on one application site, regardless of the number of applications for that site. For example, in the case of linked applications for planning permission and listed building consent on the same property, speakers may only speak once.
6. Public speaking at Planning Committee is only permitted on planning applications, not any other report submitted to the Committee.
7. When planning applications are referred to full Council the normal Council public speaking rules apply, as set out in the Council procedure rules.

### **Procedure**

8. Any requests to speak received after midday on the last working day before the committee meeting will not be accepted.
10. Before the planning application report is considered in detail, the Committee may

agree to defer the application for a site visit or to obtain further information. In such cases, there will be no public participation on the application until it is reconsidered at a future meeting. Persons who have registered to speak on applications that are deferred to a future Planning Committee meeting are not required to register again.

11. The Planning Officer will present the application to the Committee and inform Members of any late representations or updates.
12. Ward Members, who are not Planning Committee members, will then be entitled to speak on the application. The speaking time limit for Ward Members, who are not members of Planning Committee is 10 minutes.
13. The persons who have registered to speak will be introduced by the Chairman in order of Objectors and Supporters, with the applicant always speaking first is the Supporters allotted time. Once a speaker has made their statement there will be no further right to address the meeting and at the speaker must return to the public gallery.
13. The Planning Officer will clarify any planning points made by speakers relevant to the application.
14. The Committee will debate the application and make a decision on the application. Should the Committee choose to defer the application for a site visit or further information after the public speaking part of the item has passed, when the application is brought back to Committee, no public speaking will be permitted unless there are significant material changes to the application in the meantime. This will be at the discretion of the Chairman.
15. Members of the public, Ward Members and Committee Members may not show plans, drawings, video clips, photographs or circulate written material.
16. The Chairman of the meeting may:
  - (a) vary the order of representation if he/she considers that it is convenient and conducive to the despatch of the business and will not cause prejudice to the parties concerned, or
  - (b) remove any person from the meeting if they behave in a disorderly manner.

### 11.3 Site Visits

Any Member of Planning Committee may propose a site visit but the reasons relating to the relevant criteria below must be stated and recorded in the minutes, and a majority vote will determine if a site visit is to be undertaken. Members are advised only to vote if they are able to attend the site visit.

Remote tools (drones) are permitted in facilitating site visits but this does not replace the option for physical site visits and any such footage and usage should be approved by Planning officers to ensure impartiality. The procedure for

conducting the site visit will be adapted as required with the footage being shown at the Planning Committee meeting as part of the officers' presentation as far as practicable.

The rules below should be read in conjunction with the guidance on site visits contained in the Planning Code of Conduct in Part 3 of the Constitution.

#### 11.3.1 Formal Site Visits Authorised by Committee

The purpose of a site visit is solely to ascertain the facts relating to the physical nature of the site and its surroundings. The decision to carry out a site visit should normally be based on one or more of the following criteria:-

- Illustrative material is insufficient to convey the issues
- A judgement is required on visual impact
- The setting and surroundings are particularly relevant to the determination or conditions being considered
- It is necessary to experience similar/comparable conditions at another location/site
- The proposal is of particular significance although applications which only raise issues of principle or fundamental planning policies will not normally be appropriate for a formal site visit
- It is appropriate to make an informed assessment of the proposals which are subject to conflicting claims by applicants and objectors which cannot be adequately expressed in writing; or the proposal is particularly contentious.

#### 11.3.2 Before the Site Visit

- Letter sent to applicant/agent and Ward Member(s) informing of the decision, time, date, purpose and protocol for visit
- Letter sent to third parties where access to their private property may be required. Notification of date, time, purpose and protocol for visit also given

#### 11.3.3 Who May be Present and Take Part in the Proceedings

- All Committee Members or their nominated substitutes who will also be attending the decision-making meeting in that capacity
- Ward Councillors who do not serve on the Planning Committee (subject to the other provisions of this protocol)
- Relevant officers (including representatives of other organisations, for example County Highway Authority or Environment Agency, if necessary)
- A written record of those attending in any of the above capacities should be made by Planning Officers at the time of the visit.

General onlookers, supporters and objectors will not be allowed to participate. The

applicant may be present but should not address the Committee other than to respond to factual questions relevant to the site visit put to him/her at the discretion of the Chairman. Any such questions to the applicant will be made through the Chairman/Planning Case Officer during the visit.

#### 11.3.4 Conduct of visits

- Visits will be conducted in a formal manner
- The Chairman or Vice-Chairman will open the meeting and advise Members of purpose and conduct
- Officers will report any apologies and highlight issues relevant to the site inspection
- Other Members/Officers to ask questions of the Planning Case Officer or on occasion the applicant as to physical characteristics and surroundings
- Chairman to close

#### 11.3.5 General matters

- There will be no debate about the merits of the application and no decisions taken
- No formal notes will be made. The Planning Case Officer will update the Committee on the site visit when it next meets to consider the application
- Where appropriate this protocol may be sent to parish/town councils and applicants for information.

#### 11.3.6 Unaccompanied Site Visits

Members of Planning Committee have a long established practice of visiting sites before Committee meetings. Such visits are undertaken individually by Members unaccompanied by Officers. The criteria listed above apply equally to this type of site visit. The disadvantage is that these visits can be used by applicants, agents and objectors to undertake unwarranted lobbying and where a Member visits private property it can be interpreted as showing favour to the person visited. Accordingly, as set out in the Planning Code of Conduct, members should not enter private land, even if invited to do so, but should view the site only from the public highway.

### **1.4 Referral of applications to Council by the Assistant Director Planning and Development**

Where a decision of Planning Committee is contrary to both the Officers' recommendation and approved planning policy, the Assistant Director Planning and Development has the right to refer the application to full Council for determination. Before doing so he/she will advise Planning Committee of his/her intention to refer

the application to full Council before the Committee vote on the application.

When an application is to be referred to full Council, the Assistant Director Planning and Development must arrange to advise, as soon as practicable, the applicant, agent and (where relevant) appropriate third parties of the date and time of the meeting. The Assistant Director Planning and Development should also advise the Assistant Director Law and Governance that an application is to be referred so that all Members of the Council can be similarly informed of the meeting arrangements.

The Minutes of Planning Committee and Council should always include a detailed Minute setting out the reasons why an Officer recommendation was not accepted and a copy should be placed on the planning application file as appropriate.

### 1.5 Member Call-In

Ward Member 'referral' of Officer delegated cases to Planning Committee shall be accepted in accordance with the following provisions of the officer scheme of delegation in Part 1 of the Constitution.

- The call in request must be for material planning reasons
- The request must be made within 21 calendar days of the registration of the application as valid (the day after registration to count as day one)
- The request must be made in writing by letter or email
- The request must be sent to the Assistant Director Planning and Development (or the line manager that is responsible for Development Management and reports to the Assistant Director Planning and Development) and the Chairman of the Planning Committee
- The request MUST contain all the relevant information

On receipt of the call-in request the Assistant Director Planning and Development (or the line manager that reports to the Assistant Director Planning and Development and is responsible for Development Management) will either agree, or refuse, the request in consultation with the Chairman of the Planning Committee (Vice Chairman in the Chairman's absence). The criteria for deciding whether to allow a call-in request will include, but not be limited to,

- whether material planning reasons have been supplied,
- views of parish or town council,
- level of public interest,
- scale and type of development,
- site history,
- statutory time frame for decision,
- relevant development plan policies, council guidance and strategies
- whether the committee could legitimately reach another conclusion than the one reached by officers and/or the extent to which they are considered to have the potential to "add value" to the final scheme.

The councillor who called in the application is encouraged to attend, or send another nominated member to speak

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## Part 10: Roles and Appointments

(March 2024)

### 12.1 Chairman and Vice-Chairman of the Council

### 12.2 Leader of the Council

### 12.3 Deputy Leader of the Council

### 12.4 Executive Portfolio Holders

### 12.5 Leaders of Political Groups

### 12.6 Leader of the Opposition

### 12.7 Member Champions

#### 12.7.1 Member Champions - Terms of Reference

#### 12.7.2 Role Description

### 12.1 Chairman and Vice-Chairman of the Council

The Chairman and Vice-Chairman of the Council will be elected by full Council annually.

The Chairman (and in their absence, the Vice-Chairman) will have the following responsibilities:

- to uphold and promote the purposes of the Constitution, and to interpret the Constitution within meetings of Council when necessary;
- to preside over meetings of Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
- to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which Members who are not in the Executive or a Committee Chairman are able to hold the Executive and Committee Chairman to account;
- to promote public involvement in the Council's activities;
- to be the conscience of the Council; and
- to attend such civic and ceremonial functions as the Council and he/she determines appropriate.

Neither the Chairman nor Vice-Chairman of the Council can be a member of the Executive.

## 12.2 Leader of the Council

The Leader of the Council will be a councillor elected to that position by Council. The Leader of the Council shall be the Chairman of the Executive and shall have reserve powers to act in the absence or incapacity of any Executive Portfolio Holder.

The Leader will hold office for a four year term until:

- they resign from the office; or
- (following local elections) their successor becomes entitled to act as Leader
- they are removed from office by resolution of the council.

## 12.3 Deputy Leader of the Council

The Leader of the Council may appoint a Deputy Leader of the Council at the start of each council year (or at other times during the council year should that be necessary) for the purpose of chairing meetings of the Executive in the absence of the Leader or in the absence of the Leader of the Council carrying out any duties and responsibilities given to the Leader of the Council by this Constitution.

## 12.4 Executive Portfolio Holders

Portfolio Holder areas of responsibility are determined and assigned by the Leader to individual members of the Executive whom they appoint. The Leader may re-allocate functions between Portfolio Holders during the council year and shall advise all members of the Council of the change as soon as practicable after any change has taken place.

Only Councillors may be appointed to the Executive. There may be no co-optees and no deputies or substitutes for Executive members. Neither the Chairman nor Vice-Chairman of the Council may be appointed to the Executive. Members of the Executive (including the Leader of the Council) may not be members of the overview and scrutiny committee.

Executive Portfolio Holders shall hold office until:

- they resign from office; or
- they are no longer councillors; or
- they are removed from office by the Leader of the Council who must give written notice of any removal to the Chief Executive. The removal will take effect two working days after receipt of the notice by the Chief Executive.

## 12.5 Leaders of Political Groups

Each political Group represented on the Council, before the Annual Council meeting, and whenever changes occur, must inform the Chief Executive in a notice of the names of the persons belonging to that political Group, the name of the person chosen to serve as Leader of the Group, Deputy Leader of the Group and Group secretary during the ensuing year.

All such notifications shall be reported to the next meeting of Council and recorded in the minutes.

## 12.6 Leader of the Opposition

The largest political Group or Groups not participating in the administration of the Council through forming the Executive shall be known as the opposition Group and the Leader of the Group shall be known as the Leader of the Opposition.

## 12.7 Member Champions

The Council will from time to time appoint Member Champions for various issues. The role and functions of Champions are determined by the Leader from time to time

### 12.7.1 Member Champions - Terms of Reference

(Adopted December 2021)

- 1) Member Champions will only be appointed in support of policies and objectives not directly covered by the annual/Business Plan and Priorities, or existing Executive portfolios and shall be elected members of Cherwell District Council.
- 2) Member Champions may be created by Council, the Executive or the Leader of the Council. Member Champions will be appointed annually when the relevance of the appointment will be reviewed. The appointing body or office holder may decide at any point to review and terminate the appointment of a member Champion for good reason.
- 3) Member Champions will be required to submit a report at the end of each Municipal Year, detailing the work that has been undertaken during their appointment. This report will help the Leader of the Council review the relevance of the appointment and determine if the role will continue
- 4) Member Champions shall have no Executive or decision making powers and may not instruct officers. Champions shall not duplicate the work of Committee Chairmen and Executive members and shall ensure they liaise and advise them appropriately. Member Champions may not commit the Council to any course of action or any Council resources.

- 5) A register of Member Champions shall be maintained by the Assistant Director Law and Governance.
- 6) Member Champions shall not attract a Special Responsibility Allowance, but shall be able to claim travelling and subsistence expenses in line with the agreed scheme and may attend appropriate events, seminars, training and conferences, subject to budget availability.
- 7) Any such applications for events, seminars, training and conferences shall be determined by the Assistant Director Law and Governance in consultation with the Leader of the Council.
- 8) With regard to access to information Member Champions will be regarded as having 'a need to know' in terms of accessing information held by the authority in relation to the remit covered by their role.
- 9) Each Champion will have a link officer assigned from within the relevant or most appropriate service area. Officers will bring issues, initiatives and areas of work to the attention of Champions.
- 10) Champions may from time to time request to add agenda items or request to speak at a relevant meeting of the Council on an issue within the area to which they have been appointed.

## Part 11: Councillor Code of Conduct

- 1.0 Introduction**
- 2.0 Purpose of the Code of Conduct**
- 3.0 Definitions**
- 4.0 General Principles of Councillor Conduct**
- 5.0 Application of the Code of Conduct**
- 6.0 Standards of Councillor Conduct**
- 7.0 Registering and Declaring Interests**
- 8.0 Gifts and Hospitality**
- Appendix A – The Seven Principles of Public Life**
- Appendix B – Disclosable Pecuniary Interests**
- Appendix C – Disclosure of Other Registrable Interests\_\_\_\_\_**

### 1.0 Introduction

The Council has duty to promote and maintain high standards of conduct by members and co-opted members of the Council, and formally adopt a code of conduct, in accordance with the *Localism Act 2011*.

This Code was adopted on 18 May 2022.

### 2.0 Purpose of the Code of Conduct

The purpose of this Code of Conduct is to assist you, as a Councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow Councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all Councillors and your specific obligations in relation to standards of conduct. The fundamental aim of the Code is to create and maintain public confidence in the role of the Councillor and in Local Government.

### 3.0 Definitions

For the purposes of this Code of Conduct, a “Councillor” means a member or co-opted member of the local authority. A “co-opted member” is defined in the *Localism Act 2011 Section 27(4)* as “a person who is not a member of the authority but who

3.1 is a member of any committee or sub-committee of the authority, or;

3.2 is a member of, and represents the authority on, any joint committee or joint sub- committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

#### **4.0 General Principles of Councillor Conduct**

Everyone in public office and all who serve the public or deliver public services, including Councillors and local authority officers, should uphold the Seven Principles of Public Life, also known as the Nolan Principles, (see Appendix A).

Building on these principles of selflessness, objectivity, accountability, openness, honesty and integrity and leadership, the following general principles have been developed specifically for the role of Councillor.

In accordance with the public trust placed in Councillors, on all occasions a Councillor shall:

- act with integrity and honesty
- act lawfully
- treat all persons fairly and with respect; and
- lead by example and act in a way that secures public confidence in the role of Councillor.
- impartially exercise their responsibilities in the interests of the local community
- not improperly seek to confer an advantage, or disadvantage, on any person
- avoid conflicts of interest
- exercise reasonable care and diligence; and
- ensure that public resources are used prudently in accordance with the local authority's requirements and in the public interest.

These general principles have been incorporated into the obligations of the Code of Conduct as set out below.

#### **5.0 Application of the Code of Conduct**

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of Councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a Councillor.

This Code of Conduct applies to you when you are acting in your capacity as a Councillor which may include when:

- you misuse your position as a Councillor
- Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a Councillor;

The Code applies to all forms of communication and interaction, including at face-to-face meetings, at online or telephone meetings, in written communication, in verbal communication, in non-verbal communication and in electronic and social media communication, posts, statements and comments.

Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish Councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

## 6.0 Standards of Councillor Conduct

This section sets out the obligations (in bold below), which are the minimum standards of conduct required of a Councillor. Should a Councillor's conduct fall short of these standards, a complaint may be made against them, which may result in action being taken.

Guidance is also included below each obligation to help explain the reasons for the obligations and how they should be followed.

### 6.1 Respect

#### A Councillor:

- 6.1.1 Shall treat everyone, including other Councillors and members of the public with respect.**
- 6.1.2 Shall treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.**

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a Councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in Councillors.

In return, you have a right to expect respectful behaviour from everyone. If members of the public are being abusive, intimidating or threatening you are entitled to stop any conversation or interaction in person or online and report them to the relevant social media provider and/or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor- officer protocol.

## **6.2 Bullying, Harassment and Discrimination**

### **A Councillor:**

- 6.2.1 Shall not bully any person.**
- 6.2.2 Shall not harass any person.**
- 6.2.3 Shall promote equalities and not discriminate against any person.**

Bullying is offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Legislation places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.



### 6.3 Impartiality of Officers of the Council

#### A Councillor:

- 6.3.1 Shall not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.**

Officers work for the local authority as a whole and must be politically neutral, (other than political assistants where applicable). They should not be coerced or persuaded to act in a way that would undermine their neutrality. A Councillor may question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, a Councillor must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

### 6.4 Confidentiality and access to information

#### A Councillor:

- 6.4.1 Shall not disclose information either given to them in confidence by anyone or acquired by them which they believe, or ought reasonably to be aware, is of a confidential nature, unless**
- i. They have received the consent of a person authorised to give it; or**
  - ii. They are required by law to do so; or**
  - iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
  - iv. the disclosure is reasonable and in the public interest; and also made in good faith and in compliance with the reasonable requirements of the local authority and consultation with the Monitoring Officer has taken place prior to its release.**
- 6.4.2 Shall not improperly use knowledge gained solely as a result of their role as a Councillor for the advancement of themselves, their friends, family members, employer or business interests.**
- 6.4.3 Shall not prevent anyone from getting information that they are entitled to by law.**

- 6.4.4 When making decisions on behalf of, or as part of, the Council shall have due regard to any professional advice provided by the Council's Officers.**

## **6.5 Disrepute**

### **A Councillor:**

- 6.5.1 Shall not bring their role or local authority into disrepute.**

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other Councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your/its functions.

## **6.6 Use of position**

### **A Councillor:**

- 6.6.1 Shall not use, or attempt to use, their position improperly to the advantage or disadvantage of anyone.**

A Councillor should not take advantage of opportunities, responsibilities and privileges to further their own or others' private interests or to disadvantage anyone unfairly.

## **6.7 Local authority Resources and Facilities**

### **A Councillor:**

- 6.7.1 Shall not misuse council resources.**
- 6.7.2 Shall, when using the resources of the local authority or authorising their use by others, act in accordance with the local authority's requirements; and ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which they have been elected or appointed.**

A Councillor may be provided with resources and facilities by the local authority to assist them in carrying out their duties as a Councillor. Examples may include office support, stationery, equipment such as phones, computers and transport and access and use of local authority buildings and rooms.

## **6.8 Compliance with the Code of Conduct**

### **A Councillor:**

- 6.8.1 Shall undertake Code of Conduct training as required by the local authority.**
- 6.8.2 Shall co-operate with any Code of Conduct assessment, investigation, hearing and/or determination.**
- 6.8.3 Shall not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.**
- 6.8.4 Shall comply with any sanction imposed on them following a finding that they have breached the Code of Conduct.**

It is extremely important for a Councillor to demonstrate high standards, to have your actions open to scrutiny and not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with the Monitoring Officer.

## **7.0 Registering and Declaring Interests**

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

### **7.1 Disclosable Pecuniary Interests**

A Councillor must, within 28 days of taking office as a member or co-opted member, notify the Council's Monitoring Officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State (see Appendix B), where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners. Section 29 of the Localism Act 2011

requires the Monitoring Officer to establish and maintain a register of interests of members of the authority.

You must disclose the interest at any meeting of the Council at which you are present, where you have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'. If it is a 'sensitive interest', you must disclose the fact that you have an interest but do not have to disclose the nature of it. (A sensitive interest is an interest which, in the opinion of the Monitoring Officer, if disclosed, could lead to the Councillor, or a person connected with them, being subjected to violence or intimidation.) You are personally responsible for deciding whether or not you should disclose an interest in a meeting.

Following any disclosure of an interest not on the Council's register, or the subject of pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, by the Monitoring Officer, you may not participate in any discussion of, or vote on, or discharge any function related to any matter in which you have a disclosable pecuniary interest. You must withdraw from the room or chamber when the meeting discusses and votes on the matter.

Where you have a disclosable pecuniary interest on a matter to be considered or being considered by you as an Executive member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

You must ensure that your register of interests is kept up to date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in Appendix B is a criminal offence under the Localism Act 2011.

## 7.2 Other Registerable Interests

You must also register your other registerable interests with the Monitoring Officer within 28 days of taking office and ensure these are kept up to date by notifying any changes within 28 days.

Where a matter arises at a meeting which **directly relates** to the financial interest or wellbeing of one of your Other Registerable Interests (as set out in Appendix C), you must disclose the interest. Wellbeing can be described as a condition of contentedness, healthiness and happiness; anything that could be said to affect a person's quality of life, either positively or negatively, is likely to affect their wellbeing. You may speak on the matter only if members of the public are also allowed to

Speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

Where you have an Other Registerable Interest on a matter to be considered or is being considered by you as an Executive member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

### 7.3 Non-Registerable Interests

Where a matter arises at a meeting which **directly relates** to your financial interest or wellbeing (and does not fall under disclosable pecuniary interests at 7.1 above), or the financial interest or wellbeing of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a sensitive interest you do not have to disclose the nature of the interest.

Where a matter arises at a meeting which **affects** your own financial interest or wellbeing, a financial interest or wellbeing of a relative or close associate or a financial interest or wellbeing of a body included under Other Registrable Interests as set out at 7.2 above and appendix C you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied:

Where a matter affects the financial interest or well-being:

- a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
- b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

Where you have a Non-Registerable Interest on a matter to be considered or is being considered by you as an Executive member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to

deal with it.

## **8.0 Gifts and Hospitality**

### **A Councillor:**

- 8.1 Shall not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.**
- 8.2 Shall register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**
- 8.3 Shall register with the Monitoring Officer any significant gift or hospitality that they have been offered but have refused to accept.**

The presumption should always be not to accept significant gifts or hospitality but there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered.

You do not need to register gifts and hospitality which are not related to your role as a Councillor.

It is appropriate to accept normal expenses and hospitality associated with your duties as a Councillor.

## **Appendix A – The Seven Principles of Public Life**

The principles are:

### **Selflessness**

Holders of public office should act solely in terms of the public interest.

### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must disclose and resolve any interests and relationships.

### **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### **Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

### **Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

### **Honesty**

Holders of public office should be truthful.

### **Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

**Appendix B – Disclosable Pecuniary Interests**

“**Disclosable Pecuniary Interest**” means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in the table below.

"**Partner**" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#).

Subject	Description
<b>Employment, office, trade, profession or vocation</b>	Any employment, office, trade, profession or vocation carried on for profit or gain.
<b>Sponsorship</b>	<p>Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by them in carrying out their duties as a councillor, or towards their election expenses.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
<b>Contracts</b>	<p>Any contract made between the councillor or their spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council —</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
<b>Land and Property</b>	<p>Any beneficial interest in land which is within the area of the council.</p> <p>‘Land’ excludes an easement, servitude, interest or right in or over land which does not give the councillor or their spouse or civil partner or the person with whom the councillor is living as if they were spouses/</p>



	civil partners (alone or jointly with another) a right to occupy or to receive income.
<b>Licenses</b>	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer
<b>Corporate tenancies</b>	Any tenancy where (to the councillor's knowledge)— (a) the landlord is the council; and the tenant is a body that the councillor, or their spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.
<b>Securities</b>	Any beneficial interest in securities* of a body where— (a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; and (b) either— (i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or their spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners have a beneficial interest exceeds one hundredth of the total issues share capital of that class.

\* 'Director' includes a member of the committee of management of an industrial and provident society.

\* 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

## Appendix C – Disclosure of Other Registrable Interests

You must register as an Other Registrable Interest:

- a) any unpaid directorships
- b) any Body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority
- c) any Body
  - (i) exercising functions of a public nature
  - (ii) directed to charitable purposes or
  - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) of which you are a member or in a position of general control or management

## **Part 11a: Arrangements for Local Determination of Allegations of Alleged Breaches of the Councillors' Code of Conduct**

**(March 2024)**

**The Localism Act 2011**

### **Introduction**

The arrangements referred to in this document sets out the process which will be followed in the local determination of allegations of misconduct made against either a District Councillor or Parish/Town Councillor, where Cherwell District Council is the responsible authority. The purpose of these arrangements is to ensure the Council makes every effort to deal with a complaint as smoothly as possible and ensure that complaints are dealt with within agreed timescales and with the relevant legislation. All allegations will be dealt with objectively, fairly and consistently. The Monitoring Officer will also have regard to what is in the public interest and the Council's fiduciary duty to the tax payers.

Arrangements for dealing with complaints against Councillors underwent significant changes following the introduction of the Localism Act 2011. Cherwell's current adopted code of conduct, which is a code agreed by all six Oxfordshire Local Authorities, was adopted at full Council on 18 May 2022.

All complaints are received by the Monitoring Officer who takes an initial decision on whether a complaint requires investigation, informal resolution by the Monitoring Officer, should be referred to the Police or whether no further action is required.

Within these arrangements, references to the 'Monitoring Officer' also refers to their duly appointed representative(s). It is likely that the Monitoring Officer will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority, or an external investigator.

The person making the complaint is referred to as 'the complainant' and the District/Town or Parish Councillor being complained about is referred to as 'the subject member'.

### **Process for Dealing with Complaints – Initial Assessment Stage**

When the Monitoring Officer has received a formal and valid complaint, the complaint will be acknowledged within three working days of receipt.

All complaints must be submitted using the Council's online complaint form. If required, we can also provide a paper copy of the complaint form.

The Monitoring Officer also needs to ensure that the complaint complies with the Council's Assessment Criteria:

- Is against one or more named Councillors of the authority, or of a Parish or Town Council the authority is responsible for;
- the named Councillor was in office at the time of the alleged conduct;

- the complaint relates to matters where the Councillor was acting as a Councillor or representative of the authority and it is not a private matter;
- the complaint, if proven, would be a breach of the Code under which the Councillor was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the Monitoring Officer must inform the complainant that no further action will be taken in respect of the complaint.

A complaint can also be rejected if:

- the complainant fails to provide enough information to base a decision, for example it is not clear as to what part of the adopted code of conduct has allegedly been breached;
- the subject member is no longer a Councillor of the authority (although if they are a member of another authority the Monitoring Officer could refer the complaint to that authority);
- the complaint has been the subject of an investigation or other action relating to the Code of Conduct, or the complaint has been the subject of an investigation by other regulatory authorities;
- the complaint is about something that happened so long ago that there would be little benefit in taking action now;
- the complaint is too trivial to warrant further action;
- the complaint appears to be simply malicious, politically motivated or tit-for-tat;
- the complainant appears to be submitting persistent or prolific complaints

Following receipt of a complaint that meets the agreed Assessment Criteria the complainant will be asked if there is any additional information they wish to submit and they may also be asked to clarify any issues that they have raised.

A summarised copy of the complaint will be sent to the subject member for written comment (unless the complainant has asked to keep their identity confidential – see Requests for Confidentiality). The subject member will also have the opportunity to submit any additional information that they feel will support their submission. This can include written witness statements.

Where a complaint relates to a Parish/Town Councillor, the Monitoring Officer may also inform the Parish/Town Council of the complaint and seek the views of the Parish/Town Council to take into account when making a decision in the Initial Assessment Stage.

Both the subject member and the complainant have the right to seek advice from one of the Council's Independent Persons. The Council has therefore appointed two Independent Persons to ensure that a conflict situation does not arise i.e. once they have been consulted, the Independent Person will not be involved in the decision making process.

The Monitoring Officer will also collate any additional information (e.g. minutes and agendas of meetings, information on websites, the applicable Code of Conduct, Standing Orders and any other relevant policies, background information including correspondence and witness statements) that will assist the Initial Assessment Stage.

As part of the Initial Assessment Stage, an Initial Assessment Panel meeting will usually take place within 20 working days of receipt of the complaint. The Monitoring Officer will consult the Independent Person at this meeting. As this is not a public meeting, neither the subject member nor the complainant, nor members of the press or public will have the opportunity to attend or speak at the meeting. In accordance with the Localism Act 2011, following the Initial Assessment the Monitoring Officer (in consultation with the Independent Person) is able to decide on one of the following four outcomes:

- no further action will be taken on the complaint;
- a form of informal resolution will be sought;
- the matter will be referred to the Director of Public Prosecutions or the Police where it is suspected that some form of criminal conduct has occurred in relation to interests that have not been disclosed;
- the complaint will be fully investigated by an Investigator Officer appointed by the Monitoring Officer

The complainant and subject member will be notified of the outcome of the Initial Assessment Panel meeting, usually within 25 working days from receipt of the complaint.

The Council may reach one of the three following decision on an allegations:

- no further action will be taken on the complaint;
- a form of informal resolution will be sought;
- the matter will be referred to the Director of Public Prosecutions or the Police where it is suspected that some form of criminal conduct has occurred in relation to interests that have not been disclosed;
- the complaint will be fully investigated by an Investigator Officer appointed by the Monitoring Officer.

If illegal activity is identified during the Initial Assessment, this is passed to the Police with any evidence received.

A flowchart summarising these arrangements that is followed when a complaint is received is attached at Appendix 1 to these arrangements.

### **Requests for Confidentiality**

In the interests of fairness and in compliance with the rules of natural justice, District, Town and Parish Councillors who are complained about have a right to know who has made the complaint, and the substance of the allegation(s) made against them.

Complainants can request that their identity is not revealed to the subject member, and the Monitoring Officer may grant such requests at their discretion in exceptional circumstances. The Monitoring Officer is unlikely to withhold a complainant's personal details or the details of the complaint unless they consider there to be good reasons to believe that a complainant has justifiable grounds for anonymity/confidentiality.

When considering a request for confidentiality the Monitoring Officer, in consultation with the Independent Person, will consider any such request alongside the substance of the complaint itself and apply the following criteria:

- the complainant has reasonable grounds for believing that they will be at risk of physical harm from, or that they may be victimised or harassed by the subject member(s) against whom they are submitting the complaint (or from or by a person associated with the subject member(s));
- the complainant is an officer of a relevant authority who fears the consequences as regards their employment if their identity is revealed;
- the complainant works closely with the subject member, and is therefore afraid of the consequences to their employment or of losing their job;
- there is a medical risk to the complainant's health if their identity is revealed and this is supported by medical evidence;
- the complainant has reasonable grounds for the belief that they may receive less favourable treatment from the Council because of the identity and/or seniority of the subject member(s) in terms of any existing Council service provision or any tender/contract that they may have or are about to submit to the Council; or
- other exceptional circumstances

When considering a request for confidentiality against these criteria the Monitoring Officer will also:

- balance the request for confidentiality against the substance of the complaint;
- consider whether it is possible to investigate the complaint without making the complainant's identity known to the subject member, given the requirement for a proper investigation.

If the Monitoring Officer, in consultation with the Independent Person, decides to refuse a request for confidentiality, they may decide to offer the complainant the opportunity to withdraw their complaint. When deciding whether to allow a complaint to be withdrawn the Monitoring Officer must consider whether the public interest in proceeding with an investigation outweighs the complainant's wish to have their identity withheld from the subject member.

### **Outcome of Initial Assessment Stage – No Further Action**

If following the Initial Assessment Panel meeting with the Independent Person, the Monitoring Officer decides that no further action is required in respect of a complaint, no further action can be taken by the Council and the matter will be closed.

The Localism Act 2011 does not provide any appeals mechanism. However the decision could be open to Judicial Review by the High Court should the complainant wish to take up this option. The complainant would be advised to seek independent legal advice about taking up this option.

### **Outcome of Initial Assessment Stage – Informal Resolution**

If following the Initial Assessment Panel meeting with the Independent Person, the Monitoring Officer decides that other action should be taken on the complaint, the resolution, format and timescales for this action need to be outlined in the decision issued as a result of the Initial Assessment Notice.

If an informal resolution is determined as appropriate and either party declines to comply, this will be reported to the Monitoring Officer who may decide to treat the facts as a further complaint.

If the subject member complies with the action outlined in the decision, the Monitoring Officer will report the matter to the Standards Committee [and the Parish Council] for information but will take no further action.

The Localism Act 2011 does not provide any way to appeal a decision. However the decision could be open to Judicial Review by the High Court should either party wish to take up this option. The complainant or subject member would be advised to seek independent legal advice about taking up this option.

### **Outcome of Initial Assessment Stage – Report to the Police**

If during the Initial Assessment the Monitoring Officer decides that the matter needs to be referred to the Police, both the subject member and complaint and if appropriate the relevant Town or Parish Clerk will be informed.

The Monitoring Officer will pass to the Police any relevant evidence relating to the allegations received, which disclose behaviour that may constitute a criminal offence, whether under the ethical standards provisions of the Localism Act or otherwise.

If potential criminal offences are identified and the complaint is referred for investigation with a view to prosecution, the appropriate procedures of the Police or Council will be followed so as to protect the integrity of the investigation.

### **Outcome of the Initial Assessment Stage – Investigation by Investigating Officer**

If, following the Initial Assessment Stage, the Monitoring Officer, in consultation with the Independent Person, decides that if the allegations were substantiated, they may constitute a breach of the Code of Conduct of the relevant authority, they can refer the complaint for investigation.

The Monitoring Officer will appoint an Investigating Officer to undertake an investigation. The Investigating Officer may be another senior officer of the authority, an officer of another authority or an external investigator.

The Council will notify the complainant and the subject member that an investigator has been appointed to investigate the matter and advise which parts of the Code are being investigated against. This will also give the complainant and subject member details in case they need to contact the investigator to provide them with more information.

Any information received during the course of the investigation is confidential to the investigative process until the investigation is completed, unless there is a statutory requirement to disclose it. All parties involved will be advised of the confidential nature of the proceedings.

Once the investigation is concluded (no longer than six months from the original complaint being referred for an investigation) the investigator will be required to produce a draft written report that sets out their findings. The Monitoring Officer, subject member, the complainant and the Independent Person(s) will all be provided with an opportunity to comment on the initial report.

The subject member and the complainant will be sent the draft report and be asked to comment and advise if there are any areas of the report they dispute. All comments would need to be submitted within 10 working days of receipt of the draft report. The Council are not obliged to accept any comments made but where comments are not accepted, the Council should make a note explaining why.

On completion of the investigation, the Monitoring Officer may decide:

- To take no further action;
- To seek to resolve the matter informally; or
- To refer the matter to a hearing of the standards committee.

The final report should be issued by the Monitoring Officer and must be sent to:

- The subject member;
- The complainant;
- The relevant Independent Person;
- The relevant Parish or Town council of which the subject member is a Councillor (if applicable).

## **Meeting of the Standards Committee**

If the Investigating Officer concludes that there is evidence of a breach of the Code of Conduct, if a local resolution is not appropriate or the subject member is not prepared to undertake any proposed remedial action, the matter will be reported to the Standards Committee and a hearing will be called.

The meeting of the Standards Committee must be held within three months of completion of the investigators report. The Democratic and Elections Officer shall arrange a time and date for the Standards Committee to meet and consider the matter.



At least five working days before the date of the meeting of the Standards Committee, the Democratic and Elections Officer shall notify the subject member, complainant, the clerk of the relevant Town or Parish Council (if applicable), Legal Advisor and any relevant witnesses of the date, time and place of the meeting and the membership of the Standards Committee at which the matter will be considered.

At least five working days before the Standards Committee meeting date, the Democratic and Elections Officer will send to each member of the Standards Committee, the subject member, the complainant and the Monitoring Officer, a copy of the paperwork for the meeting. The paperwork will include the agenda for the Committee meeting, a copy of the Investigator's report and a copy of any written statement in response to the report which has been received from the subject member, complainant and Independent Person.

The Monitoring Officer may make the provision of any such copy conditional upon an appropriate undertaking of confidentiality until the report is made available to the press and public, or it is agreed that the press and public shall not be excluded from the meeting.

## Procedure at the Meeting of the Standards Committee

### Attendance of the Subject Member and Complainant

- (i) The subject member and complainant may arrange to be accompanied or represented by counsel, a solicitor or by any other person they may wish at the Hearing at their own expense. If this is the case, the subject member or complainant must notify the Monitoring Officer of their intention to do so at least three working days prior to the Hearing.
- (ii) If the complainant or subject member are not present at the start of the Committee meeting, the Committee will adjourn to enable time for them to attend, unless they are satisfied that there is sufficient reason for their failure to attend, in which case the Committee may resolve to continue the meeting in their absence. Where the Committee proceeds in their absence, the procedure for the meeting shall be adapted as necessary, giving any representative of the subject member or complainant who is present such rights as would otherwise be accorded to them.

### Agenda of the Committee meeting

The agenda of the meeting will be as follows:

- (i) Elect a chair person to preside over the meeting if the Chairman or Vice-Chairman are not present;
- (ii) Report of any apologies from Members unable to attend the meeting;
- (iii) Approve the Minutes of the last meeting;
- (iv) Receive any declarations of interest from Members;
- (v) Consideration as to whether to adjourn or to proceed in the absence of the subject member or complainant;
- (vi) Introduction of all in attendance at the meeting
- (vii)

any representation from the Monitoring Officer, or his representative and/or the subject member as to reasons why the Committee should exclude the press and public and a determination as to whether to exclude the press and public. Where the Committee decides that it will not exclude press and public, the Clerk shall at this point provide copies of the agenda and reports to any members of the press and public who are present;

- (viii) Consideration of the complaints and its evidence in the order in which they have been received.

#### Speaking at the Meeting

- (i) Presentation by the Monitoring Officer or Investigating Officer of the investigation report.
- (ii) Questions from the Committee to the Monitoring Officer. There shall be no cross-examination by the subject member but they may request the Chairman to direct appropriate questions to the Monitoring Officer
- (iii) The Monitoring Officer may introduce any witnesses required to substantiate any matter contained in the report that the complainant and subject member have disputed, however if the matter is not included in their written statement the Monitoring Officer or Democratic and Elections Officer should draw this to the attention of the Committee. The Committee may then decide:
  - not to admit the information but to proceed to a decision on the basis of the information contained in the report;
  - to admit the dispute but invite the Monitoring Officer to respond or recall any necessary witnesses;
  - or adjourn the meeting to enable the Monitoring Officer to investigate and report on the dispute.
- (iv) Committee's questions to the Monitoring Officer's witnesses. (There shall be no cross-examination by the subject member, but the subject member may request the Chairman of the Meeting to direct appropriate questions to the Witnesses).
- (v) Opportunity for the complainant or their representative to raise any issues with the report which they have disputed in their written submission. (The legal advisor shall ensure that the Committee are aware of any written submissions.)
- (vi) Committee's questions to the complainant. (There shall be no cross examination by the subject member, they will have the opportunity to raise any issues when they address the Committee).
- (vii) The complainant may introduce any witnesses required to substantiate any matter contained in the report that they have disputed.
- (viii) Committee's questions to the complainant's witnesses. (There shall be no cross-examination by the subject member, they will have the opportunity to raise any issues when they address the Committee).
- (ix) Presentation by the subject member or their representative. They should only raise any issues with the report which they have disputed in their written submission. (The legal advisor shall ensure that the Committee are aware of any written submissions.)

- (x) Committee's questions to the subject member.
- (xi) The subject member may introduce any witnesses required to substantiate any matter contained in the report that they have disputed.
- (xii) Committee's questions to the subject member's witnesses.
- (xiii) The Committee may at any time seek legal advice from its legal advisor.
- (xiv) Such advice will, on all occasions, be given in the presence of the subject member (or their representative) and complainant (or their representative).

### **Making a finding**

Once all evidence has been presented by all parties, the Chairman will ask the Monitoring Officer whether there was any new matter raised during the course of meeting which was not addressed in the investigator's report or in the information submitted by the complainant or subject member disputing elements of the report. The Monitoring Officer will then have an opportunity to respond to any such new matter, or may request the Committee to adjourn to enable the Monitoring Officer to investigate and report on that new matter and/or to secure the attendance of witnesses as to the new matter.

If there is no adjournment, the Committee is required to come to a decision as to whether the subject member has breached the relevant Code of Conduct. The Committee need to be happy that they have sufficient information to make a decision. In the event that they require additional information they may question the Monitoring Officer, the subject member, complainant or any witness present in order to obtain sufficient information to enable the Committee to come to a decision on this issue.

The Committee will adjourn to a separate room where, in private, they will consider whether the subject member has acted in breach of the adopted Code of Conduct. If requested, an officer can retire with the panel to advise on matters of procedure and law, and any advice given must be conveyed back to the meeting publicly.

Once the Committee has come to a decision, the Committee will return and the Chairman will advise the complainant and the subject member their decision as to whether a breach of the Code of Conduct has occurred, and the reasons for that decision.

If the Committee come to the conclusion that the subject member has acted in breach of the Code of Conduct, the Committee will then hear representations from the Monitoring Officer and the subject member as to whether the Committee should take any action against the Councillor and what sanctions should be taken. Members of the Committee may ask questions of the Monitoring Officer and the subject member and seek legal advice in order to satisfy themselves that they have the information upon which to take a proper decision.

The Committee will then adjourn from the meeting to a separate room and will consider, in private, whether any action should be taken and what form of sanction should be taken. The Committee will then return to the meeting and the Chairman will report to the meeting the Committee's decision, the reasons for the decisions and sanctions imposed.

Sanctions that the Committee can impose include one or a combination of the following:

- Report its findings in respect of the subject member's conduct to Council or the relevant Parish or Town Council;

- Publish its findings in respect of the member's conduct;
- Issue a formal censure (or recommend the Parish or Town Council issue a formal censure);
- recommend to the subject member's group leader (or in the case of un-grouped councillors, recommend to Council) that they be removed from any or all Committees or sub-Committees of the authority (or recommend such action to the Parish or Town Council);
- recommend to the Leader of the relevant authority that the subject member be removed from positions of responsibility;
- instruct the Monitoring Officer to (or recommend that the Parish or Town Council) arrange training for the subject member;
- recommend to Council (or to the Parish or Town Council) that the subject member be removed from all outside appointments to which they have been appointed or nominated by the authority (or by the Parish or Town Council);
- recommend to Council (or to the Parish or Town Council) that it withdraws facilities provided to the subject member by the authority for a specified period, such as a computer, website and/or email and internet access; or
- recommend to Council (or that the Parish or Town Council) that it excludes the subject member from the authority's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, Committee and sub-Committee meetings and/or restricts contact with officers to named officers only;
- if relevant, recommend to Council that the subject member be removed from their role as leader of the authority;
- if relevant, recommend to the secretary or appropriate official of a political group that the Councillor be removed as group leader or other position of responsibility.

10.8 Note that where the subject member is a Parish/Town Councillor, the matter is referred back to their Council to say that a breach of the Code has been found and with a recommended sanction. The Parish/Town Council must then meet to consider whether to impose that sanction or to replace it with another relevant sanction. They cannot overturn the finding that there has been a breach of the Code and if they wish to impose a different sanction, they should seek advice from the clerk and/or the Monitoring Officer. The Standards Committee should also ask the Parish/Town Council to report back to the Monitoring Officer within three months to confirm that they have met to discuss the sanction, and if necessary, to write again once the sanction has been fulfilled.

Note that under the Code of Conduct, failure to comply with a sanction may itself be a breach of the Code.

### **Publicising the findings**

As soon as possible after the Standards Committee has made its decision in respect of the complaint, the Monitoring Officer shall take reasonable steps to give written notice of the decision and the reasons for the decision to complainant, subject member, the Investigator, Independent Person and if appropriate the relevant Parish/Town Clerk. The decision notice should be published on the website of any authorities involved and anywhere else the Committee considers appropriate.

Where the Committee finds that the subject member did not breach the Code of Conduct the authority's Code of Conduct, the public summary must say this and give reasons for this finding.

Where the Committee finds that the subject member breached the Code of Conduct but determines that no action is needed, the notice should:

- state that the subject member failed to follow the Code, but that no action needs to be taken;
- outline what happened;
- give reasons for the Committee's decision not to take any action.

Where the Committee finds that the subject member breached the Code of Conduct and a sanction is imposed, the notice should:

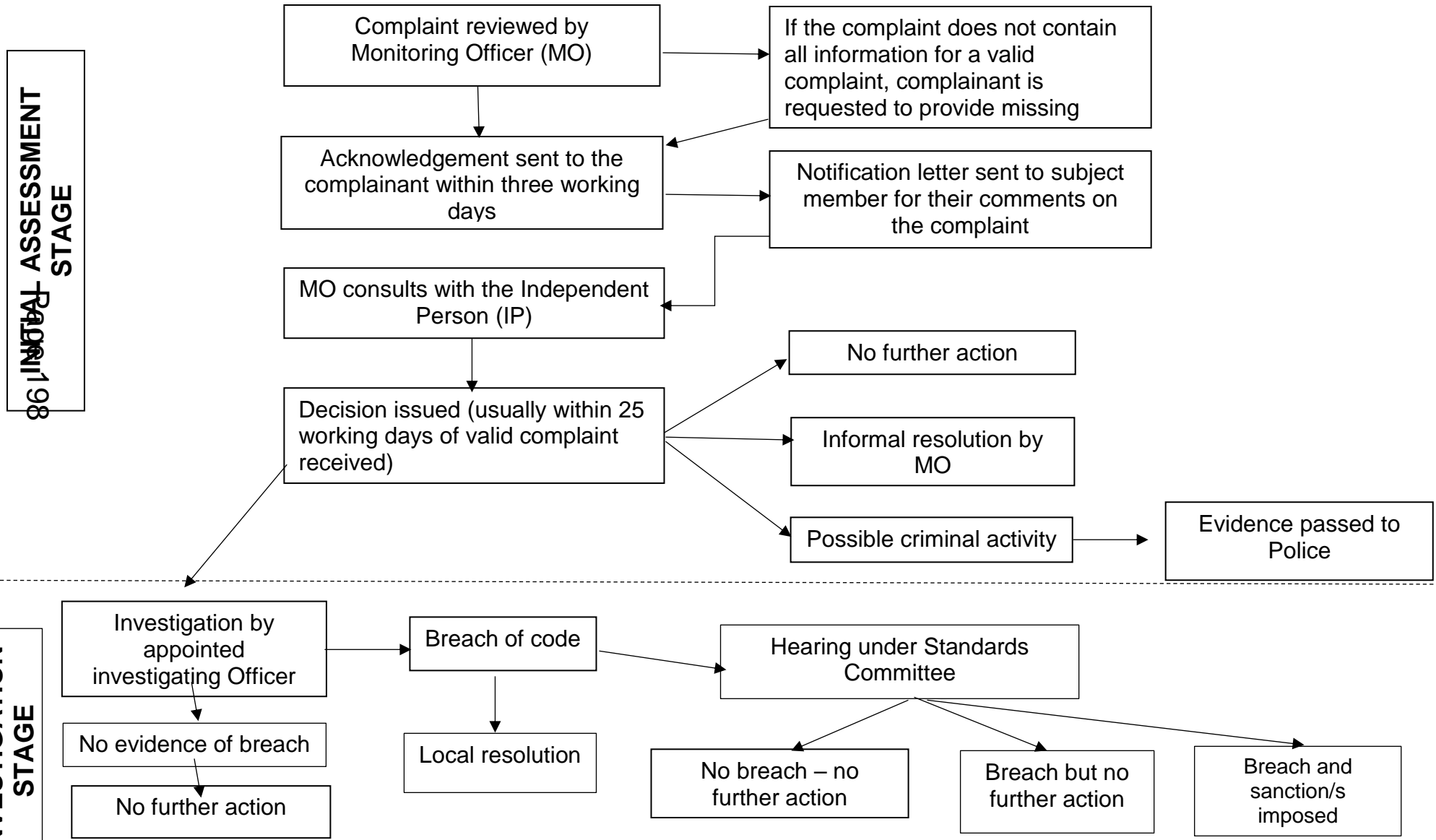
- say that the subject member failed to follow the Code of Conduct;
- outline what happened;
- explain what sanction has been imposed;
- give reasons for the decision made by the Standards Committee

The Committee's reports and minutes will be made available for public inspection in the same way as other committee papers are.

## **Appeals**

There is no right of appeal for the complainant or the subject member against a decision of the Standards Committee.

Appendix 1 – Arrangements flowchart



## Part 12: Members' Planning Code of Conduct

If you have any doubts about the application of this code to your own circumstances you should seek advice, preferably well before any meeting takes place.

- 14.1 About This Code**
- 14.2 The Planning System – The Members' Role**
- 14.3 Key Points (Golden Rules)**
- Essential – Do's and Don'ts**
- 14.4 Disclosable Pecuniary Interests**
- 14.5 Where you have a Disclosable Pecuniary Interest**
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- 14.11 How to Deal with Lobbying**
  - 14.11.1: Unless you have a Disclosable Pecuniary Interest, you may:**
- 14.12 Dealing with Particular Groups**
  - 14.12.1: Applicants/Developers**
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- 14.20 Procedure if Officers' Advice is not to be Followed:**
- 14.21 Training**
- 14.22 Sanctions**
  - 14.22.1: Sanctions (including offences)**
  - 14.22.2: External Sanctions**

## 14.1 About This Code

This code:

- is based on a Model Code which was prepared by the former Association of Council Secretaries and Solicitors;
- supplements the Members' Code of Conduct; and
- applies to:
  - Members **at all times** when involving themselves in the planning process
  - at less formal occasions such as meetings with officers or the public and at consultative meetings
  - both planning application matters and to enforcement matters.

## 14.2 The Planning System – The Members' Role

The key purpose of the planning system is to manage development in the public interest. The Members' role is to make planning decisions

- openly and transparently
- impartially
- for justifiable planning reasons.

**This Code aims** to ensure that all decisions are made in accordance with these principles.

## 14.3 Key Points (Golden Rules)

Planning decisions involve a balance between private and public interests where opposing views are often strongly held.

Your overriding duty is to the whole community not just to the people in your ward.

Decisions must not only **be** impartial they must be **seen to be** impartial.

- You should not favour, or appear to favour, any person, company, group or locality.
- You should not give the appearance of pre-judging ("pre-determining") the matter before it is considered by the Committee.

Planning decisions must be made in accordance with the statutory development plan unless material planning considerations indicate otherwise. <sup>1</sup>

The views of officers involved in the determination of planning matters will be presented on the basis of their overriding obligation of professional independence.

You may think that material planning considerations outweigh the development plan, or take a different view of the planning balance than is contained in the officer recommendations. You are fully entitled to do so but you will need to make sure that you can clearly identify and support the planning reasons leading to this conclusion/decision. Advice should still be sought from Planning Officers in relation to setting out the rationale for your decision.

<sup>1</sup> Section 38(6) Planning & Compulsory Purchase Act 2004



## Essential – Do's and Don'ts

### 14.4 Disclosable Pecuniary Interests

**DO**, as soon as you become aware that you have a disclosable pecuniary interest in any matter to be discussed at a meeting, make a verbal disclosure of that interest.

**DO** leave the meeting before that matter is discussed or, if you realise after the discussion has begun, as soon as you have made your disclosure.

**DON'T** participate in the discussion or vote on a matter in which you have a disclosable pecuniary interest unless you have been granted a dispensation.

**DO** notify the Monitoring Officer of your disclosable pecuniary interest in writing within 28 days of your disclosure unless it is already included on your register of interests form published on the Council's web site.

**DO** seek advice from the Monitoring Officer if you are in any doubt about what to do.

### 14.5 Where you have a Disclosable Pecuniary Interest

**DON'T** get involved in the processing of the application.

**DON'T** attend any formal or informal meeting about the application or seek to speak at meetings.

**DON'T** try to represent local views.

**DON'T** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.

**DON'T** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment because of your position as a councillor. This would include, where you have a disclosable pecuniary interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.

**DO** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a disclosable pecuniary interest to an appropriate officer (in person or in writing), the Code places greater expectations as to conduct than would be imposed on a normal member of the public.

### 14.6 Your Own Proposals

**DO** notify the Monitoring Officer, in writing, of your own proposals and those where you act as agent for a third party - this notification should be made no later than the

submission of the application. These proposals will be reported to the Committee as main items and not dealt with by officers under delegated powers.

#### 14.7 Where you have no Disclosable Pecuniary Interest

**You** may take part in the decision making process but need to take account of the following points:-

**Do** keep at the front of your mind that, when you come to make a decision, you:

- are entitled to have and to have expressed your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;
- must keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice as well as the arguments from all sides;
- are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a member, in giving fair consideration to points realised;
- are only entitled to take into account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
- are to come to a decision after giving what you feel is the right weight to those material considerations

#### 14.8 Bias and predetermination – don't fetter your discretion<sup>2</sup>

**DON'T** fetter your discretion by approaching the decision with a closed mind. Doing so will prevent you from participating impartially in planning decisions: making up your mind ("**pre-determination**"), or even appearing to make up your mind in advance of the Committee meeting, and of your hearing the arguments on both sides, may put the Council at risk of legal proceedings.

**Remember:**

- Planning decisions should only be taken with knowledge of all the relevant considerations, including responses to consultations where relevant. The officers' reports are intended to bring together all relevant considerations, and further matters may arise at the committee meeting. It is therefore not possible to come to a firm decision in advance of the meeting. You may have a view as to how you will decide a particular matter ("**pre-disposition**") but you must keep an open mind at the meeting.

**Where you have Fettered your Discretion**

- Don't speak and vote on the proposal at the meeting;
- Although you are not required to withdraw from the meeting, you may prefer to do so to avoid any complaint that your presence influenced the decision.

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<sup>2</sup> Members should also have regard to the Council's more detailed guidance: *Bias and Predetermination: A guidance note for members*

You can still exercise your separate rights as Local Ward Member where you have fettered your discretion. If you do exercise that right:

- advise the Proper Officer or Chairman that you wish to speak in this capacity before commencement of the item; and
- remove yourself from the room for the duration of that item.

#### 14.9 District Council Proposals

**DO** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than just a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits). The best advice in these circumstances is not to take part in the decision or vote on the proposals.

#### 14.10 Participation in the Discussions of Consultee Bodies

Members may have a dual role as both members of organisations that are consulted on planning proposals and as members of the Planning Committee. In those circumstances:-

**You may** take part in discussions of the consultee body on the proposal **IF** you make it clear to the consultee body that:

- your views are expressed on the limited information before you only, **AND**
- you must reserve judgement and the independence to make up your own mind on the proposal based on your overriding duty to the whole community and not just to the constituents of that body, **AND**
- you will not commit yourself as to how you or others may vote when the proposal comes before the Planning Committee.

#### 14.11 How to Deal with Lobbying

**DO** remember that your overriding duty is to the whole community not just to the people in your Ward. You need to make decisions impartially. Make sure that you do not favour, or appear to favour, any person, company, group or locality.

**DON'T** declare the way you intend to vote

**DON'T** express any opinion on the merits prior to your formal consideration of the matter at a meeting(s) of the planning authority unless you make it very clear that you will only make up your mind at the meeting after hearing the officers' presentation and evidence and arguments on both sides.

**DO** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality to express a firm point of view or an intention to vote one way or another.

**14.11.1: Unless you have a Disclosable Pecuniary Interest, you may:**

- listen/receive viewpoints from residents or other interested parties;
- make comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-determining the issue and you make clear you are keeping an open mind;
- seek information through appropriate channels; or
- be a vehicle for the expression of opinion or speak at the meeting as a local member, provided that, if you are a member of the Committee, you explain your actions at the start of the meeting/item and make it clear that, having expressed the opinion or local view, you will make up your own mind having heard all the facts and listened to the debate.

**14.12 Dealing with Particular Groups****14.12.1: Applicants/Developers**

**DO** refer applicants/developers who approach you for planning or procedural advice to officers wherever practicable.

**DON'T** agree to a meeting with applicants or developers where you can avoid it, except where this is part of a meeting organised by an officer and at which an officer is present. (Councillors do not normally take part in officers' discussions with applicants before a decision is taken, unless there are clear guidelines published by the Council to protect and assist councillors and officers. Where you do become involved, you should be advised by the appropriate officers and the discussions should be recorded as a written file note.)

**DO** ensure that you report to the Assistant Director Planning and Development any significant contact with the applicant and other parties and explain the nature and purpose of the contacts and your involvement in them. Ensure that this is recorded on the planning file.

**DO** make it clear that you will **only** be in a position to make a final decision on the application after having heard all the relevant evidence and arguments at Committee.

**DO** consider whether it would be prudent to make notes of what is said if no officer is present.

**14.12.2: Lobby Groups**

**DON'T** become a member of, lead or represent a lobby group seeking to promote or oppose planning proposals. If you do and you are a member of the Committee, you will have fettered your discretion.

**14.12.3: Political Groups**

**DON'T** decide how to vote at any sort of political group meeting, or press any other Member to do so, in advance of the meeting at which any planning decision is to be taken.

### 14.12.3: Presentations

**DON'T** attend presentations unless they have been organised by officers and an officer is present.

**DO** ask relevant questions for the purposes of clarifying your understanding of the proposals.

**DO** remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the appropriate Committee of the planning authority.

**DO** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Members might vote.

### 14.13 Undue or Excessive Lobbying

**DO** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality). The Monitoring Officer will in turn advise the appropriate officers to follow the matter up.

### 14.14 Gifts and Hospitality

**Be careful about accepting** gifts or hospitality wherever possible. If some hospitality is unavoidable, ensure that it is not excessive or inappropriate. Whilst not a disclosable pecuniary interest, a member, nevertheless, has the option of registering this so as to demonstrate openness and transparency to avoid any allegation of corruption or impropriety.

### 14.15 Dealings with Officers

**DON'T** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views on the proposal, which may be incorporated into any committee report.)

**DO** recognise that officers are part of a management structure and only discuss a proposal, except in any formal meeting, with an Assistant Director or those officers who are authorised by their Assistant Director to deal with the proposal at a Member level.

**DO** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

#### 14.16 Site Visits

**DO** ensure that you treat the site inspection only as an opportunity to seek information and to observe the site.

**DON'T** express opinions or views to anyone.

**DO** try to attend site visits organised by the Council where possible.

**DO** ask questions or seek clarification of matters that are relevant to the site inspection.

**DON'T** hear representations from the applicant or third parties.

**DON'T** visit a site on your own, even in response to an invitation, as this may give the impression of bias. Exceptionally, where there is no organised site visit, and with the prior approval of the Assistant Director Planning and Development, the local ward member or in appropriate circumstances other members, may ask for an individual site visit accompanied by an officer (there is nothing preventing you from viewing a particular site from the public highway).

#### 14.17 Communication with the Public at Committee Meetings

**DON'T** allow members of the public to communicate with you (orally or in writing) during the Committee's proceedings, as this may give the appearance of bias.

#### 14.18 Making Decisions

**DO** comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

**DO** come to your decision only after due consideration of all of the information reasonably required to base a decision upon. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request it. If necessary, defer or refuse.

**DON'T** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.

**DO** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, your reasons are recorded and repeated in the report to the Committee.

**DO** have recorded the reasons for any Committee decision to defer a proposal.

#### 14.19 Where the Officers' Recommendation is not Accepted

Decisions on planning matters (unless delegated to officers) are ultimately for members to make. But decisions, whoever makes them, must be made in accordance with the development plan unless material considerations indicate otherwise<sup>3</sup>.

If the officers' recommendation is not to be followed, equally robust planning reasons for the decision must be given at the meeting and minuted. Those reasons must be capable of being defended at any subsequent appeal.

Officer reports will include a recommendation based on an assessment of the proposal against the development plan and material considerations, including those arising from the representations made by the applicant and consultees. The reasons for the recommendation will be set out in the report. If members take a different view at the meeting, they will need to provide equally argued planning reasons. If on reading the officers' report, you form an initial impression that leads you to be pre-disposed to go against the recommendation, it may help to discuss tentative reasons with officers before the meeting.

**DO** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the **planning reasons** leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

#### 14.20 Procedure if Officers' Advice is not to be Followed:

**Proposer** to set out planning reasons for the proposal.

**Officers** to be given time to comment on those reasons and their ability to withstand challenge through the appeal procedures.

**Chairman** may adjourn briefly for proposer and seconder to discuss and formulate reasons with officers, reconvening for a vote and for reasons to be fully recorded. If Chairman concludes that there are opposing views amongst Committee Members, they may take a vote on the proposal without adjourning for discussion with officers. In such circumstances the planning reasons for the proposal should be set out in detail before the vote is taken.

#### 14.21 Training

**DON'T** participate in decision making at meetings dealing with planning matters if you have not attended any mandatory planning training prescribed by the Council.

**DO** try to attend any other specialised training sessions provided. These will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.

In accordance with Government guidance, it is Council policy that every Member of the Council must receive formal training in the planning system before serving on

<sup>3</sup> Section 38(6) Planning & Compulsory Purchase Act 2004

the Planning Committee. Similarly, any present or newly elected Member participating in the determination of a planning application by full Council, must receive such training before taking part.

If training is declined or not undertaken for any reason, then the Member concerned would not be able to participate in Planning Committee meetings or at meetings of full Council when it is determining a planning application.

## 14.22 Sanctions

### 14.22.1: Sanctions (including offences)

If you do not follow this code, you may put:

- The Council at risk of proceedings on legality or of maladministration;
- Yourself at risk of breaching the Members' Code of Conduct.

It is a criminal offence (without reasonable excuse), if you are aware that you have a disclosable pecuniary interest in a matter being considered at a meeting:

- Not to disclose that interest (unless it is already registered)
- To participate in any discussion or vote on that matter.

### 12.22.2: External Sanctions

These include:

#### **Local Government Ombudsman**

The Ombudsman can investigate the process by which a planning decision has been taken (though not the decision itself). If injustice caused by maladministration is found, the report may name the Member involved and give particulars of the breach. The report may be made publicly available.

#### **Appeals to the Secretary of State**

If an appeal is lodged and the Council is found to have been unreasonable (for example by making a decision for inadequate planning reasons) the appellant's costs may be awarded against the Council.

#### **Judicial Review**

If the Council can be shown to have not followed the correct procedures in determining an application or to have taken into account irrelevant considerations, the court may quash the decision. The claimant's costs would normally be awarded against the Council.



## Part 13: Bias and Predetermination: A Guidance Note for Members

(September 2023)

- 15.1 Introduction**
- 15.2 Lawful Decision Making**
- 15.3 What is Predetermination or Bias?**
- 15.4 Consequences**
- 15.5 Predisposition**
- 15.6 Localism Act 2011**
- 15.7 Freedom of Speech**
- 15.8 Case Law**
- 15.9 Conclusion**
- 15.10 Bribery Act**
- 15.11 Membership of Organisations**
- 15.12 Trade Union Representation**
- 15.13 Dual/Triple Hatted Members**
- 15.14 Community meetings**
- 15.15 Code of Conduct**
- 15.16 Summary of Do's and Don'ts**
  - 15.16.1: Do's**
  - 15.16.2: Don'ts**

### 15.1 Introduction

Local Authorities are legal entities that are required to make decisions in accordance with the law and in accordance with their own governance arrangements as set out in a Constitution and a Code of Conduct. Each Principal Authority must appoint a Monitoring Officer who has responsibility to ensure lawful decision making. The Monitoring Officer is required to report to the Authority where the actions of the Council itself, its Committees or Sub-Committees, Councillors or employees give rise or is likely to give rise to a breach of any legal enactment or maladministration (Section 5 of the Local Government and Housing Act 1989).

### 15.2 Lawful Decision Making

There are certain procedural requirements in relation to the membership and operation of decision making meetings and legal requirements as to the provision

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of sufficient information to enable informed decisions to be made. There can also be legal requirements to undertake consultation before decisions are made. Where consultation is required (or whenever it is undertaken) it must be done properly and the results taken into account by the decision maker, before a final decision is made.

It is essential that the public have confidence in the procedures adopted and that Members themselves ensure that decisions are properly taken in accordance with legal requirements.

Legal challenges are common, particularly on controversial matters, and the limits of judicial review mean that whilst claimants will often be aggrieved with the merits of a decision it is more often the case that challenges are brought on the basis of alleged defects in the decision making process.

The key components to lawful decision making are that Members do not close their minds to permissible outcomes, consider issues in good faith without the presence or appearance of bias, have regard to all relevant considerations and act in accordance with the law.

### **15.3 What is Predetermination or Bias?**

Predetermination is where a Councillor's mind is closed to the merits of any other arguments about a particular issue on which they are making a decision and that they have already made their minds up about it. The Councillor makes a decision on the issue without taking all relevant information into account.

Predetermination is therefore the surrender by the decision-maker of their judgement by having an evidentially closed-mind such that they are unable to apply their judgement fully and properly to an issue requiring decision.

It is essential that Councillors do not appear to have already made up their minds in advance of the meeting itself. Such impressions can be created in a number of different ways such as quotes given in the Press or what is said at the meeting itself or at other meetings and in correspondence (particularly, nowadays, in e mails) Predetermination may amount to a form of bias.

Bias can also occur where the private interests of a Councillor impact or may be perceived to impact on their decision making. For example, where the Councillor's relationship with any person or body/agency who may be affected by the decision may reasonably be perceived to affect, their ability to weigh matters fairly and properly. Bias is conduct that, to a fair-minded and informed observer, gives rise to a real possibility that a member is biased in the sense of approaching a decision with a closed mind and without impartial consideration of all the issues. Bias is technically of two sorts: actual bias and apparent bias. The latter is easier to allege and establish. The test is whether a reasonable, informed observer would take the

view that there was a possibility of bias<sup>1</sup>. If a Member participated in a decision despite having a pecuniary interest then that would be actual bias. Giving the appearance of having a closed mind on an issue may lead to an allegation of apparent bias.

In instances of both predetermination and bias, the implication is that a decision will be taken in a particular and fixed way irrespective of the merits or the information provided at the meeting.

#### **15.4 Consequences**

Where a Councillor has a closed mind, this potentially has a direct impact on the validity of the decision and might make the decision challengeable either by way of Judicial Review or some other legal appeal process. If proven it would amount to a procedural irregularity and might mean that the decision taken by the Committee is then regarded as unlawful and void.

Challenges can also be made via a complaint to the Local Government Ombudsman who can investigate the matter and has power both to secure documentation held by the council and to require witnesses to attend for interview. A finding of maladministration requires the Council to place a public notice of the findings, debate at full Council and respond to the findings.

The Monitoring Officer also has the power to investigate a matter and decide if there has been any procedural irregularity as well as a possible breach of the member's code of conduct.

#### **15.5 Predisposition**

Predisposition means that a person has not yet fully made up their mind about an issue. Although they may have policy, personal or other legitimate reasons to be disposed toward a particular outcome, predisposition still holds open the possibility that the member will have regard to all of the evidence provided to him or her and is still open to persuasion on the facts of the case.

The law recognises that a Councillor may be predisposed to a particular view on issues but this in itself is not a bar from them taking a full part in the decision making. Provided they have an open mind to the merits of the arguments before they make a final decision on the specific issue before them e.g. a general antipathy to wind farms does not preclude a specific decision about a specific application for a wind turbine planning application in a specific locality. The general view does not close the member's mind to the relevant facts concerning the specific decision that needs to be taken.

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<sup>1</sup> R (on the application of Ortona) v SSCLG 2009 JPL 1033. See Georghiou v LB Enfield (2004) EW HC 779.

By the nature of the councillor role, elected members will have predispositions on matters of policy, or perhaps on a local issue for which they have campaigned or stood for election. The holding and expression of views, even strong views, is to be expected. The common law recognises this and has established that only if a councillor firmly closes their mind to any other possibility (when called upon to take or participate in a decision) will the courts judge the matter as having strayed into predetermination or bias.

**The law recognises that Councillors do have opinions and views on a wide range of issues and whilst not having a closed mind, nevertheless, they are not expected to have an empty mind!**

## 15.6 Localism Act 2011

In order to make it explicitly clear that all Councillors should be entitled to speak on behalf of their communities without necessarily precluding themselves from local decision making, Section 25 of the Localism Act 2011 was implemented to address this issue. In effect, expressions of a view on a particular local planning issue, or campaigning for election on a particular platform, should not of itself be treated as evidence of a closed mind on a particular matter which would prevent them from participating in Council business relating to that issue.

Section 25 states that if there is an issue about the validity of a decision as a result of an allegation of bias or predetermination (either actual or apparent) then in those circumstances a decision maker is not to be taken to have had or to appear to have had a closed mind just because they have previously done anything that directly or indirectly indicated what view they might take or would take in relation to the matter.

The clear intention of the legislation is to allow Members to feel more confident in becoming involved in local debate without fear of precluding themselves from taking part in decision making.

This is based on the principle that a member should be deemed to be open to persuasion on the facts of the case before the actual decision is taken at the Committee, having taken into account the relevant Committee reports, the debate, advice provided, consultation undertaken and any representations made at the meeting i.e. taking into account all of this information and only then making a decision.

However, this Section does not provide blanket protection or immunity for anything that is said by a Member. The test of what an 'impartial and fair minded observer would think<sup>2</sup>' would still apply in relation to interests or relationships, which bring into question issues of undue influence or bias. The protection of Section 25 only relates to previous statements not being **in of themselves** proving

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<sup>2</sup> Porter v Magill 2001 VKHL 67

predetermination or bias. If there is other evidence available to demonstrate predetermination or bias then such statements might then become admissible.

## 15.7 Freedom of Speech

There is an important difference between those Councillors who are directly involved in making a decision and those Councillors who are legitimately seeking to influence that decision. Councillors who are not involved in making a decision are generally free to speak how they want with regards to a matter and indeed frequently take on the role of advocate for the local community. This can include attending a decision making Committee as a non-Committee member and, with the leave of the Chairman addressing the Committee on the merits of the matter before it.

## 15.8 Case Law

The Localism Act effectively confirms and re-states the established case law in relation to predetermination and it is therefore helpful to consider such cases as they provide practical examples of instances where predetermination was not proven.

### 15.8.1: R (Lewis) v Redcar and Cleveland Borough Council [2010] UKSC11

A highly controversial decision taken just before an election was unsuccessfully challenged. Members were entitled to be predisposed to determine an application in accordance with their own political views and policies, provided that they listened to the arguments and had regard to all material considerations. Neither the proximity of the local election nor the unanimity of the members of the majority group in themselves were capable of demonstrating that those who voted in favour of the application had closed minds to the planning merits of the proposal.

### 15.8.2: R (Island Farm Development Limited) v Bridgend CBC 2006 EWHC 2189

This case involved a refusal by a Local Authority to sell land to the claimant who wished to develop it. There were strong local feelings about the matter and indeed several members of the Council had been elected having campaigned against the sale. The Judge held that Members were entitled, when making decisions on local issues, to take into account policies they believe in, especially if they have been part of a manifesto in a local election. Prior statements were simply evidence of predisposition, not of closed minds.

**15.8.3: Condron v National Assembly for Wales [2006] EWCA Civ 1573**

In the case of Condron, a Member as he walked into the building just prior to the meeting, was asked how they were going to vote and stated that they were “going with the Officer recommendation”. Even in this instance, where there was explicit evidence of intention, nonetheless, the Courts ruled that there was no evidence that at the meeting itself the Member had a closed mind as there was no evidence to suggest that they wouldn't have changed their mind as there was still the possibility that they might have changed their opinion depending on what they had heard.

**15.9 Conclusion**

The legislation is clear that whatever a Councillor says or does prior to the meeting cannot by itself, be used as evidence of predetermination or bias provided they conduct themselves appropriately and consider and weigh the matters at the meeting itself before reaching a decision.

Nonetheless, separate from the legal protection, Councillors also need to guard against the perception or unfounded allegations of predetermination and bias. Therefore, it is important for Councillors to explain that their views are preliminary and are not to be taken as their final decision and that they have retained an open mind and will listen to both sides of the argument before reaching a final conclusion.

**15.10 Bribery Act**

It is a criminal offence under the Bribery Act 2010 to request or receive money or other advantage in return for improperly doing or not doing an act as part of your Councillor role. Voluntary registration of gifts and hospitality received or offered protects both you and the Council from such allegations of corruption. The declaration form has a section which can be used for these voluntary disclosures of interest.

**15.11 Membership of Organisations**

Councillors and co-opted members will often be members of outside organisations, locally or nationally, either in their private capacity or as appointed by their councils. This can include community groups, lobby groups, political parties and trade unions.

An association with such a group could, conceivably, be a factor in any allegation of real or actual bias. This would depend on the circumstances of the case. Mere membership is unlikely to be an issue. However, active involvement in the promotion of a particular cause or object, if this is germane to a decision before the

council, may well give rise to an appearance of bias.

In order to strengthen openness and transparency it is advisable for Members to register such membership in order to protect themselves and the Council from allegations of bias or of having a particular hidden agenda.

It is always open to members voluntarily to declare any other personal interests in that section of the Register of Interests Form provided for this purpose. If a member considers that a personal interest, other than a disclosable pecuniary interest, would conflict with their responsibilities to abide by the Seven Principles of Public Life (the 'Nolan Principles') then these can be included in that latter section of the form.

One of the Nolan Principles is that:

*"Holders of public office must avoid placing themselves under any obligation to people or organisations that may try inappropriately to influence them in their work"*

Therefore, members need to be mindful of any pronouncements they may make as part of such organisations, either on their behalf or individually.

### **15.12 Trade Union Representation**

Insofar as any such association may involve sponsorship (by that organisation) e.g. by a Trade Union then registration is already required as a Disclosable Pecuniary Interest. The relevant Regulations explicitly provide that sponsorship includes "any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992". This means that sponsorship by a trade union will be a disclosable pecuniary interest and should be registered as such.

### **15.13 Dual/Triple Hatted Members**

Dual and triple-hatted members need to balance their legitimate right to express views while protecting the integrity of council decision making from allegations of real or apparent bias and predetermination arising from potential conflicts of interest between the two Councils they represent.

Members of more than one local authority may occasionally find themselves in a position where they have made a decision or been consulted on a matter in one authority which then comes up for consideration in another authority. In those circumstances, advice should be sought from the Monitoring Officer as to whether or not the initial involvement precludes them from taking part in the decision making.

Members may also need to be cautious as to whether they can take part in a decision that has financial implications, either positive or negative, for the other public body. Again the advice of the Monitoring Officer should be sought.

### 15.14 Community meetings

Where a member agrees to chair a community or public meeting on a particular planning matter, the member should make it clear at the outset the capacity in which they are acting (e.g. as a facilitator to local discussion) and make a very clear statement setting out that they are taking part with an open mind. It is suggested that members might want to use the following words to do this (varied to name the particular meeting) and perhaps to include a copy as an annex to the minutes:

*I have agreed to chair this meeting [Liaison Committee etc] in order to enable meetings to take place between [local residents, the Parish Council, the operator, the landowner, the District Council through its officers, and other interested parties]. I intend to listen to the views and opinions put forward by all parties at this meeting but I would like to make it clear that insofar as there is any discussion or consideration of a proposal by any party that may require planning permission, all parties should be aware that notwithstanding anything I may hear or any comment I may make at these [Liaison] meetings, this is not the correct forum to determine any such matters and that I will make my decision on such matters at the relevant Council meeting with an open mind and based on all the evidence presented at that meeting.*

A version of this statement could also be made if a member is participating in, but not chairing, such a meeting, for the avoidance of doubt.

### 15.15 Code of Conduct

Members will be familiar with their responsibilities under the Code of Conduct to register and declare disclosable pecuniary interests and any other non-pecuniary interests which they wish to register. These provisions protect council decision-making, and members themselves, where private interests may otherwise conflict with public duties.

If you are a member of a planning committee you will also need to have regard to the specific guidance in the Council's Planning Code in relation to bias and predetermination.

### 15.16 Summary of Do's and Don'ts

The law of ***bias and predetermination*** protects the democratic decision making process such that decisions are taken properly and conscientiously, having due regard to advice and other material in the meeting, and what it said in the relevant debate.



**15.16.1: Do's**

- Members should not be afraid of holding or expressing views, even strong views - provided that they remain just that - **views**
- Be careful not to convey the impression in the mind of a reasonable person (and before the decision in question) that you have already made up your mind 'come what may'
- Remember that the *appearance* of bias is sufficient to undermine the decision-making process even if you believe that no bias *actually* exists

**15.16.2: Don'ts**

- In expressing your views ahead of a decision, do not use extreme language that could indicate you have **predetermined** the matter already
- Allow your associations and memberships to create the *impression* of bias
- Accept gifts and/or hospitality that creates the impression of bias or corruption

For further advice about this guidance, and to discuss any particular scenarios, contact the Monitoring Officer or the Democratic and Elections Team, [democracy@cherwell-dc.gov.uk](mailto:democracy@cherwell-dc.gov.uk)

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## Part 14: Conventions for the Management of Council Business and a Protocol on Member/Officer Relations

(Adopted 2015, reviewed May 2022)

- 16.1 Introduction**
- 16.2 Terminology**
- 16.3 Members and Officers: Their Respective Roles**
- 16.4 Political Groups**
- 16.5 Members Briefings and Access to Information**
  - 16.5.1: Briefings**
  - 16.5.2: Access to Information**
- 16.6 Relationship Between Officers and Portfolio Holders and Chairmen**
- 16.7 Non-Scheduled Meetings**
- 16.8 Group Leaders and Attendance at the Executive and at Committees**
- 16.9 Requests for the Preparation of Reports**
- 16.10 Officer Advice to Political Groups**
- 16.11 Support Services to Members and Political Groups**
- 16.12 Press Releases and Publicity**
- 16.13 Correspondence**
- 16.14 Involvement of Ward Councillors**

### 16.1 Introduction

The Conventions were originally drafted in consultation with the Leaders of the three Political Groups on the Council at the time, and agreed by the Council in May 1995 to assist in the management of the Council's business in the situation where no single Political Group had an overall majority. They have been amended from time to time, as required by the Council, and now reflect a situation where a single Political Group has an overall majority.

The Conventions supplement the current Rules of Procedure and practice within the Council in the areas covered, and contain a protocol for relations between Members and Officers.

Where difficulties of interpretation or unforeseen circumstances arise, the matter will be discussed with the Political Group Leaders together with the Chief Executive to determine a way in which it might be handled.

### 16.2 Terminology

The Member elected by the Council to be its Chairman shall be known as the "Chairman of the Council".

The person appointed by the majority Political Group to be its Leader shall be the Leader of the Council and lead the Executive. They shall be known as the "Leader of the Council".

The person appointed by each Political Group as its leader shall be known as the "Leader of the ..... Group" as is appropriate.

The Political Group with the second largest number of seats on the Council shall be known as "the Opposition Group", and the Leader of that Group shall be known as the "Leader of the Opposition".

The Member elected by any Committee, Sub-Committee, Panel or Working Party shall be known as "Chairman of the ..... Committee, Sub-Committee, Panel or Working Party" as is appropriate, unless the Chairman wishes to be known as "Chair".

### **16.3 Members and Officers: Their Respective Roles**

In order for the management of the Council's business to be handled effectively, it is necessary for the relationship between Members and Officers to be clearly defined and understood.

Given the difference in their roles, it is important that mutual respect exists between Officers and Members and both should observe reasonable standards of courtesy in their dealings with each other and neither party should seek to take unfair advantage of their position.

The Council's code of conduct for councillors provides that councillors should treat others, including officers, with respect, that they should not bully any person and that they should not do anything that compromises or is likely to compromise the impartiality of those who work for or on behalf of the Council.

### **16.4 Political Groups**

Political Groups (not necessarily the same thing as a political party) have been recognised in law since 1990. The rules concerning the establishment of Political Groups and their Membership and any changes thereto will be notified to Members by the Director of Law and Governance, so that Groups may be properly formed or changed from time to time.

On the basis that Political Groups exist within the Member structure and are likely to continue to do so:-

- the notification of Group Leaders should take place before the date of the Annual Meeting of Full Council;
- for each Executive area of responsibility, Committee or Sub-Committee, each Group may nominate both a Member to be the main point of contact and a Deputy. The main point of contact will of course be the Portfolio Holder or the

Chairman in respect of the Group taking that position. For the other Groups the person shall be designated the "Group Spokesperson". The deputy to the Group Spokesperson shall be designated the "Deputy Group Spokesperson".

- The Group Leaders will submit to the Chief Executive by the Friday following the Annual Council Meeting, a list of those Members whom they wish to act as Group and Deputy Group Spokespersons.

A Political Group may legally consist of a minimum of two Members.

The Council will decide whether or not Political Group Leaders are paid a Special Responsibility Allowance and, if so, the level of such allowance. In reaching that decision, the Council will take into consideration the recommendations of the Independent Remuneration Panel.

Office and equipment facilities are offered as a matter of course to the majority Political Group, and also to the largest Opposition Group, regardless of size. Where there are two or more equally sized largest Opposition Groups, they will be invited to share office and equipment facilities (with the practical arrangements to be agreed between the relevant Group Leaders).

## **16.5 Members Briefings and Access to Information**

### **16.5.1: Briefings**

Personal briefings on matters to be raised at meetings of Committees, Sub-Committees, Panels and Working Parties may be given by members of Joint Management Team to the Chairman, Vice-Chairman and Group Spokespersons.

Briefings for Committee, Sub-Committees, Panels and Working Parties for the appropriate Chairman, Vice-Chairman and the Spokespersons for the Political Groups may take place at the same time, unless any Group request separate briefings.

A member of the Leadership Team taking a report to full Council, the Executive, a Committee, Sub-Committee, Panel or Working Party shall consult the relevant Portfolio Holder before finalising the report save in the case of reports to the Overview and Scrutiny Committee. The Officer will always remain responsible for the contents of their report.

### **16.5.2: Access to Information**

As regards the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law, and details we set out in the Constitution in the section headed "Access to Information Procedure Rules".

The common law right of Members is much broader and is based on the principle that any Member has a prima facie right to inspect Council documents so far as their access to the documents is reasonably necessary to enable the Member properly to perform their duties as a Member of the Council. This principle is

commonly referred to as the “need to know” principle.

The exercise of this common law right depends therefore upon the Member’s ability to demonstrate that he/she has the necessary “need to know”. In this respect a Member has no right to “a roving commission” to examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the “need to know”. This question must initially be determined by the particular Assistant Director whose service holds the document in question (with advice from the Assistant Director Law and Governance). In the event of dispute, the question falls to be determined by the Chief Executive, and if the Member is then still not satisfied, the Executive may be requested to determine the matter.

In some circumstances (e.g. a Committee Member wishing to inspect documents relating to the functions of that Committee) a Member’s “need to know” will normally be presumed. In other circumstances (e.g. a Member wishing to inspect documents which contain personal information about third parties) a Member will be expected to justify the request in specific terms.

Whilst the term “Council document” is very broad and includes, for example, any document produced with Council resources, it is accepted by convention that a Member of one Political Group will not have a “need to know”, and therefore no right to inspect, a document which forms part of the internal workings of another Political Group.

Further and more detailed advice regarding Members’ rights to inspect Council documents may be obtained from the Assistant Director of Law and Governance.

Any Council information provided to a Member must only be used by the Member for the purpose for which it was provided i.e. in connection with the proper performance of the Member’s duties as a Member of the Council. This point is emphasised in the Code of Conduct for councillors in the following terms:

#### *6.4 Confidentiality and access to information*

*A Councillor:*

- 6.4.1 Shall not disclose information either given to them in confidence by anyone or acquired by them which they believe, or ought reasonably to be aware, is of a confidential nature, unless*
- i. They have received the consent of a person authorised to give it; or*
  - ii. They are required by law to do so; or*
  - iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or*
  - iv. the disclosure is reasonable and in the public interest; and also made in good faith and in compliance with the reasonable requirements of the local authority and consultation with the Monitoring Officer has taken*

*place prior to its release.*

- 6.4.2 *Shall not improperly use knowledge gained solely as a result of their role as a Councillor for the advancement of themselves, their friends, family members, employer or business interests.*
- 6.4.3 *Shall not prevent anyone from getting information that they are entitled to by law.*
- 6.4.4 *When making decisions on behalf of, or as part of, the Council shall have due regard to any professional advice provided by the Council's Officers.*

Any factual information relating to a matter before a Committee or Sub-Committee that has been provided on request to a Member, whether a member of that Committee or Sub-Committee or not, shall be made available to all members of the Committee or Sub-Committee concerned where the information is relevant to a decision to be made.

If a member of Leadership Team considers that meeting a request for factual information would involve a substantial commitment of resources, they may refer the matter initially to the Group Spokespersons for the Committee, Sub-Committee, Panel or Working Party and, in the event of the matter not then being resolved, to the appropriate Committee or Sub-Committee.

Notwithstanding the position set out above, if a Chairman or a Spokesperson wishing to pursue a particular line of enquiry indicates that the matter is to be regarded as confidential, then there shall be no disclosure of that information to any other Member without their permission. That does not preclude the same information being provided to another Spokesperson if it is sought independently. (The principle is, therefore, not that the information itself is kept confidential but that Spokespersons are entitled to pursue their own lines of enquiry without other Members being told).

Nothing in this section shall inhibit the right of Members to seek and receive information and advice properly relevant to their duties and responsibilities.

## **16.6 Relationship Between Officers and Portfolio Holders and Chairmen**

It is clearly important that there should be a close working relationship between the Chairmen of Committees, Portfolio Holders and Leadership Team. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officers' ability to deal impartially with other Members and other Political Groups.

Whilst the Chairman of a Committee (or Sub-Committee) will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must

be recognised that in some situations an Officer will be under a duty to submit a report on a particular matter. Similarly, an Officer will always be fully responsible for the contents of any report submitted in their name. Any issues arising between a Chairman and a Chief Officer in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.

Finally, it must be remembered that Officers within a service are accountable to their Assistant Director and that whilst Officers should always seek to assist a Portfolio Holder or Chairman (or indeed any Member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Service Head.

### **16.7 Non-Scheduled Meetings**

A Member who is attending a meeting as deputy for the Leader of the Council or Political Group shall advise the Assistant Director Law and Governance prior to the commencement of the meeting of that fact, and such attendance shall be recorded in the Minutes of the meeting.

When non-scheduled meetings of Committees and Sub-Committees are required, all reasonable efforts will be made to fix an acceptable date in consultation with the Chairman and Group Spokespersons.

For small meetings, all reasonable efforts will be made to contact all Members concerned, but the practicalities and required time-scales may militate against this. Substitutes should be used to ensure that, as far as possible, appropriate representation is available.

### **16.8 Group Leaders and Attendance at the Executive and at Committees**

As provided for in the Meeting Procedures Rules, the Leaders of all Groups shall be entitled to attend and speak at meetings of Committees and Sub-Committees. Group Leaders may also attend, and make a statement on items of business on the agenda of the Executive. Group Leaders may arrange for a deputy to represent them at any such meeting they are entitled to attend but both shall not simultaneously attend such a meeting acting in the capacity set out above.

The Assistant Director Law and Governance shall be advised prior to the meeting of the name of any Member deputising for the Leader of a Group and acting in the capacity set out above.

### **16.9 Requests for the Preparation of Reports**

Without prejudice to the right of a member of the Council to give notice to the Chief Executive that he/she wishes an item to be included on the agenda for the next available meeting of the Overview and Scrutiny Committee, formal requests to members of the Leadership Team for a report on a particular issue to be prepared



should only come from the Leader of the Council, or relevant Portfolio Holder or Chairman of the relevant Committee, Sub-Committee, Panel or Working Party or a Group Spokesperson. If, in the opinion of the member of Leadership Team, the contents might be politically sensitive or involve a considerable effort, they shall discuss the request with the Chairman and other Group Spokespersons in order to determine the degree of support it enjoys. Subject to two Group Spokespersons confirming that they wish a report be produced, the Officer shall prepare the report. Committees, Sub-Committees, Panels or Working Parties may also request formal reports from Officers.

If such requests cover the responsibility of more than one Committee, or would include significant financial implications, they should be addressed to the Chief Executive in the first instance for discussion with the Group Leaders.

The procedure for overview and scrutiny envisages that the wishes of Members of all political groups will be taken into account in setting the work programme. Requests for items to be included in the work programme shall be considered by the Chairman and the relevant scrutiny Committee and agreement reached if an item should be added to the work programme. The objective will be to arrive at a manageable work programme and not to obstruct requests for items of business from minority groups.

#### **16.10 Officer Advice to Political Groups**

It is common practice for Political Groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to provide information and advice in connection with such deliberations by Political Groups.

Whilst in practice such Officer input is likely to be in most demand from whichever Group is for the time being in control of the Council, information and advice is available to all Groups on the same basis.

Certain points must however be clearly understood by all those participating in this type of process, Members and Officers alike. In particular:

- Officer input in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of Group business. The observance of this distinction will be assisted if Officers are not expected to be present at meetings, or parts of meetings, when matters of Group business are to be discussed;
- Group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council

decisions and it is essential that they are not interpreted or acted upon as such; and

- Similarly, where Officers provide information and advice to a Group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant body when the matter in question is considered.

Special care needs to be exercised whenever Officers are involved in providing information and advice to a Group meeting which includes persons who are not Members of the Council. Such persons will not be bound by the Council's Code of Conduct for councillors (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons Officers may not be able to provide the same level of information and advice as they would to a Members only meeting.

Officers must respect the confidentiality of any Group discussions at which they are present in the sense that they should not relay the content of any such discussion to another Group.

Any particular cases of difficulty or uncertainty in this area of Officer advice to Groups should be raised with the Chief Executive who will discuss them with the relevant Group Leader(s).

### **16.11 Support Services to Members and Political Groups**

The only basis on which the Council can lawfully provide support services (e.g. stationery, typing, printing, photocopying, transport, etc) to Members is to assist them in discharging their role as Members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

### **16.12 Press Releases and Publicity**

All publicity undertaken by the Council will be in accordance with the Code of Recommended Practice on Local Authority Publicity issued by the Department of Communities and Local Government (Circular 01/11).

Press releases issued by the Council shall contain no quotes from Members other than, where appropriate, from the Chairman of the Council acting in a civic capacity or from the Executive Leader or the relevant Portfolio Holder or Chairman. Comments will only be included if they relate to matters considered by the Executive or Portfolio Holders or any Committee, Sub-Committee, Panel or Working Party and the press release is issued after the appropriate meeting.

Press releases prior to, but concerning matters due to be considered, shall be confined to purely factual information.

All press releases should however, contain the name and telephone contact

information for the relevant Portfolio Holder or Committee Chairman.

Members should respond to requests for press, radio and television interviews in a purely personal capacity and the proceedings will be the personal responsibility of the Member concerned.

Where press conferences or media events are arranged, all relevant Portfolio Holders or Committee Chairmen should be invited to attend as appropriate.

The Communications team will circulate press releases conforming to the above rules to the media. Press releases not conforming to the above requirements should not be issued by Officers of the Council.

In the pre-election period, advice on the extra restrictions applying to publicity will be circulated by the Monitoring Officer. Circumstances where a councillor who is standing for election is publicised and/or quoted in Council publicity during a "purdah" period will not be permitted.

### **16.13 Correspondence**

Correspondence between an individual Member and an Officer should not normally be copied (by the Officer) to any other Member. Where exceptionally it is necessary to copy the correspondence to another Member, this should be made clear to the original Member. In other words a system of "blind copies" should not be employed.

Official letters on behalf of the Council should normally be sent out in the name of the appropriate Officer, rather than the name of a Member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear in the name of a Member, but this should be the exception rather than the norm. Letters which for example, create obligations or give instructions on behalf of the Council must never be sent out in the name of a Member.

### **16.14 Involvement of Ward Councillors**

Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Ward or Wards affected should as a matter of course be invited to attend the meeting, the maximum possible notice being given. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be notified at the outset of the exercise.

Other issues likely to affect Ward Members should be notified to them in advance, for example press releases relating to a particular Ward or significant matters likely to affect a Ward.

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## **Part 15: The Respective Roles of Members and Officers and Dealing with Conflicts of Interest/Ethical Walls Policy**

(Adopted October 2016, Reviewed May 2022)

- 17.1 Introduction**
- 17.2 The role of Members**
- 17.3 The role of Officers**
- 17.4 The role of Directors/Trustees**
- 17.5 How these roles work in practice**
- 17.6 Statutory requirements**
- 17.7 Summary**

### **Appendix: Ethical Walls Procedure**

- a. Ethical Walls Procedure**
- b. Background**
- c. Procedure**
- d. Statutory Officers and Dispute Resolution Procedure**

#### **17.1 Introduction**

Council owned/influenced companies/organisations (Council Entities) have been created and more may be created in the future.

Nominated officers may also spend their time serving Council Entities as set out in their letter of nomination from the councils. Underpinning this is an acknowledgment that where a smaller number of senior officers will be serving multiple organisations, there is a need to reflect the way in which officers have to operate.

Members and officers need to be aware of the action to be taken when there is an actual or potential conflict of interest in acting for more than one organisation.

#### **17.2 The role of Members**

Full Council is collectively responsible for setting Council policy within the defined policy framework. CDC has established an Executive to bring forward the delivery of their agreed policies. Members of the Executive are both collectively and individually accountable for carrying through the Council's policy objectives.

Members are not directly involved in the day to day provision of services to the public but Executive Portfolio Holders have a close involvement with officers in dealing with the effectiveness of service provision. It is recognised that on occasion this may result in the need for immediate contact with officers but where practicable

such contact will be on a managed basis. In order to make best use of officer and member time, there will be mutually managed contact between Executive Members and officers on service provision where Members pursue matters on behalf of their constituents.

As only Executive Portfolio Holders have executive authority/responsibilities as Members, all other Members will need to pursue matters with the appropriate Portfolio Holder or officer through a managed approach. Portfolio Holders may take certain non-key decisions on matters within their own portfolio, and within the scheme of delegation of the relevant constitution, but in doing so must be aware of any possible conflict in policy or budget.

No Member (Portfolio Holder or otherwise) should become involved in the day to day management or operation of a service area, which shall be the responsibility of the Assistant Director.

Members may also be appointed as Non-Executive Directors/ Trustees of Council Entities.

### **17.3 The role of Officers**

Officers are equally accountable to the Council and the Executive.

Officers are professional advisers on policy and carry out the instructions of the Council and the Executive as well as exercising powers that are delegated to them and taking operational decisions within their areas of responsibility.

Officers may also be appointed as Directors/ Trustees of Council Entities.

The possibility of conflict between organisations should be minimised by identifying from the outset where potential conflict might arise, operating the ethical walls policy appended and referring, if necessary, such conflict through the dispute resolution mechanism in the relevant agreement/ Memorandum of Understanding.

### **17.4 The role of Directors/Trustees**

Both Members and officers may also be nominated and appointed as Directors/ Trustees of Council Entities. This will involve Members and officers serving together as board members equally in terms of voting rights and responsibilities. Councillors who are Non-Executive Directors will by their nature have different and often higher levels of involvement with the organisation to which they are appointed than Members would normally have. However, day to day management of operations and staff shall remain the responsibility of the managing director of the Council Entity and board collectively.

### 17.5 How these roles work in practice

- Decisions on matters relating to each Council's policy framework are taken by Members at meetings of full Council, usually after having considered the recommendations of the Executive or appropriate Committee which in turn considers the recommendations of the officers.
- Decisions on policy matters within the relevant Council's policy framework are taken by the Executive having considered the recommendations of officers.
- Decisions on policy matters by Council Entities are taken by the board.
- The Councils have an adopted scheme of delegation. This scheme sets out what is delegated to which body or officer, either conditionally or unconditionally. The Councils can review their scheme of delegation at any time to ensure decisions are being taken at the appropriate level. The process of delegation ensures that Members are not overloaded with relatively less important matters and can concentrate on important policy issues and the effectiveness of service provision and continuous improvement in service. Members who are not Portfolio Holders have an important role in representing the views of their constituents and ensuring through scrutiny that the Council's policies and plans are effectively delivered. Some Members (Portfolio Holders and otherwise) have roles on regulatory committees dealing with matters such as planning and licensing. To minimise the possibility of any conflict of interest, or defect in process, the schemes of delegations of the authorities should be harmonised so far as possible. Where differences need to remain there should be a clear business case for this.
- Council Entities have adopted articles or a constitution and these documents set out what is delegated to which body or employee, either conditionally or unconditionally. They can be reviewed at any time to ensure decisions are being taken at the appropriate level.
- It is recognised that there may be rare occasions where it is not possible to reconcile the interests of two or more organisations with their respective legal responsibilities. Such conflicts shall be managed by ensuring that relevant officers and Members in each organisation are ring fenced from each other through the creation of ethical walls in accordance with the appended procedure to ensure that due regard is taken of each organisation and the need for certain matters to remain confidential to one or other organisation.

### 17.6 Statutory requirements

- The Council derives its powers from statute. Some of these are mandatory
- (i.e. the Council must do them) and some are discretionary (i.e. the Council may carry them out if they wish). In all cases, Members and officers may only operate within the law.

- Councils must have a Head of Paid Service, a Monitoring Officer and a Section 151 Officer. These officers are part of the leadership team and have an obligation to act in the best interests of their appointing authority/authorities.
- If any of these statutory posts in a shared role consider that there is a conflict of interest within their area of responsibility which is affecting the ability of either Council to function effectively the most appropriate statutory officer may take a report to the appropriate full Councils setting out the conflict of interest and proposals for resolution.

### 17.7 Summary

- a) Members are responsible for setting Council policy.
- b) Officers are responsible for advising members on the setting of Council policy and for ensuring such policy is implemented.
- c) The scheme of delegation determines which body or person deals with particular matters, and at which level decisions are taken.
- d) The day to day management and operation of services is the responsibility of officers.
- e) Where officers are dividing their time between two or more organisations members need to have regard to less time being available for their authority alone and the need to manage contact with officers to ensure the optimum use of both member and officer time.
- f) If conflicts arise in relation to the respective regulatory duties of any of the organisations steps will be taken to ensure the ring fencing of officers and the confidentiality of information as necessary.
- g) Otherwise, where there is actual or potential conflict there are three routes depending on the nature of the conflict,
  1. agree to pay for appropriate external support to advise one or more authorities.
  2. refer the issue through the dispute mechanism in the relevant agreement or memorandum of understanding.
  3. the most appropriate statutory officer may refer the matter Full Council for resolution.



## Appendix: Ethical Walls Procedure

### a. Ethical Walls Procedure

This procedure is designed to be read alongside the protocol on the Respective Roles of Members and Officers and Dealing with Conflicts of Interest.

It is recognised that there may be rare occasions most commonly in a regulatory context or where a council owned/ influenced company/organisation context (Council Entity) has been established where it is not possible to reconcile the interests between the council and a Council Entity with their respective legal responsibilities.

Such conflicts shall be managed by ensuring that relevant officers working for each side are ring fenced from each other to ensure that due regard is taken of the respective and conflicting duties and interests and the need for certain matters to remain confidential to the Council or Council Entity. This procedure sets out how this will operate in practice.

### b. Background

An Ethical wall, cone of silence, screen or firewall is a business term describing an information barrier within an organisation that is erected in order to prevent exchanges or communication that could lead to conflicts of interest and/or the disclosure of information which is confidential to the Council or to a Council Entity. For example, an ethical wall may be erected to separate and isolate people who make investments from those who are privy to confidential information that could influence the investment decisions, in newspapers between journalists and advertising executives to protect editorial independence and in law firms where different solicitors are acting for different clients on the same issue.

For the vast majority of Members and officers there will be no conflict of interest in working for, being appointed to or advising more than one Council or Council Entity, in fact most officers and Members will not experience this during their time in local government. However, a small number of officers and Members, mainly those holding Executive, senior management, statutory, legal, financial, regulatory and planning posts may face situations where they become aware of conflict or potential conflict between the Council and a Council Entity. There is a need for officers and Members in these posts to maintain vigilance in identifying these situations where conflict could arise. Whilst there is no definitive list of these situations, they may apply to the Council and Council Entities where an officer or Member may be a Director or trustee or where an officer or member who is a Director may be dealing with other officers or members in their capacity as Directors or trustees of another Council Entity.

In all cases officers and Members should always err on the side of caution and seek advice as it is much better to deal with and plan for potential conflicts, as when actual conflicts are identified it may be that too many officers and members are already acting for one side or the other and/or the erection of the Ethical Wall may be too late. The creation of an Ethical Wall does require a level of maturity and respect from those on either side of

it. For instance it is not uncommon for a manager to be on one side and a direct report on the other.

If there is a conflict or significant risk of a conflict, between the Council and a Council Entity the officer or member must not act for both, except where the council and the Council Entity are expressly pursuing the same common objective. In all cases of conflict or potential conflict a decision should be sought immediately from the Monitoring Officer. The Monitoring Officer in deciding whether there is a conflict or whether the officer or member can act for multiple organisations, will ensure that the overriding consideration is the best interests of the individual organisation, and in particular, whether the benefits of the officer or member acting for all of them outweighs the risk.

If the Monitoring Officer feel that there is a risk of conflict or that the interest of the organisations are not best served by an officer or member acting for both, they will invoke this procedure.

### **c. Procedure**

When a conflict or potential conflict is identified an officer or Member should alert the Monitoring Officer or their Deputy.

The Monitoring Officer will provide advice to the officer on whether there is a conflict and, in all cases, alert the Leadership Team. The Monitoring Officer will maintain an audit trail of his actions and any advice given, including a list of active Ethical Walls.

In the case that a conflict or potential conflict is identified the Monitoring Officer (in consultation with the relevant members/ Directors / Assistant Directors) will draw up a list of the officers who will be representing the interests of each party.

The Monitoring Officer will alert those on the list, Leadership Team, relevant Portfolio Holders and any external parties to the discussion, that an Ethical Wall has been put in place and who they should deal with.

Once the Ethical Wall has been erected, officers on either side of the wall should treat and behave towards the other Council or Council Entity and the officers representing it with full regard to the issue in question as if they were an external organisation. That is information supplied by the other party should be thoroughly and critically examined and not taken on trust or face value, and information which is confidential to the interests of the organisation they represent must not be disclosed to the other party.

Whilst this relationship should be respectful and business like, it should be based on auditable correspondence as opposed to verbal communications as such documents could later be relied upon in legal action.

It should be agreed where files and electronic correspondence should be held and neither party should access information held by the other. Appropriate access restrictions will be established by ICT Services for information held electronically.

Officers should only advise members and officers on their side of the wall. Reports to committees must be in the name of and signed off by officers on the correct side of the

wall and officers should not be present at meetings at any time when they are dealing with the issue on the other side of the wall.

The Ethical Wall should only be used for the issue in question and does not extend to any other areas of work.

When the issue in question has been successfully concluded the Monitoring Officer(s) should be notified and they will close the issue on the list of active Ethical Walls if they deem it appropriate.

In the case of an Ethical Wall between the Councils, the list will contain a minimum of two named officers on either side, one of which will be the Monitoring Officer, a Deputy Monitoring Officer or a legal officer. The Head of Paid Service (or in her absence or case of conflict her deputy) will not normally be assigned to either side of the wall and will not become involved in the issue. This enables the Head of Paid Service to arbitrate on any issue including human resources implications which may arise in the operation of this procedure. For employees in shared teams the identity of their employing Council will not necessarily dictate the side of the Wall to which they are allocated.

#### **d. Statutory Officers and Dispute Resolution Procedure**

All Councils must have a Head of Paid Service, a Monitoring Officer and a Section 151 Officer. These officers are part of the management teams and have a legal obligation to act in the best interests of the authorities which appointed them.

It is imperative that the statutory officer system is robust and resilient therefore statutory officers should ensure that they appoint deputy statutory officers who may act for the other council(s) in case they are conflicted. To account for this and also to ensure there is sufficient statutory officer resilience; the recommendation is that each statutory officer appoints at least one, but preferably two deputies.

If any of these statutory posts consider that there is a conflict of interest within their area of responsibility, which has not been resolved through invoking this procedure and which is affecting the ability of the Council to function effectively the most appropriate statutory officer(s) may take a report to Full Council setting out the conflict of interest and proposals for resolution and invoke the relevant shareholder agreement/ Memorandum of Understanding Dispute resolution procedure for Council Entities if necessary.

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## Part 16: Cherwell District Council Partnership Protocol

(Adopted April 2006. Reviewed December 2020)

- 18.1 Introduction**
- 18.2 Scope**
- 18.3 Why a Partnership?**
- 15.4 What is the Partnership for?**
- 18.5 Who needs to be involved?**
- 18.6 Where will the people come from?**
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- 18.8 Data Quality and information sharing**
- 18.9 How will funds be delivered and spent?**
- 18.10 Reviewing Performance**
- 18.11 Dispute resolution**
- 18.12 The Media**
- 18.13 Exit Strategy**
- 18.14 Partnership principles**

### 18.1 Introduction

This Protocol is addressed to all our potential partners and sets out our expectations when entering into any partnership arrangement.

Cherwell District Council adopted a Partnership Protocol in April 2006. The definition of a partnership was agreed then as “an agreement between two or more independent bodies to work collectively to achieve an objective”.

This Protocol replaces and builds on the principles set out in the Partnership Protocol of 2006 and provides greater detail on the way Cherwell District Council will act, and will expect partners to act, within any partnership arrangement. This Protocol will be part of the Council’s Constitution.

Cherwell District Council has, as a key corporate objective, the desire to work in partnership to deliver outcomes which are for the good of the community living, working, and visiting, in the Cherwell area.

Cherwell District Council wishes to ensure that all partnerships that it is a part of are underpinned by a common vision that is understood and agreed on by all the participating bodies.

### 18.2 Scope

The purpose of the Protocol is to provide guidance on how to deal with issues arising from working within partnerships and to help both partners and the public

understand the basis of the Council's involvement in such arrangements.

### **18.3 Why a Partnership?**

There must be clarity about what a partnership can achieve and why it is desirable. This means clear principles and objectives and a clear timescale. It is also important to be clear about what a partnership is. A contract between the Council and a supplier for goods or services is not a partnership (although commercial contracts may have a "partnership" element where it is agreed that risk/costs will be shared, that type of arrangement is not covered by this Protocol but by the Council's Financial and Contract Rules of Procedure).

### **15.4 What is the Partnership for?**

All parties must share the vision of what they want to achieve in partnership. This will need to be expressed in clear, shared objectives so that actions and outcomes can be measured against agreed targets.

The legal status of the partnership will be determined by what it wants to achieve. Advice should be sought from Legal Services on the best structure to put in place bearing in mind what the objectives are and what organisations are involved. Unless a separate legal entity is created a partnership cannot hold funds in its own right and is not able to employ people. The issue of joint and several liability must be considered. This means each party to the partnership takes responsibility for the decisions of the partnership.

### **18.5 Who needs to be involved?**

There needs to be clarity about who is doing what. If an organisation is nominating individuals to attend partnership meetings there must be clarity about the authority that individual has to bind their organisation to partner decisions. If such authority cannot be given there must be clarity about decision making processes and timescales within each organisation so that where a partnership requires a decision to be taken the partner organisations can ensure the person attending has authority to make the necessary decision.

### **18.6 Where will the people come from?**

People will be needed to attend meetings and carry out actions agreed by the partnership. There must be clarity about who will do what and acknowledgment from the partner organisations about the resources that will take. Time can be just as significant a contribution to partnerships as money.

### **18.7 How will decisions be reached?**

The decision making process should be open and transparent. Matters should only be confidential when it is proper and appropriate for them to be treated as such (for example commercial sensitivity or sensitive personal data under the Data Protection Act 1998 – see below).

The partnership will need to agree from the outset the process for making decisions. Should decisions be by a majority? Should some decisions only be possible by unanimous agreement? Should only those contributing funds have a vote? Should there be any matters where parties should have an absolute veto? Partnership decisions should be clearly recorded. There must be clarity over who is responsible for this.

#### **18.8 Data Quality and information sharing**

Partnerships will make decisions based on the data provided. The partner organisations must therefore commit to provide to the partnership the most robust data they are able to. Cherwell will scrutinise the reliability of data and seek assurances as to quality and the processes in place to ensure such quality. Information sharing will be a key part of partnership working. Partner organisations are expected to comply with the provisions of the Data Protection Act 1998 and the Freedom of Information Act 2000. Where confidential information is exchanged there should be an information sharing protocol.

#### **18.9 How will funds be delivered and spent?**

There must be clear accountability for financial administration. Please ask the Finance Team about the processes that need to be in place. Where will the money come from? Is the partnership intended to seek funds from other sources? Are the partners themselves contributing? If so, are the contributions equal? What returns and outcomes are expected for the financial contribution? Are future contributions ring-fenced and protected from budget pressures? How will the money be spent? Where public funds are involved, systems to authorise, record and audit expenditure should be in place.

#### **18.10 Reviewing Performance**

There should be at least an annual review of objectives achieved by the partnership, a review of financial performance and consideration of the vision and whether it is fit for purpose and necessary and appropriate for the partnership to continue. Has the usefulness of the partnership ended? Reviews may be more frequent and there should be a system for the achievements and issues of the partnership to be reported back to all partners. Cherwell District Council's Accounts, Audit and Risk Committee will monitor the performance of all partnerships the Council is involved in; in doing so they will take a risk-based approach in order that such monitoring is proportionate.

The performance of all partnerships which Cherwell District Council is involved in is open to scrutiny by the Council.

#### **18.11 Dispute resolution**

Robust discussion and differences of view are key to good partnerships. All parties should feel free to express differences and express the views, priorities and

interests of their organisations. All parties should treat each other as valued and respected partners.

It is important for an informal dispute resolution process to be agreed rather than all disputes leading to a termination of the partnership. Cherwell District Council will expect senior officers of partner organisations to be willing to meet to try and resolve any disputes at the earliest opportunity.

#### **18.12 The Media**

It is important that any disputes between parties do not spill over into public recriminations or behaviours that reflect badly on both the partnership and the organisations involved. Being part of a partnership means robust discussions internally but ultimately agreeing a way forward and maintaining that with a united front for all public purposes. Partnerships should have an agreed media strategy.

#### **18.13 Exit Strategy**

Partnerships may be time limited with a single objective or objectives which, once achieved, mean the partnership should be dissolved. There needs to be clarity about how the decision to end the partnership will be taken and what will happen to the assets. Consideration should also be given as to whether any future arrangements are required. If only some partners wish to leave, the decision will need to be taken as to whether a partnership should, or can, continue and, if so, the decision making processes and funding of the partnership will need to be reviewed

#### **18.14 Partnership principles**

Cherwell District Council believes all partners should enjoy the following rights, and bear the following responsibilities, in any partnership arrangement:

- To be treated as respected and valued partners and to demonstrate this by listening, responding and encouraging real dialogue
- To be able to express different views and reach consensus through forthright debate
- To express the constraints under which they operate but take a positive approach focused on outcomes
- To expect loyalty to the partnership by taking collective responsibility for decisions made by the partnership and to promote and support the aims of the partnership within their own organisation
- To expect the partnership to help them achieve their own objectives within their own organisations
- To expect an active role to be taken in the partnership and to deliver what is promised and abide by decisions taken



- To expect information to be shared freely where it is legally possible to do so and to expect confidentiality to be respected.
- To operate in a positive culture focused on results

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## Part 17: An Advice Note for Elected Councillors Serving on Outside Organisations

(Adopted August 2015, reviewed May 2022)





- 19.1 Introduction**
- 19.2 General Background**
- 19.3 Types of Bodies**
- 19.4 The Application of the Council's Code of Conduct**
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- 19.6 Officeholders (Chairman, Treasurer etc)**
- 19.7 Indemnities: General**
- 19.8 Guidance about serving on particular bodies**
  - 19.8.1 Companies**
  - 19.8.2 Unincorporated organisations (Management Committees)**
  - 19.8.3 Charities**
  - 19.8.5 Consultative/Advisory Bodies/Pressure Groups**
  - 19.8.6 Partnerships**
- 19.9 Reporting Back**
- 19.10 Data Protection**
- 19.11 Some Final Thoughts**
- 19.12 Do's and Don'ts**
- 19.13 Useful Contacts**

## **19.1 Introduction**

This is general advice for elected Councillors which has been prepared by the Oxfordshire District and County Secretaries/Monitoring Officers Group about some issues which can and do arise when they are appointed to serve on bodies to which the Council may traditionally make appointments.

The business of local government, at all levels, now includes far more partnership working, and work in the community. A Councillors' representational role is enhanced and strengthened by participating in outside bodies but inevitably there will be great differences in the way these bodies work. It is not possible therefore to give exhaustive advice about every issue which a councillor may face if serving on an outside body, but this note deals with some of the most fundamental issues.

## **19.2 General Background**

Once Councillors are elected to serve on the Council, they may very well be nominated by the Council to serve on other bodies which deal with a variety of issues on a district, county or regional basis. Such bodies are many and varied: examples being community hall committees, cultural arts and sports and tourism

promotional bodies, charitable bodies, voluntary and advisory organisations and bodies dealing with various major public programmes as well as bodies actually run by other public institutions.

Councillors need to understand certain ground rules as part of their take up of an appointment on an outside body:-

- it is not necessarily the case that the Council knows in detail the organisation of the outside bodies to which they appoint councillors, as these bodies are independent bodies of varied backgrounds;
- the Council will probably be only one of a number of organisations with which the body has formal contact;
- Councillors need to make themselves aware, at the time of joining a body, what they are taking on, and what the body expects of them;
- Councillors need to be aware that taking on a specific role with an outside body (e.g. chairmanship of it) may create a conflict when the Council considers matters relating to that body;
- Councillors are bound by their Council's local Code of Conduct when serving on an outside body unless it conflicts with any legal obligations arising from their membership of that body;
- there are many different forms of organisation as described above, and councillors should be aware that they are not covered by the Council's legal machinery or insurance for the activities they may become involved in through membership of an outside body. A separate note about limitation of risk and the insurance situation is given below.
- generally outside bodies will be performing or facilitating public works or programmes or engaged in philanthropic activity and the competence of administration of them will vary considerably. Councillors serving on them need to be alert to problems and to seek advice about any matters which may be of concern from the Council's Monitoring Officer.

This introductory advice is not intended to dissuade Councillors from participating in the valuable work of outside bodies. It is simply saying that outside bodies are very varied in their culture and operational base and the Council as such does not know enough about them to give them a seal of approval to the extent that the councillor is "fireproof" if serving as a Council nominee - checks and clarity of purpose established by the Councillor are very necessary.

At the end of this advice note there are some useful contacts listed, both within and outside the Council. There are also some Do's and Don'ts which might help Councillors when representing the Council on an outside body.

### 19.3 Types of Bodies

As mentioned above organisations are many and varied. It is impossible to provide advice about every problem that may be encountered.

Broadly speaking bodies may fall into one of the following categories:-

- a formally incorporated company  
e.g. Charter Housing, South East Employers
- an unincorporated organization  
e.g. Bicester and District Chamber of Commerce, Oxfordshire Association of Local Councils
- a charitable body  
e.g. Oxfordshire Age Concern, Banbury Charities
- partnerships/consultative groups  
e.g. Bicester Vision, Oxford Airport Consultative Committee

The obligations of a Councillor will vary depending upon the role taken. Again, in general, the obligations of being a director of a company, or charity trustee will be specific and more clearly defined in law than for membership of an unincorporated body. The point of councillor representation on outside bodies is to further the public interest, either locally or generally, and Councillors need to exercise their judgement in this respect whilst bearing in mind any Council objectives in having representation on the body concerned.

For unincorporated organisations, the rules governing the (Councillors') duties and liabilities should be set out in a Constitution which will govern how the organisation will operate. Quite often the Constitution will provide for a management committee to be responsible for the everyday running of the organisation.

There are also bodies which could be described as "consultative" or pressure groups. Membership of these bodies can bring particular problems which are discussed below.

The succinct advice is to be aware of your responsibilities and ensure you take advice if necessary, from the appropriate person in the organisation on which you are serving.

#### **19.4 The Application of the Council's Code of Conduct**

As indicated above, an elected Councillor is bound to observe the requirements of the Council's Code of Conduct when serving on another body (as well as observing the body's own code/governance guidelines) which require those serving on it to conduct themselves in a certain way.

**(Note:** for Councillors serving on more than one authority be aware of the Code of Conduct for the authority which is making the appointment).

Section 7.0 of the Council's Code of Conduct sets out the requirements for registering interests. :-

### 19.5 Ordinary Members of Management Committees (or similar)

- Where Council has appointed a Councillor to an outside body as a representative of the Council, they may regard themselves as not having an interest. It is important to remember that simply by appointing a Councillor to an outside body the Council does not grant the person an automatic exemption from prejudicial interest in every circumstance relating to that body. For example, trustees have specific obligations to the body to which they belong; these would almost certainly amount to a significant interest if a Councillor were involved in discussion in a meeting of the Council (or its Executive or Committees etc.) about a grant to that body, or other matters affecting its financial or business affairs. It is therefore important that, in spite of the general rule of exemption, Councillors remain alert when sensitive issues arise and seek advice where appropriate
- For Councillors who are not appointed by the Council to the body the normal rules about disclosable pecuniary interests apply (unless the body falls into another exemption category). This also includes Councillors who have been appointed to Body A as the Council's representative and then appointed/nominated by Body A to represent it on Body B.
- Councillors should bear in mind that the terms of exception should be interpreted as implying that where a councillor is on an outside body, but not as the Council's representative, an interest may exist.

### 19.6 Officeholders (Chairman, Treasurer etc)

- If a Councillor, who is the Council's representative on a body, is approached to accept a position as an officeholder with that body, they should consider whether taking such a leading role is compatible with representing the Council. Part of the role of a councillor on an outside body is to liaise between the Council and that body and to report on its business and performance to the Council. To do so effectively requires a degree of impartiality from that body which holding an office may call into question.
- It may be that part of an organisation's motivation in seeking to have a Councillor as an officeholder is to gain extra influence with the Council. It is important therefore that from the start the Councillor makes clear that as an officeholder the likelihood of conflicts of interest arising is significantly greater. It may indeed make the position untenable. As an officeholder a Councillor should normally expect to declare an interest in matters affecting the affairs of the body - not just grants, but also issues relating to planning, licensing, property etc. Regard should also be had to paragraph 6.6 of the Code which states that a Councillor must not in their official capacity, or any other



circumstances, use their position as a Councillor improperly to confer on or secure for themselves or any other person, an advantage or disadvantage.

- Officeholders should equally be aware of the need to be careful in avoiding conflicts of interest arising when acting in their capacity as members of an outside body because of its dealings with the Council. This could come from individual cases or from more significant policy and financial aspects of the relationship between the body and the Council. Some bodies may themselves have governance arrangements designed to regulate ethical standards.
- It is important to avoid any perception of impropriety. The potential for incompatibility between a Councillor's role as an officeholder on an outside body and membership of the Council will be influenced by a number of factors, such as
  - the degree to which the body is dependent on the Council for financial or other support, and the scale of that support
  - the general nature of the relationship between the Council and the body
  - the real or perceived influence the councillor may be able to exert over the Council - for example, is they are a member of the Executive or are "high profile" in some other way? Would a decision contrary to their point of view either by the Council or by the management committee of the outside body be perceived as politically embarrassing?
  - Would the Council be perceived as seeking to exercise undue influence over the body, or vice versa?
- Such considerations will apply to all Councillors who hold office, whether or not they have been appointed to the body by the Council.

### 19.7 Indemnities: General

Within this note specific advice is given, in the relevant sections, about the need for insurance cover to be available through the body on which the Councillor serves.

The general ability of the Council to provide an overall indemnity for Councillors serving on outside bodies is still not entirely clear in law but, for the purpose of this advice note, bodies that are independent of the Council and on which Councillors may serve are the source through which insurance should be available. These bodies will have a variety of people serving on them, other than members of councils - it is for the body to see to it, as far as they are able within their powers, that their representatives are covered by insurance.

The ability of local authorities to indemnify Councillors and Officers for any *personal liability* arising from actions or decisions taken by them in the course of their official duties is covered under the Local Authorities (Indemnities for Members and Officers) Order 2004. The scope of the order can be summarised as follows:

- Where the Councillor is carrying out any function which is at the request of, with

the approval of or for the purposes of, the Authority.

- Where the Councillor is carrying out any function which is at the request of, with the approval of the Authority but acting in capacities other than a Councillor of the Authority.
- Where the action or inaction complained of falls outside the powers of the Authority itself or outside the powers of a Councillor individually (*ultra vires*), provided the Officer or Member reasonably believed the matter was not outside those powers.
- Where a Councillor makes a statement that certain steps have been taken or requirements fulfilled, but it later becomes clear that this is not the case. Again, the officer or member indemnified must reasonably believe that the statement was true when it was made.

## **19.8 Guidance about serving on particular bodies**

### **19.8.1 Companies**

There is a considerable body of law concerning the duties of those who may run companies i.e. directors. There are rules in the Local Government and Housing Act 1989 concerning Council involvement in companies. Because the legal implications and rules are extensive, and Councillors' involvement with companies is on the increase, separate guidance is given to Councillors who may serve in such capacity, through an Appendix to this note.

### **19.8.2 Unincorporated organisations (Management Committees)**

#### General status

Groups that are not charitable trusts or limited companies are "unincorporated associations" and have no separate legal identity from their members. The rules governing the members' duties and liability should be set out in a Constitution, which is simply an agreement between the members as to how the organisation will operate. Usually, the Constitution will provide for a management committee to be responsible for the everyday running of the organisation. An unincorporated organisation may be charitable and may register as a charity.

Property will have to be held by individuals as the organisation has no existence of its own.

#### Duties

Broadly, Management Committee Councillors must act within the constitution (of the unincorporated organisation), and must take reasonable care in exercising their powers.

#### Liabilities

- (i) Generally, Management Committee members are liable for the acts of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there is no insurance cover from the organisation, the Management Committee members are personally liable for the shortfall.
- (ii) If one person is appointed by the Constitution to act as the agent of the organisation for certain purposes, then that person acts as the agent of all the members, who have joint liability for the agent's actions.
- (iii) Members of the Management Committee will have personal liability if they act outside the authority given to them or if they do not comply with statute e.g. the payment of employees' tax etc.

#### Indemnities

Councillors will be entitled to an indemnity if they act in accordance with the constitution and are not at fault provided the body concerned has obtained insurance, but if the organisation is to pay the premium it must be permitted by the constitution. The necessary insurance policy would need to be renewed otherwise it would become invalid. Councillors would then not be covered.

### **19.8.3 Charities**

#### General status

- To be a charity an organisation must operate for a charitable purpose. There are four:
  - the relief of poverty and human suffering
  - the advancement of education
  - the advancement of religion
  - another purpose for the benefit of the community
- It must operate for the public benefit and have exclusively charitable purposes. An organisation which operates for political purposes will not qualify for charitable status.
- To register as a charity the organisation must submit its Trust Deed (usually the Memorandum and Articles of Association of a company limited by guarantee) to the Charity Commissioners for approval. If they are satisfied that the organisation is charitable it will be registered as such.
- Those who are responsible for the control and administration of a charity are referred to as its trustees, even where the organisation is a company limited by guarantee and even though they are not strictly trustees. Trustees of a charity retain personal liability and can only delegate it if the trust authorises them so to do.

#### Trustees' duties

- Trustees must take care to act in accordance with the Trust Deed and to protect the charity's assets.
- Trustees must not make a private profit from their position. They must also perform their duty with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professionals and in relation to investment matters.
- Charity trustees need to have regard to the requirements of the Charities Acts and to ensure that the requirements of the Charity Commissioners are met. Advice and guidance on these details would normally be available from the administrator of the Trust. There are leaflets available from the Charity Commissioners about various aspects of running a charity. These should be obtainable from the administrator of the Trust.

#### Trustees' personal liability

- If in doubt, always consult the person who is responsible for the administration of the charity but ultimately you should consult the Charity Commissioners. Contact details are at the end of this note. A trustee who does so should avoid personal liability for breach of trust if they act in accordance with the advice given.
- Generally though a trustee incurs personal liability if they:
  - act outside the scope of the trust deed
  - fall below the required standard of care
  - make a personal profit from the trust assets
- In such circumstances the trustee will incur personal liability for losses incurred.
- Trustees can be liable personally to third parties because unlike a company, a trust has no separate identity from the trustees. Trustees are, however, entitled to an indemnity from the trust assets, provided they act properly in incurring the liability. Trustees remain personally liable once they retire (e.g. if they have entered into a contract on behalf of the trust) and should therefore seek an indemnity from their successors. If the charity is a company, however, the trustees for the time being will be responsible.
- Trustees may be liable to fines if they do not comply with the duty to make returns etc.

#### Indemnities

An indemnity can be given from the trust fund provided the trustee has acted properly and within their powers. Trustees may take out insurance to protect themselves against personal liability but not for criminal acts, fraud etc. There will be no problem if the trustees themselves pay the premiums but if they are paid out of the charitable funds, the trustees will need the consent of the Charity Commissioners unless the trust deed allows it. Again any insurance policy should

be kept in force by ensuring renewal premiums are paid.

### **19.8.5 Consultative/Advisory Bodies/Pressure Groups**

Difficulty can arise where a Councillor serving on a particular body champions a cause being promoted by that body or has been closely involved in formulating advice or preparing an application for assistance in some form which is required from the Council. In such circumstances the councillor should be aware that it will be necessary to consider their position if and when the matter comes before the Council.

A Councillor who has led an outside body to formulate advice for a Council may very well be deemed to show bias or a closed mind in such circumstances and quite apart from any considerations under the Code of Conduct may not be able to participate in discussion and voting at the Council, as they are not able to exercise their judgement in the wider public interest.

Examples of close involvement on issues coming before the Council and arising through membership of these types of bodies could occur through membership of historical or civic societies, or local arms of national organisations like Friends of the Earth.

### **19.8.6 Partnerships**

Today, within the public sector, bodies are formed which can be described as partnerships. These can involve local authorities with other public sector bodies or sections of other public sector bodies in dealing with specific issues. These partnerships can range from informal groups where each organisation's representative comes to the group with a defined purpose/supply of resources from their organisation to contribute to the achievement of a particular programme of events, to more formal arrangements where a legal agreement is entered into between all the parties as to what the object of the partnership is and what the obligations/inputs will be from the partners.

In the former case the representatives on the partnership steering group or "committee" should act within the scope of the authority given to them by their Council, which on occasions may need to be clarified when the agenda for the partnership meetings is prepared. In the latter case, the legal agreement should set out the rights and obligations of the partners and the representative will need to be familiar with these requirements. It is likely that in these circumstances the Council's legal officer will have drafted, or approved, an agreement to regulate the arrangements in accordance with the Council's decision to be involved.

### **19.9 Reporting Back**

The Council requires reports back from Councillors at least once per year on outside body activity. This is to help in monitoring the value of representation, any

particular problems encountered, and to keep the Council aware of any relevant activities of the body during the year. Annual reports should be sent to the Democratic and Elections Team. The system of annual reporting does not mean a Councillor should not report back after each meeting, if there are reasons to make the Council aware of a particular issue.

#### **19.10 Data Protection**

It is possible that through representation on an outside body you will process personal data that belongs to the body. If you do this you will need to ensure with the body whether you need to be part of the body's notified arrangements to the Information Commissioner for processing the data.

(Processing data means doing anything with it from obtaining it, working with it to destroying it.)

#### **19.11 Some Final Thoughts**

The way local government operates increasingly involves Councillors participating in the affairs of other organisations. These organisations may be close partners of the Council helping to deliver services or they may be more distant bodies carrying out some particular role within a local community. It is an important part of local governance that Councillors should feel able to participate in such bodies if they wish or if the Council feels it is beneficial. Some help can be available to Councillors to enable them to carry out their tasks on bodies in which they may take an interest but the bottom line is that the organisations are separate from the Council and the Councillor must act in accordance with the interests of the organisation.

In considering matters before the body, the Councillor can take account of any of the Council's objectives but cannot be bound by the Council to vote one way or the other on a particular matter. The overriding duty is to vote in accordance with the interests of that organisation.

Councillors should always be clear about their role on the organisation. In the most basic cases, a Councillor may well be a representative on the body simply to render general help and advice - or to help in specific circumstances. In such cases there should be few issues arising. If a councillor's role expands then, as set out elsewhere in this note, advice may need to be sought about possible conflict of interest, particularly of the Councillor who holds a specific office on the District Council e.g. member of the Executive or Committee Chairman.

If you are at all concerned by the administration or management of a body that you have been appointed to, in the first instance you should raise the matter with the person who appears to you to be managing the organisation. If there are matters which might concern the Council you can raise the matter with the Council's

responsible officer for outside body nominations - the Assistant Director Law and Governance. It may not be possible for the Council to resolve the issues but the Council may then be able to consider whether continued representation on the body is justified or desirable.

## 19.12 Do's and Don'ts

### 19.12.1: Do

- Make sure you understand from the body on which you represent the Council what they expect of you (i.e. a clear relationship statement).
- Obtain any written information from the body such as their constitution, objectives/powers and duties summary accounts etc. to help you do your job properly.
- Seek assurances and evidence about insurance to minimise/eliminate any personal liability you might incur.
- Ensure you receive proper notification of meetings of the body and look at the records of meetings they produce.
- Act in the best interests of the body.
- Liaise with the Council on any issues which concern the body - but not so as to infringe any provision of the Code of Conduct.
- Report back to the Council on activities of the body - either annually or after a particular meeting if necessary.
- Raise any issues of general administration of the body with the identified contact person in the organisation.
- If you have concerns which you feel you cannot raise with the body, report to the Council's appropriate Officer.

### 19.12.2: Do Not

- Breach the Council's Code of Conduct requirements.
- Take on an officeholder's post in the organisation without considering the implications for the Council and your elected councillor responsibilities.
- Vote on any issues in the organisation other than in the best interests of the organisation.
- Agree to act as a 'go-between' with the Council on any issue which may cause a conflict of interest.
- Fail to keep yourself briefed of matters taking place within the organisation.

### 19.13 Useful Contacts

Charity Commission  
Tel No 0300 066 9197 (Monday to Friday, 9am – 5pm)  
website [Charity Commission](#)

NCVO (National Council for Voluntary Organisations)  
Tel No 020 7713 6161  
Email: [ncvo@ncvo.org.uk](mailto:ncvo@ncvo.org.uk)  
website [NCVO](#)

Community Matters  
Tel No 0113 450 4866  
Email: [admin@community-matters.org.uk](mailto:admin@community-matters.org.uk)  
website [Community Matters](#)

Community First Oxfordshire  
Tel No: 01865 883488  
Email: [info@communityfirstoxon.org](mailto:info@communityfirstoxon.org)  
website [Community First Oxfordshire](#)

### Appendix: Advice to Councillors re Companies

#### Companies



Sometimes a Councillor will find they have been nominated to serve on an outside body which is a registered company. If so, the following advice is relevant.

On incorporation a company becomes a separate legal entity which can hold property in its own right, enter into contracts and sue and be sued in its own name. The company is distinct from its shareholders and members. In the case of a limited liability company, the liability of members of the company is limited to the amount they paid or agreed to pay when they joined the company. This can be as little as £1.

Companies limited by shares are those which have a share capital (e.g. 1,000 shares of £1 each). Each member holds shares and receives a share in the profits made by the company according to the value of the shares held. Shares can be sold. Companies limited by guarantee are those where there is no shareholding. Instead each member agrees that in the event of the company being wound up they will agree to pay a certain amount. This may also be as little as £1. This form of company is the most usual in the public and voluntary sector particularly where charitable status is sought.

The management of a company is generally the responsibility of a board of directors. The powers of the directors are usually set out in the company's Articles of Association (the rules each company has to govern its internal management). Sometimes even though a company has been incorporated the directors may be referred to as members of the committee of management, governors or even trustees. However, this does not change their status as directors. Conversely, sometimes officials are called directors but they are not members of the board. Again their status will not be affected. Directors are those who are appointed by the company to act in that capacity.

### **Directors' Duties**

A director is an agent of the company. Their prime duties are as follows:-

**A fiduciary duty** to the company (not individual shareholders) to act honestly and in good faith and in the best interests of the company as a whole. Directors are therefore in the position of "quasi trustees" who must take proper care of the assets of the company. The fiduciary duty of the director towards the company is very similar to the fiduciary duty of councillors to Council Tax payers.

**A general duty** of care and skill to the company but a director requires no greater skill than might reasonably be expected of someone of that individual's particular knowledge and experience. A director is not deemed to be an expert, but is expected to use diligence and to obtain expert advice if necessary.

Like a Councillor in respect of Council decisions, the director is under a duty **to exercise independent judgement**, though it is permissible for him/her to take account of the interests of a third party that they represent. In such a case the director must disclose that position and tread a fine line between the interests of the company and the party represented (in this case the Council). The director cannot vote simply in accordance with the Council mandate. To do so would be a breach of duty.

**No conflict.** There may be actual or potential conflicts between the interests of the Council and the interests of the company. In such circumstances, the only proper way for the conflict to be resolved is for the councillor to resign either from the company or from the Council.

Directors are **not allowed to make a private profit** from their position. They must, therefore, disclose any interests they or their family may have in relation to the company's contracts. Whether they are then allowed to vote will depend on the Articles of Association.

Directors must **ensure compliance with the Companies Acts** in relation to the keeping of accounts and ensuring that the relevant returns are made to the Registrar of Companies. Failure to do so incurs fines and persistent default can lead to disqualification as a director.

### **Directors' liabilities**

The company's identity must clearly be shown on its stationery. The company number, place of registration, registered office address and if any of the directors' names are shown then they must all appear. Non-compliance is an offence and the directors and company officers can be fined.

A company can only act within the scope set out in its Memorandum of Association (the document which sets out the objects of the company). Those directors knowingly causing the company to act beyond the activities set out in the Memorandum will be liable personally. In very limited circumstances it is possible for the actions of the directors to be ratified by the members of the company.

A director may also be liable for breach of trust if they misapply the money or property of the company. Directors may also be liable if they fail to take action to prevent breach by a co-director of which they are aware.

In the event of failure to act in accordance with the best interests of the company, or if a director uses their powers improperly or makes a personal profit from their position as director, then the director may be personally liable for loss to the company and may be required to give to the company any personal profit made.

If the level of skill and care shown by a director falls below that which could be reasonably expected and the company suffers loss, the director will be liable for the loss incurred. However, if it believes the director acted honestly and reasonably, a Court may excuse the director the liability.

If a director knows or ought to know that there is no reasonable prospect of the company avoiding liquidation, a Court may require that director to contribute to the company's assets on liquidation if the company continues to trade. This is known as wrongful trading. No such order will be made if the Court is satisfied that the director took all reasonable steps to minimise the loss to the creditors. If a director has concerns about the company's financial position, they could be well advised to inform the other directors

and seek advice from the company auditors. They should try to ensure that further debts are not incurred.

A director will also be liable if, to their knowledge, the company carries on business with intent to defraud creditors or any other person or for any other fraudulent purpose. Fraudulent trading can also lead to disqualification from acting as a director.

All cheques and similar documents which purport to be signed on behalf of the company must bear the company name. Where they do not, the director signing on behalf of the company may be liable to a fine and may also be liable to the payee if the company fails to honour the cheque. It is, therefore, wise for directors to make sure that all documents they sign on behalf of the company state very clearly that they act as agent for the company, (e.g. Director, for and on behalf of ....)

A third party who enters into a contract, on the assumption that a director had power to bind the company, may be able to claim damages against the director if it subsequently transpires that the director had no such power. Directors would be well advised to ensure that contracts are approved by the board and that the authority to enter into any contract has been properly delegated before signing it.

Though company liability ceases on dissolution, the liability of the directors (if any) may still be enforced after dissolution.

### **Indemnities**

Directors cannot be indemnified against liability arising out of negligence, default, or breach of duty or trust. However, the company's Articles of Association may allow for directors to be indemnified by the company in respect of the cost of defending such proceedings if the director is granted relief by the Court or acquitted. **It is lawful for companies to purchase insurance to protect its directors against claims of negligence, breach of duty, trust, default. Directors would be well advised to ensure that such a policy of insurance is maintained at all times.**

**It is not possible for the Council to provide indemnities or insurance for councillors acting as directors.**

### **Local Authorities (Companies) Order 1995**

This Order, made under the Secretary of State's powers contained in Part V of the Local Government and Housing Act, 1989 sets out rules concerning local authorities' involvement in "regulated companies" which are subject to extensive controls, and their involvement in other companies where a number of rules apply.

"Regulated companies" are so defined if they are controlled or influenced by the local authority. "Influenced companies", under the effective control of the local authority, will be subject to the capital controls regime and special property controls. In broad terms, the test as to whether companies are local authority influenced is whether the local authority has the right to, or in fact does, exercise a dominant influence of the company in question.

The original concept of controlled, influenced and minority interests in companies was introduced by the 1989 Act. "Influenced" means at least 20 per cent local authority interest plus a business relationship with the company accounting for over 50 per cent of the company's turnover and/or the company was located on local authority land leased or sold for less than best consideration. "Controlled" means over 50 per cent local authority interests, and "minority" less than 20 per cent interest. The concept in the 1989 Act continues, but the 1995 Order introduced the term "regulated".

Councillors who are directors of outside companies to which they have been nominated by the Council are under the following obligations:

- the remuneration they receive from the company should not exceed that received from a local authority, and should be declared;
- to give information to councillors about their activities as required by the local authority (save for confidential information); and
- to cease to be a director immediately upon disqualification as a Councillor. Councillors should be alert to the demands of being a Director of a company if they are invited to serve in that capacity on a body which is a registered company.

## Part 18: Officer Employment Procedure Rules

### 20.1 Recruitment and appointment

#### 20.2 Recruitment of Head of Paid Service, Corporate Directors and Assistant Directors

#### 20.3 Appointment of Head of Paid Service

#### 20.4 Appointment of Corporate Directors and Assistant Directors

#### 20.5 Other appointments

#### 20.6 Disciplinary action

#### 20.7 Notification to Executive of proposed appointments and dismissals

### APPENDIX

#### 20.1 Recruitment and appointment

20.1.1 Candidates for appointment as officers are required to state in writing whether they are the parent, grandparent, spouse/partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or officer of the Council; or of the spouse/partner of such persons.

20.1.2 No candidate so related to a councillor or an officer will be appointed without the authority of the relevant Corporate Director or an officer nominated by them.

20.1.3 Subject to Rule 20.3 below, the Council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information. Subject to Rule 20.3 below, no councillor will seek support for any person for any appointment with the Council.

#### 20.2 Recruitment of Head of Paid Service, Corporate Directors, Directors and Assistant Directors

20.2.1 Where the Council proposes to appoint the Head of Paid Service, a Corporate Director, Director or an Assistant Director and it is not proposed that the appointment be made exclusively from among its existing officers (including any officers of other Councils placed at its disposal under section 113 of the Local Government Act 1972), the Council will:

- i. draw up a statement specifying:
  - a. the duties of the officer concerned; and
  - b. any qualifications or qualities to be sought in the person to be appointed;
- ii. make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it.

- iii. make arrangements for a copy of the statement mentioned in paragraph 20.1 to be sent to any person on request.
- iv. In the case of Head of Paid Service and Corporate Directors, interview all applicants (or, if appropriate, shortlist for interview) via a Committee or Sub-Committee of the Council.

### **20.3 Appointment of Head of Paid Service**

- 20.3.1 Full Council will approve the appointment of the Head of Paid Service following the recommendation of such an appointment by the Personnel Committee assisted, if the Committee considers it appropriate, by an independent adviser. That Committee must include at least one member of the Executive and must receive confirmation from the Monitoring Officer that Rule 20.2 above has been complied with.
- 20.3.2 Full Council may only approve the appointment of the Head of Paid Service where no justified objection has been made by any member of the Executive. The incumbent Head of Paid Service will advise on whether or not such an objection is justified.

### **20.4 Appointment of Corporate Directors and Assistant Directors**

- 20.4.1 The Personnel Committee shall appoint Corporate Directors whose role is exclusive to the Council assisted, if the Committee considers it appropriate, by an independent adviser. That Committee must include at least one member of the Executive and must receive a report from the Monitoring Officer confirming that Rule 20.2 above has been complied with.
- 20.4.2 An offer of employment as a Corporate Director, Director or an Assistant Director shall only be made where no justified objection from any member of the Executive has been received. The Head of Paid Service will advise on whether or not such an objection is justified.

### **20.5 Other appointments**

- 20.5.1 Appointment of officers below Corporate Director level (other than any assistants to political groups) is the responsibility of the Head of Paid Service or their nominee and shall not be made by Councillors.
- 20.5.2 Appointment of any assistant to a political group shall be made in accordance with the wishes of that political group.

### **20.6 Disciplinary action**

- 20.6.1 The Head of Paid Service, Monitoring Officer and Section 151 Officer (Chief Finance Officer) may be suspended whilst an investigation takes place into alleged misconduct by any of them. That suspension will be on full pay and last no longer than two months, None of these officers employed by the Council can be dismissed for misconduct other than via a resolution of Full Council following compliance with the procedure set out in the appendix to these Rules.
- 20.6.2 Councillors will not be involved in disciplinary action against any officer other than those referred to in Rule 20.6.1 above, and other Corporate Directors and Assistant Directors employed by the Council, though the Council's disciplinary, capability and related procedures, as adopted, from time to time may allow a right of appeal to Councillors in respect of dismissals.
- 20.6.3 With the exception of those officers mentioned in Rule 20.6.1 above, all other employees of the Council shall be subject to the Council's disciplinary, capability and related procedures.

## **20.7 Notification to Executive of proposed appointments and dismissals**

- 20.7.1 No offer of appointment to the Head of Paid Service, a Corporate Director, Director or an Assistant Director post shall be made until:
- a. the appointor has notified the Proper Officer of the name of the proposed appointee and any other particulars which the appointor considers to be relevant to the appointment;
  - b. the Proper Officer has notified every Executive Member of the above and the period (which shall not be less than three working days, unless agreed otherwise with the Leader) within which any objection to the proposed appointment can be made by the Council Leader on behalf of the Executive; and
  - c. either no objection has been made by the Council Leader within the stated period or the appointor (having taken advice from the Head of Paid Service) considers any objection not to be justified.
- 20.7.2 No notice of dismissal shall be given to the Head of Paid Service, a Corporate Director, Director or an Assistant Director until:
- a. the dismissor has notified the proper officer of the name of the relevant officer and any other particulars which the dismissor considers relevant to the proposed dismissal;
  - b. the Proper Officer has notified every Executive Member of the above and the period (which shall be not less than five working days) within which any objection can be made to the proposed dismissal by the Council Leader on behalf of the Executive has elapsed; and
  - c. either no objection has been made by the Council Leader within the stated period or the dismissor (having taken advice from the Head of Paid Service) considers any objection not to be material.

## APPENDIX

1. In the following paragraphs—
  - (a) “*the 2011 Act*” means the Localism Act 2011;
  - (b) “*chief finance officer*”, “*disciplinary action*”, “*head of the Council’s paid service*” and “*monitoring officer*” have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001;
  - (c) “*independent person*” means a person appointed under section 28(7) of the 2011 Act;
  - (d) “*local government elector*” means a person registered as a local government elector in the register of electors in the Council’s area in accordance with the Representation of the People Acts;
  - (e) “*the Panel*” means a committee appointed by the Council under section 102(4) of the Local Government Act 1972 for the purposes of advising the Council on matters relating to the dismissal of relevant officers of the Council;
  - (f) “*relevant meeting*” means a meeting of the Council to consider whether or not to approve a proposal to dismiss a relevant officer; and
  - (g) “*relevant officer*” means the chief finance officer, head of the Council’s paid service or monitoring officer, as the case may be.
2. A relevant officer may not be dismissed by the Council unless the procedure set out in the following paragraphs is complied with.
3. The Council must invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.
4. In paragraph 3 “*relevant independent person*” means any independent person who has been appointed by the Council or where there are fewer than two such persons, such independent persons as have been appointed by another council or councils as the Council considers appropriate.
5. Subject to paragraph 6, the Council must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 3 in accordance with the following priority order—
  - (a) a relevant independent person who has been appointed by the Council and who is a local government elector;
  - (b) any other relevant independent person who has been appointed by the Council;



- (c) a relevant independent person who has been appointed by another council or councils.
- 6. The Council is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so.
- 7. The Council must appoint any Panel at least 20 working days before the relevant meeting.
- 21. Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the Council must take into account, in particular—
  - (a) any advice, views or recommendations of the Panel;
  - (b) the conclusions of any investigation into the proposed dismissal; and
  - (c) any representations from the relevant officer.
- 9. Any remuneration, allowances or fees paid by the Council to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act.”

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**CHERWELL DISTRICT COUNCIL**  
**FINANCIAL PROCEDURE RULES**

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**Appendix**

Credit Card Usage Protocol

## 1. Financial Procedure Rules

### 1.1 Introduction

1.1.1 Financial Procedure Rules are part of the constitution and provide the framework for managing the financial affairs of Cherwell District Council. They apply to every Member and all staff and anyone acting on their behalf, including contractors. These rules are not intended to be a constraint on service delivery. The Council is committed to innovation provided the necessary risk assessment and safeguards are in place. References to "Council" refers to Cherwell District Council. These rules must be read with the Contract Procedure Rules which together provide a comprehensive framework for financial management of the Council. Where there is reference to current guidance in these rules this means the latest approved version of that guidance regardless of the references given, which may not always be up to date.

1.1.2 These regulations set out the financial responsibilities of the:

Full Council

Executive

Committees and Sub-Committees

Chief Executive

Corporate Directors

Assistant Director of Finance, the "Section 151 Officer"

Assistant Director Law and Governance, the "Monitoring Officer"

Assistant Directors

The Chief Executive, Corporate Directors and Statutory Officers are collectively known as the Corporate Leadership Team (CLT). The inclusion of Directors and Assistant Directors are known as the Extended Leadership Team (ELT).

1.1.3 Written records must be kept where decision-making has been delegated. The Assistant Director of Finance should have the original signed copy of all financial delegations. Any reference to writing in this document includes all electronic communication.

1.1.4 All Councillors and staff have a general responsibility for taking reasonable action to provide for the security of the assets under their control, and for ensuring that the use of these resources is legal, properly authorised, and delivers value for money.

- 1.1.5 The Section 151 Officer, is responsible for the financial probity of the Council.
- 1.1.6 The Section 151 Officer is responsible for maintaining a continuous review of the Financial Procedure Rules and for submitting any additions or changes necessary for approval. The Section 151 Officer may amend these Rules where required by statutory change or administrative error.
- 1.1.7 The Section 151 Officer is responsible for reporting breaches of the financial regulations to the Executive or the relevant lead member.
- 1.1.8 Throughout these rules there is reference to the Section 151 Officer. Section 151 of the Local Government Act 1972 requires local authorities to make arrangements for the proper administration of their financial affairs and appoint a Section 151 Officer, to have responsibility for those arrangements. This is currently the Assistant Director of Finance, or their nominated deputy, . Throughout these rules the Deputy Section 151 Officer may take action in the absence of the Section 151 Officer.

## **1.2 Relationship with Other Documents**

- 1.2.1 These regulations must be read in conjunction with the Constitution and the powers set out in the Scheme of Delegation. These regulations work together with the Contract Procedure Rules.
- 1.2.2 These Financial Procedure Rules set out broad control principles whilst the Detailed Financial Regulations, which appear in each section, set out in more detail how the requirements imposed by the Financial Procedure Rules can be met in practical operational terms.
- 1.2.3 The Section 151 Officer shall approve such subsidiary rules and procedures as are necessary to support the Financial Procedure Rules.
- 1.2.4 The Extended Leadership Team (ELT) are responsible for ensuring that their staff receive sufficient training to enable them to be aware of, and comply with, the requirements of the Contract Procedure Rules, Financial Procedure Rules and the Detailed Financial Regulations.
- 1.2.5 The Section 151 Officer is responsible for issuing advice and guidance on any matters related to the Financial Procedure Rules and Detailed Financial Regulations.
- 1.2.6 In these regulations, all references to Assistant Directors apply equally and, where appropriate, to the Chief Executive, Corporate Directors and Directors.

1.2.7 Nothing in these Financial Procedure Rules prevents expenditure being incurred which is essential to meet any sudden emergency or which is referable to Section 138 of the Local Government Act 1972, subject to such expenditure being reported as soon as practicable to the Executive. This is in line with the urgency powers contained in the Scheme of Delegation.

## 2. Financial Management

### 2.1 Introduction

2.1.1 Financial Management covers all financial accountabilities in relation to the running of the Council, including the policy framework and budget.

2.1.2 The responsibilities of the Council, the Executive and Committees are in the Constitution, as are the roles of the statutory officers of the Council.

2.1.3 The Council itself must legally provide the Section 151 Officer with sufficient staff, accommodation and other resources to carry out their statutory duties. The Section 151 Officer will determine what they deem to be sufficient.

### 2.2 **Financial Management Standards**

2.2.1 All staff and Members have a duty to abide by the highest standards of probity in dealing with financial issues. This is facilitated by ensuring everyone is clear about the financial control environment which safeguards resources and ensures their optimum use contributes to the goals and requirements of the organisation.

#### **Key Controls**

2.2.2 The financial control environment consists of budgetary control, final accounts, governance, financial administration, internal review and external review. It includes:



- (a) Promotion of the control objectives throughout the Council including controls enforced by the accountancy software
- (b) A monitoring system to review compliance with financial standards and regular comparisons of performance indicators and benchmark standards that are reported to the Executive, Overview and Scrutiny Committee and Budget Planning Committee.

### **Responsibilities of the Section 151 Officer**

- 2.2.3 Statutory duty to ensure the proper administration of the financial affairs of the Council.
- 2.2.4 To set the financial management standards and to monitor compliance with them.
- 2.2.5 To ensure proper professional practices are adhered to and to act as head of profession in relation to the standards, performance and development of finance staff throughout the Council.
- 2.2.6 To advise on the corporate financial position and on the key strategic controls necessary to secure sound financial management.
- 2.2.7 To ensure that financial information is available to enable accurate and timely monitoring and reporting of comparisons of national and local financial performance indicators.
- 2.2.8 To prepare the revenue budget and the capital programme and to oversee investments in accordance with the capital strategy and treasury management policies.
- 2.2.9 Under Section 114 of the Local Government Finance Act 1988, a statutory duty to report to Council if any decision is made, or about to be made, which involves incurring unlawful expenditure, or an unlawful action resulting in loss or deficiency to the Council, or an unlawful entry in the Council's accounts.

### **Responsibilities of Extended Leadership Team**

- 2.2.8 To promote the financial management standards set by the Section 151 Officer in their service areas and to monitor adherence to the standards, ensuring financial implications of decisions are agreed with the Assistant Director of Finance & Section 151 Officer or the in accordance with the Scheme of Delegation.

2.2.9 To promote sound financial practices in relation to the standards, performance and development of staff in their service areas.

2.2.10 Demonstrate that the services provided by the Council provide value for money and clear responsibility for governance and internal control as set out in the Financial Management Code.

## **2.3 Virement**

2.3.1 Virement means switching resources between approved estimates or heads of expenditure. It is intended to enable budgets to be managed with a degree of flexibility. The overall policy framework is determined by Full Council to optimise the use of resources.

### **Key Controls**

2.3.2 Key controls for the scheme of virement are:

- (a) It is administered by the Assistant Director of Finance within guidelines set by Full Council. Any variation from this scheme requires the approval of Full Council.
- (b) The overall budget is recommended by the Executive and approved by Full Council. Assistant Directors and nominated Budget Managers are authorised to incur expenditure in accordance with the estimates that make up the General Fund Revenue Budget and the Capital Programme. For the purposes of this scheme, a budget head is considered to be at sub-service level overseen by Assistant Directors. (which incorporates the).
- (c) Virement must not result in an overall increase in net budget requirement.
- (d) Virements shall not be made across ring-fenced accounts. Resources may not be vired between revenue and capital accounts.

**2.3.3 Revenue Virement powers are as follows:**

<b>Officer/Body</b>	<b>Power</b>	<b>Constraints</b>
<p>Chief Executive, Corporate Directors, Directors and Assistant Directors</p>	<p>The transfer of revenue budget provision within a budget head (i.e. cost centre/ combination of cost centres overseen by an Assistant Director)</p> <p>Maximum size of virement £100,000</p>	<p>Must not exceed approved net expenditure for budget head.</p> <p>No significant change in Council policy (Executive approval required - see below)</p> <p>Cannot use over £10,000 in additional external income (Section 151 Officer approval required - see below)</p> <p>No increase in future years' net expenditure</p> <p>Signed confirmation by Assistant Director</p> <p>No virement involving internal recharges will be allowed.</p> <p>No virement from specified "Major Budget Heads" (Executive approval required - see below) Formal request to and confirmation by Section 151 Officer</p>
<p>Section 151 Officer</p>	<p>The above plus the transfer of revenue budget provision between budget heads controlled by different Assistant Directors.</p> <p>Virement which involves additional income over £10,000</p> <p>Maximum size of virement £250,000</p>	<p>Must not exceed overall service net expenditure budget.</p> <p>No significant change in Council policy (Executive approval required - see below)</p> <p>No increase in future years' net expenditure</p>
<p>Executive</p>	<p>Any virement over £250,000 or which involves a significant change in Council policy</p>	<p>None, other than statutory constraints and those limits contained within the Budget and Policy Framework Procedure Rules</p>

## 2.4 Treatment of Year-End Balances

2.4.1 The rules below cover arrangements for the transfer of resources between accounting years, i.e. a carry-forward. For the purposes of this scheme, a budget heading is an Assistant Directors service area in the approved budget.

### Key Controls

2.4.2 Appropriate accounting procedures are in operation to ensure that carried-forward totals are correct.

### Responsibilities of the Section 151 Officer

2.4.3 To administer the scheme of carry-forward in line with the Reserves Policy approved by the Executive.

2.4.4 To report all overspend and underspend on service estimates carried forward to the Executive.

### Responsibilities of Assistant Directors

2.4.5 Any overspend on service estimates in total on budgets under the control of the Assistant Director must be carried forward to the following year and will constitute the first call on service estimates in the following year. The Section 151 Officer will report the extent of overspend carried forward to the Executive and to the Full Council.

2.4.6 Net underspend on service estimates under the control of the Assistant Director may be carried forward, subject to:

- (a) the Council and Directorate having an overall underspend
- (b) reporting to the Executive the source of underspend or additional income and the proposed application of those resources
- (b) the approval of the Executive where the underspend exceeds 10% of the individual budget heading (where this amounts to £10,000 or more) or £50,000, whichever is less.

## 2.5 Accounting Policies

2.5.1 The Section 151 Officer is responsible for the preparation of the Council's statement of accounts, in accordance with proper practices as set out in the format required by the Code of Practice on Local Council Accounting in the United Kingdom: A Statement of Recommended Practice (CIPFA/LASAAC [Local Authority Scotland Accounts Advisory Committee]), for each financial

year ending 31 March.

### **Key Controls**

2.5.2 The key controls for accounting policies are:

- (a) Systems of internal control are in place which ensure that financial transactions are lawful
- (b) Suitable accounting policies are selected and applied consistently
- (c) Proper accounting records are maintained
- (d) Financial statements are prepared which present fairly the financial position of the Council and its expenditure and income.

### **Responsibilities of the Section 151 Officer**

2.5.3 To select suitable accounting policies and to ensure that they are applied consistently. The accounting policies are set out in the statement of accounts, which is prepared at 31 March each year.

### **Responsibilities of Extended Leadership Team**

2.5.4 To adhere to the accounting policies and guidelines approved by the Section 151 Officer

## **2.6 Accounting Records and Returns**

2.6.1 Maintaining proper accounting records is one of the ways in which the Council discharges its responsibility for stewardship of public resources. The Council has a statutory responsibility to prepare its annual accounts so as to present fairly its operations during the year. These are subject to external audit. This audit provides assurance that the accounts are prepared properly, that proper accounting practices have been followed and that quality arrangements have been made for securing value for money in the use of the Council's resources.

### **Key Controls**

2.6.2 The key controls for accounting records and returns are:

- (a) all Executive, finance staff and budget managers operate within the required accounting standards and timetables
- (b) all the Council's transactions, material commitments and contracts and other essential accounting information are recorded completely, accurately and on a timely basis
- (c) procedures are in place to enable accounting records to be reconstituted in the event of systems failure

- (d) reconciliation procedures are carried out to ensure transactions are correctly recorded
- (e) prime documents are retained in accordance with legislative and other requirements.

### **Responsibilities of the Section 151 Officer**

- 2.6.3 To determine the accounting procedures and records for the Council. Where these are maintained outside the Finance service, the Section 151 Officer should consult the Assistant Director concerned.
- 2.6.4 To arrange for the compilation of all accounts and accounting records under their direction.
- 2.6.5 To comply with the following principles when allocating accounting duties:
  - (a) separating the duties of providing information about sums due to or from the Council and calculating, checking and recording these sums from the duty of collecting or disbursing them
  - (b) employees with the duty of examining or checking the accounts of cash transactions must not themselves be engaged in these transactions.
- 2.6.6 To make proper arrangements for the audit of the Council's accounts in accordance with the Accounts and Audit Regulations (England) Regulation 2011.
- 2.6.7 To ensure that all claims for funds, including grants, are made by the due date.
- 2.6.8 To prepare and publish the audited accounts of the Council for each financial year, in accordance with the statutory timetable and with the requirement for the Full Council (or a Committee – at CDC, responsibility sits with the Accounts, Audit and Risk Committee) to approve the statement of accounts before the statutory deadline.
- 2.6.9 To administer the Council's arrangements for under and overspends to be carried forward to the following financial year.
- 2.6.10 To ensure the proper retention of financial documents in accordance with the information management policies of the Council.

### **Responsibilities of Extended Leadership Team**

- 2.6.11 To consult and obtain the approval of the Section 151 Officer before making any changes to accounting records and procedures.

2.6.12 To comply with the principles outlined in paragraph 2.6.5 when allocating accounting duties.

2.6.13 To maintain adequate records to provide a management trail leading from the source of income/expenditure through to the accounting statements and to ensure there is a clear written scheme of delegation in their area identifying staff with authority to act on their behalf and the limits on that authority.

2.6.14 To supply information required to enable the statement of accounts to be completed in accordance with guidelines issued by the Section 151 Officer.

## **2.7 The Annual Statement of Accounts**

2.7.1 The Council has a statutory responsibility to prepare its own accounts to present fairly its operations during the year. The Full Council (or a Committee – at CDC, responsibility sits with the Accounts, Audit and Risk Committee) is responsible for approving the statutory annual statement of accounts.

### **Key Controls**

2.7.2 The key controls for the annual statement of accounts are:

the Council is required to make arrangements for the proper administration of its financial affairs and to secure that one of its officers has the responsibility for the administration of these affairs. In Cherwell District Council, that officer is the Assistant Director of Finance & Section 151 Officer.

The Council's statement of accounts must be prepared in accordance with proper practices as set out in the Code of Practice on Local Council Accounting in the United Kingdom: A Statement of Recommended Practice (the SORP) (CIPFA/LASAAC).

### **Responsibilities of the Section 151 Officer**

2.7.3 To select suitable accounting policies and to apply them consistently.

2.7.4 To make judgements and estimates that are reasonable and prudent.

2.7.5 To comply with the latest Code of Practice on Local Authority Accounting (SORP)

2.7.6 To sign and date the statement of accounts, stating that it presents fairly the financial position of the Council at the accounting date and its income and expenditure for each financial year ended 31 March.

2.7.7 To draw up the timetable for final accounts preparation and to advise staff and external auditors accordingly.

- 2.7.8 To report to the Executive the outturn figures for the preceding financial year and draw attention to any major departures from budget and/or matters of importance as soon as practicable after the end of that year.

### **Responsibilities of the Extended Leadership Team**

- 2.7.9 To comply with accounting guidance provided by the Section 151 Officer and to supply the Section 151 Officer with information when required.

## **3. Financial Planning**

### **3.1 Introduction**

- 3.1.1 Full Council is responsible for agreeing the Council's policy framework and budget, which will be proposed by the Executive. In terms of financial planning, the key elements are:

- the business plan
- the revenue budget
- the capital programme
- the medium term financial strategy
- the treasury management strategy
- the capital strategy

- 3.1.2 Where responsibility is given to an Assistant Director to report to Executive, this will be carried out following full consultation with the Corporate Leadership Team

### **Policy Framework**

- 3.1.3 Full Council is responsible for approving procedures for agreeing variations to approved budgets, plans and strategies forming the policy framework and for determining the circumstances in which a decision will be deemed to be contrary to the budget or policy framework.
- 3.1.4 Full Council is responsible for setting the level at which the Executive may reallocate budget funds from one service to another. The Executive is responsible for taking in-year decisions on resources and priorities in order to deliver the budget policy framework within the financial limits set by the Council.

## **3.2 Budgeting**



3.2.1 Budgets allow the Council to plan, authorise, monitor and control the way money is allocated and spent. It is illegal for an authority to budget for a deficit. Prudential borrowing is permitted to pay for capital assets, but provision must be made to repay this borrowing in line with the Council's Minimum Revenue Provision Policy within the revenue budget and medium-term financial strategy. The general format of the budget will be approved by the Full Council and proposed by the Executive on the advice of the Section 151 Officer. The draft budget should include allocation to different services and projects, proposed taxation levels and contingency funds.

### **Budget Preparation**

- 3.2.2 The Section 151 Officer, in consultation with Corporate Leadership Team, is responsible for ensuring that a revenue budget is prepared on an annual basis and a medium term financial plan on at least a three-yearly basis for consideration by the Executive, before submission to Full Council. Full Council may amend the budget or ask the Executive to reconsider it before approving it.
- 3.2.3 The Executive is responsible for issuing guidance on the general content of the budget in consultation with the Section 151 Officer or Assistant Director of Finance as soon as possible following approval by the Full Council. This takes the form of the issuing of the Budget Book and/or ensuring formal acceptance of annual budgets by Assistant Directors.
- 3.2.4 It is the responsibility of the Corporate Leadership Team to ensure that budget estimates reflecting agreed service plans are submitted to the Executive and that these estimates are prepared in line with guidance issued by the Executive.

### **Budget Monitoring and Control**

- 3.2.5 The Section 151 Officer is responsible for providing appropriate financial information to enable budgets to be monitored effectively. The Section 151 Officer must monitor and control expenditure against budget allocations and report to the Executive on the overall position on a regular basis.
- 3.2.6 It is the responsibility of Assistant Directors and other budget holders to control income and expenditure within their areas and to monitor performance, taking account of financial information provided by the Section 151 Officer (who is the Assistant Director of Finance). They should report on variances within their own areas. They should also take any action necessary to avoid exceeding their budget allocation and alert the Section 151 Officer or to any problems, and report to the Leadership Team as soon as possible thereafter.

## Preparation of the Capital Programme

3.2.7 The Section 151 Officer is responsible for ensuring that a capital programme is prepared on an annual basis for consideration by the Executive before submission to Full Council. The capital programme is a minimum three-year rolling programme based on the priorities of the council.

### Guidelines

3.2.8 Guidelines on budget preparation are issued to Members, and the Executive Leadership Team by the Executive following agreement with the Assistant Director of Finance & Section 151 Officer. The guidelines will take account of:

- legal requirements
- medium-term planning prospects
- available resources
- spending pressures
- relevant government guidelines
- other internal policy documents
- cross-cutting issues (where relevant)

### Maintenance of Reserves

3.2.9 It is the responsibility of the Section 151 Officer to advise the Executive and/or Full Council on prudent levels of reserves for the Council.

## 3.3 The Council's Business Plan

3.3.1 The purpose of the Business Plan is to explain overall priorities and objectives, current performance, and proposals for further improvement. It is a key element in the Council's programme of engaging with the public.

### Key Controls

3.3.2 The key controls for the plans are:

- (a) to ensure that all relevant plans are produced and that they are consistent
- (b) to produce plans in accordance with any statutory requirements
- (c) to meet the timetables set
- (d) to ensure that all performance information is accurate, complete and up to date
- (e) to provide improvement targets which are meaningful, realistic and challenging.

- 3.3.3 To advise and facilitate the provision of financial information that needs to be included in plans in accordance with agreed timetables.
- 3.3.4 To contribute to the development of corporate and service targets and objectives and performance information.

#### **Responsibilities of the Extended Leadership Team**

- 3.3.5 To ensure that systems are in place to measure activity and collect accurate information for use as performance indicators.
- 3.3.6 To ensure that performance information is monitored sufficiently frequently to allow corrective action to be taken if targets are not likely to be met.
- 3.3.7 To contribute to the development of plans in line with any statutory requirements.
- 3.3.8 To contribute to the development of corporate and service targets and objectives and performance information.

### **3.4 The Budget**

- 3.4.1 The budget explains the way in which financial control and management will be exercised. The format shapes how the rules around virement operate, outlines the operation of budgets and sets the level at which funds may be reallocated within budgets.

#### **Key Controls**

- 3.4.2 The key controls for the budget are:
  - (a) legal requirements and government guidance
  - (b) CIPFA's Code of Practice
  - (c) available resources and spending pressures.

#### **Responsibilities of the Section 151 Officer**

- 3.4.3 To determine the detailed format of the budget

#### **Responsibilities of the Extended Leadership Team**

- 3.4.4 To comply with accounting guidance provided by the Assistant Director of Finance & Section 151 Officer.

### **3.5 Revenue Budget Preparation, Monitoring and Control**

- 3.5.1 Approval of revenue estimates by Council constitutes authority to incur

expenditure as detailed in the budget. Budgetary control is a continuous process, enabling the Council to review and adjust its budget targets during the financial year. It also provides the mechanism that calls to account managers responsible for defined elements of the budget.

- 3.5.2 Assistant Directors should identify and explain variances against budget in their areas. To ensure that the Council in total does not overspend, each service is required to manage its own expenditure within the agreed budget. Where net overspends are identified Assistant Directors should develop recovery plans
- 3.5.3 For the purposes of budgetary control by managers, a budget will normally be the planned income and expenditure for a service area or cost centre. However, budgetary control may take place at a more detailed level if this is required by the Assistant Director's scheme of delegation.

### **Key Controls**

- 3.5.4 The key controls for managing and controlling the revenue budget are:
- (a) Budget managers should be responsible only for income and expenditure directly under their control.
  - (b) A nominated budget manager for each cost centre heading
  - (c) Budget managers accept accountability for their budgets and the level of service to be delivered and understand their financial responsibilities
  - (d) Budget managers follow an approved certification process for all expenditure
  - (e) Income and expenditure are properly recorded and accounted for
  - (f) Performance levels/levels of service are monitored in conjunction with the budget and necessary action is taken to align service outputs and budget.

### **Responsibilities of the Section 151 Officer or Assistant Director of Finance (where indicated\*)**

- 3.5.5 To establish an appropriate framework of budgetary management and control which ensures that:
- (a) Budget management is exercised within approved estimates unless the Full Council agrees otherwise
  - (b) Each Assistant Director has available timely information on receipts and payments on each budget which is sufficiently detailed to enable managers to fulfil their budgetary responsibilities
  - (c) Expenditure is committed only against an approved budget head
  - (d) All officers responsible for committing expenditure comply with relevant guidance, and the financial regulations
  - (e) Each cost centre has a single named manager, determined by the

relevant Assistant Director. (As a general principle, budget responsibility should be aligned as closely as possible to the decision-making processes that commits expenditure)

- (f) Significant variances from approved budgets are investigated and reported by budget managers regularly.

3.5.6 To administer the Council's scheme of virement\*.

3.5.7 To submit reports to the Executive or to Full Council, in consultation with the Corporate Leadership Scheme, where it is apparent that the budget under the control of an Assistant Director is, or is likely to be, significantly overspent by financial year-end.

3.5.8 To prepare and submit reports on the Council's projected income and expenditure compared with the budget on a regular basis.

### **Responsibilities of the Extended Leadership Team**

3.5.9 To maintain budgetary control within their divisions, in adherence to the principles in 3.5.5, and to ensure that all income and expenditure are properly recorded and accounted for.

3.5.10 To ensure that an accountable budget manager is identified for each item of income and expenditure under the control of the Assistant Director (grouped together in a series of cost centres). As a general principle, budget responsibility should be aligned as closely as possible to the decision-making that commits expenditure.

3.5.11 To ensure that only spending covered by a budget provision is incurred, it shall be the duty of Assistant Directors, in consultation with the Leadership Team, to report to the Executive any overspending or shortfall of income against the approved budget head as well as proposed recovery plans, other than where such overspendings can be overcome by virement in accordance with 2.3.3 above.

3.5.12 The Extended Leadership Team must ensure that a monitoring process is in place to review performance levels/levels of service in conjunction with the budget and is operating effectively.

3.5.13 The Extended Leadership Team must prepare and submit to the Executive reports on their projected expenditure against budget in consultation with the Assistant Director of Finance & Section 151 Officer or their nominated Deputy.

3.5.14 The Extended Leadership Team must ensure prior approval by the Executive for new proposals, of whatever amount, that:

- (a) create financial commitments in future years

- (b) change existing policies, initiate new policies, cease existing policies or materially extend or reduce the Council's services.

3.5.15 All reports should set out the full financial implications, following consultation with the Assistant Director of Finance & Section 151 Officer or their nominated Deputy.

3.5.16 To ensure compliance with the scheme of virement.

3.5.17 To agree with the relevant Assistant Director where it appears that a budget proposal, including a virement proposal, may impact materially on another service area or Assistant Director's level of service activity.

### **3.6 Budgets and Medium Term Planning**

3.6.1 The Council is a complex organization responsible for delivering a wide variety of services. It needs to plan effectively and to develop systems to enable scarce resources to be allocated in accordance with carefully weighed priorities. The budget is the financial expression of the Council's plans and policies.

3.6.2 The revenue budget must be constructed so as to ensure that resource allocation properly reflects the service plans and priorities of Full Council. Budgets (spending plans) are needed so that the Council can plan, authorise, monitor and control the way money is allocated and spent. It is illegal for a Council to budget for a deficit.

3.6.3 Medium-term planning (or a three- to five-year planning system) involves a planning cycle in which Assistant Directors develop their own plans to operate their services within the resources available. As each year passes, another future year will be added to the medium-term plan. This ensures that the Council is always preparing for events in advance.

#### **Key Controls**

3.6.4 The key controls for budgets and medium-term planning are:

- (a) specific budget approval for all expenditure
- (b) that budget managers are consulted in the preparation of the budgets for which they will be held responsible and accept accountability within delegations set by the Executive for their budgets and the level of service to be delivered
- (c) that a monitoring process is in place to review regularly the effectiveness and operation of budget preparation and to ensure that any corrective action is taken.
- (d) that budget managers and Assistant Directors are involved in the development of medium-term plans including identification of the

resulting service performance and financial implications.

### **Responsibilities of the Section 151 Officer**

- 3.6.5 To prepare and submit reports on budget prospects for the Executive, including resource constraints set by the Government. Reports should take account of medium-term prospects, where appropriate.
- 3.6.6 To determine the detailed form of revenue estimates and the methods for their preparation, consistent with the budget approved by Full Council and after consultation with the Executive and Assistant Directors.
- 3.6.7 To prepare and submit reports to the Executive on the aggregate spending plans under the responsibility of Assistant Directors and on the resources available to fund them, identifying, where appropriate, the implications for the level of Council tax to be levied.
- 3.6.8 To advise on the medium-term implications of spending decisions.
- 3.6.9 To encourage the best use of resources and value for money by working with Assistant Directors to identify opportunities to improve value for money, and by encouraging good practice in conducting financial appraisals of development or savings options, and in developing financial aspects of service planning.
- 3.6.10 To advise Full Council on Executive proposals in accordance with their responsibilities under section 151 of the Local Government Act 1972.

### **Responsibilities of Extended Leadership Team**

- 3.6.11 To prepare estimates of income and expenditure, in consultation with the Assistant Director of Finance & Section 151 Officer or, to be submitted to the Executive.
- 3.6.12 To prepare budgets that are consistent with guidelines issued by the Executive. The format should be prescribed by the Section 151 Officer in accordance with the Full Council's general directions.
- 3.6.13 To integrate financial and budget plans into service planning, so that budget plans can be supported by financial and non-financial performance measures.
- 3.6.14 In consultation with the Assistant Director of Finance & Section 151 Officer or and in accordance with the laid-down guidance and timetable, to prepare detailed draft revenue and capital budgets for consideration by the appropriate Committee.

3.6.15 When drawing up draft budget requirements, to have regard to:

- (a) Spending patterns and pressures revealed through the budget monitoring process
- (b) Legal requirements
- (c) Policy requirements as defined by Full Council in the approved policy framework
- (d) Initiatives already under way.

### **3.7 Resource Allocation**

3.7.1 A mismatch often exists between available resources and required resources. A common scenario is that available resources are not adequate to fulfil need/desire. It is therefore imperative that needs/desires are carefully prioritised and that resources are fairly allocated, in order to fulfil all legal responsibilities. Resources may include staff, money, equipment, goods and materials.

#### **Key Controls**

3.7.2 The key controls for resource allocation are:

- (a) Resources are acquired in accordance with the law and using an approved authorisation process
- (b) Resources are used only for the purpose intended, to achieve the approved policies and objectives, and are properly accounted for
- (c) Resources are securely held for use when required
- (d) Resources are used with the minimum level of waste, inefficiency or loss for other reasons.

#### **Responsibilities of the Section 151 Officer**

3.7.3 To advise on methods available for the funding of resources, such as grants from central government and borrowing requirements.

3.7.4 To assist in the allocation of resources to budget managers.

#### **Responsibilities of Extended Leadership Team**

3.7.5 To work within budget limits and to utilise resources allocated, and further allocate resources, in the most efficient, effective and economic way.

3.7.6 To identify opportunities to minimise or eliminate resource requirements or consumption without having a detrimental effect on service delivery.

3.7.7 Where budget savings are required, deliver these in a way which maximises income delivery and where this is not possible, minimises the impacts on the delivery of Council priorities.



### 3.8 Capital Programme

- 3.8.1 The Section 151 Officer is responsible for ensuring that a rolling three year capital programme is produced on an annual basis for submission to Council.
- 3.8.2 The Government places strict controls on the financing capacity of the Council. This means that capital expenditure should form part of an investment strategy and should be carefully prioritised in order to maximise the benefit of scarce resources.

#### Key Controls

- 3.8.3 The key controls for capital programmes are:
- (a) Full Council must approve the programme of capital expenditure
  - (b) Expenditure on capital schemes is subject to the approval of the Assistant Director of Finance & Section 151 Officer or their nominated Deputy
  - (c) A scheme and estimate, including project plan, progress targets and associated revenue expenditure is prepared for each capital project, for approval by the Executive.
  - (d) Approval by the Executive is required where capital schemes are to be financed from the revenue budget, up to the amount shown in the Capital Programme, and subject to the approval of Full Council, where the expenditure exceeds this amount
  - (e) Schedules for individual schemes within the overall budget approved by Full Council must be submitted to the Executive for approval (for example, minor works), or under other arrangements approved by Full Council
  - (f) A named manager is responsible for delivery
  - (g) Monitoring of progress is undertaken in conjunction with expenditure and comparison with approved budget.

#### Responsibilities of the Section 151 Officer

- 3.8.4 To prepare capital estimates jointly with the Corporate Leadership Team and to report them to the Executive for approval. The Executive will make recommendations on the capital estimates and on any associated financing requirements to Full Council.
- 3.8.5 To prepare and submit reports to the Executive on the projected income, expenditure and resources compared with the approved estimates.
- 3.8.6 To issue guidance concerning capital schemes and controls, for example, on project appraisal techniques. The definition of 'capital' will be determined by the Section 151 Officer, having regard to government regulations and accounting requirements.

**Responsibilities of the Extended Leadership Team**

- 3.8.8 To comply with guidance concerning capital schemes and controls issued by the Assistant Director of Finance & Section 151 Officer or their nominated deputy. .
- 3.8.9 To ensure that all capital proposals have undergone a project appraisal in accordance with such guidance.
- 3.8.10 To prepare regular reports reviewing the capital programme provisions for their services. To ensure that adequate records are maintained for all capital contracts.
- 3.8.11 To proceed with projects only when there is adequate provision in the capital programme, and with the agreement of the Section 151 Officer where required.
- 3.8.12 To prepare and submit reports to the Executive, of any variation in contract costs greater than £50,000 or 5% of the contract value, whichever is the greater.
- 3.8.13 To seek approval per the table below for amendments to the Capital Programme. For amendments of more than £250,000 where there is not associated external funding the approval process is via full Council.

<b>Officer/Body</b>	<b>Power</b>	<b>Constraints</b>
Chief Executive Corporate Directors, Directors and Assistant Directors	Transfer between budget capital schemes controlled by the same manager of up to £50,000	Must not result in an overall change in the size of the Capital Programme

<p>Section 151 Officer</p>	<p>The above plus:</p> <ul style="list-style-type: none"> <li>• the transfer of capital budget provision between schemes controlled by different managers up to £250,000.</li> <li>• The approval of new capital schemes funded by underspends in other projects up to £250,000</li> <li>• The approval of new capital schemes up to £250,000 for which specific funding has been identified (e.g. grant funding).</li> </ul>	<p>Limited to changes up to £250,000</p>
<p>Executive</p>	<p>The above plus:</p> <ul style="list-style-type: none"> <li>• the approval of new schemes for which specific funding has been identified (e.g. grant funding)</li> <li>• the approval of new schemes up to £250,000 to be funded by borrowing.</li> </ul>	<p>None, other than statutory constraints and those limits contained within the Budget and Policy Framework Procedure Rules</p>

3.8.14 To authorise additional capital expenditure on the replacement of capital assets, provided it can be financed from an associated insurance claim.

3.8.15 To ensure that credit arrangements, such as leasing agreements, are not entered into other than by the Assistant Director of Finance & Section 151 Officer or their nominated deputy and, if applicable, approval of the scheme through the capital programme

### 3.9 Maintenance of Reserves

3.9.1 The Council must decide the level of general reserves it wishes to maintain before it can decide the level of Council Tax. Reserves are maintained as a matter of prudence. They enable the Council to provide for unexpected events and thereby protect it from overspending, should such events occur. Reserves for specific purposes may also be maintained such as the purchase or renewal of capital items.

## Key Controls

- 3.9.2 To maintain reserves in accordance with the Code of Practice on Local Council Accounting in the United Kingdom: A Statement of Recommended Practice (CIPFA/LASAAC) and agreed accounting policies.
- 3.9.3 For each reserve established, the purpose, usage and basis of transactions should be clearly identified.
- 3.9.4 Authorisation of budget transfers to and from reserves should be authorised in line with the Reserves Policy.

## Responsibilities of the Section 151 Officer

- 3.9.5 To advise the Executive and/or the Full Council on prudent levels of reserves for the Council, and to take account of the advice of the external auditor in this matter where available. The levels will always take full account of associated risks and the assessed needs of the Council, and will reflect any guidelines published by the Chartered Institute of Public Finance and Accountancy.

## Responsibilities of Extended Leadership Team

- 3.9.6 To ensure that resources are used only for the purposes for which they were intended.

## 4. Risk Management and Control of Resources

### 4.1 Introduction

- 4.1.1 It is essential that robust, integrated systems are developed and maintained for identifying and evaluating all significant risks to the Council. This should include the proactive participation of all those associated with planning and delivering services. The fundamental aim of risk management is to support the council identify and manage risk especially with regards to those risks (both financial and non-financial) that may have an impact on the reputation and performance of the Council as a whole, and in particular, on its ability to deliver on its strategic priorities.

### Risk Management

- 4.1.2 The Accounts Audit and Risk Committee will approve the Council's Risk Management Policy Statement and Strategy and review the effectiveness of risk management generally. The Policy will be sent to the Executive for endorsement. The Assistant Director of Finance & Section 151 Officer is responsible for ensuring that proper insurance exists where appropriate.

- 4.1.3 The Section 151 Officer is responsible for preparing the Council's Risk Management Policy Statement, for promoting it throughout the Council and for advising the Executive on proper insurance cover where appropriate.

### **Internal Control**

- 4.1.4 Internal control refers to the systems of control devised by management to help ensure that the Council's objectives are achieved in a manner that ensures effective use of resources and that the Council's assets and interests are safeguarded.
- 4.1.5 The Section 151 Officer and the Monitoring Officer are responsible for advising on effective systems of internal assurance. These arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice. They should ensure that public funds are properly safeguarded and used economically, efficiently and in accordance with the statutory and other authorities that govern their use.
- 4.1.6 It is the responsibility of the Extended Leadership Team to establish sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve continuous improvement, economy, efficiency and effectiveness and for achieving their financial performance targets.

### **Audit Requirements**

- 4.1.7 All the activities of the Council are subject to both internal and external audit. The Accounts and Audit (England) Regulations 2011 issued by the Secretary of State require every local Council to maintain an adequate and effective internal audit of its accounting records and of its system of internal assurance.
- 4.1.8 Full Council is responsible for appointing external auditors to the Council.
- 4.1.9 The Council may, from time to time, be subject to audit, inspection or investigation by external bodies such as Her Majesty's Revenue and Customs (HMRC), who have statutory rights of access.

### **Preventing Fraud, Bribery and Corruption**

- 4.1.10 The Section 151 Officer and the Monitoring Officer are responsible for the development and maintenance of an anti-fraud and anti-bribery and corruption policy.

### **Assets**

- 4.1.11 Assistant Directors should ensure that records and assets are properly maintained and securely held. They should also ensure that contingency plans for the

security of assets and continuity of service in the event of disaster or system failure are in place.

### **Treasury Management**

- 4.1.12 The Council has adopted CIPFA's Code of Practice for Treasury Management in Local Authorities.
- 4.1.13 Full Council is responsible for approving the Treasury Management Policy Statement setting out the matters required under CIPFA's "Treasury Management in the Public Services: Code of Practice and Cross Sectoral Guidance Notes (2017 Edition)". The Policy Statement is proposed to the Full Council by the Executive. The Section 151 Officer has delegated responsibility for implementing and monitoring the statement.
- 4.1.14 All money in the hands of the Council is controlled by the Section 151 Officer as designated under section 151 of the Local Government Act 1972.
- 4.1.15 The Section 151 Officer is responsible for reporting to the Executive on the activities of the treasury management operation and on the exercise of his or her delegated treasury management powers. One such report will comprise an annual report on treasury management for presentation by 30 September of the succeeding financial year as well as a proposed Treasury Management Strategy for the coming financial year at or before the start of each financial year.
- 4.1.16 All Executive decisions on borrowing, investment or financing shall be delegated to the Section 151 Officer who is required to act in accordance with CIPFA's Code of Practice for Treasury Management in Local Authorities.

### **Staffing**

- 4.1.18 The Head of Paid Service is responsible for determining how officer support is organised.
- 4.1.19 The Head of Paid Service is responsible for providing overall management to staff. They are also responsible for ensuring that there is proper use of the evaluation process or other agreed systems for determining the remuneration of a job.
- 4.1.20 The Head of Paid Service is responsible for controlling total staff numbers by:
- advising the Executive on the budget necessary in any given year to cover estimated staffing levels
  - adjusting the staffing to a level that can be funded within approved budget provision, varying the provision as necessary within that constraint in order to meet changing operational needs

- the proper use of appointment procedures

## 4.2 Risk Management

- 4.2.1 All organisations, whether private or public sector, face risks to people, property and continued operations. Risk is the chance or possibility of loss, damage, injury or failure to achieve objectives caused by an unwanted or uncertain action or event. Risk management is the planned and systematic approach to the identification, evaluation and control of risk. Its objectives are to secure the assets of the organisation and to ensure the continued financial and organisational well-being of the organisation. In essence it is, therefore, an integral part of good business practice. Risk management is concerned with evaluating the measures an organisation already has in place to manage identified risks and then recommending the action the organisation needs to take to control these risks effectively.
- 4.2.2 Risk management is recognised as being concerned with both the positive and negative aspects of risk; that is to say opportunities as well as threats. The current strategy therefore applies to risk from both perspectives.
- 4.2.3 Risk, can therefore be defined as: “an uncertain event or set of events that, should it occur will have an effect (positive or negative) on the achievement of the councils’ objectives, performing its duties or meeting the expectations of its stakeholders”
- 4.2.4 The Council is aware that risks will always arise and most risks cannot be fully eliminated, only managed to an acceptable level. Within this context the council is committed to managing risk in order to reduce the impact on the organisations priorities and on service provision.
- 4.2.5 Risk management will be embedded within the daily operations of the council, from strategy and policy formulation through to business planning and general management processes. It will also be applied where the council works in partnership with other organisations, to ensure that partnership risks are identified and managed appropriately.
- 4.2.6 Through understanding risks, decision-makers (councillors and managers) will be better able to evaluate the impact of a particular decision or action on the achievement of the councils’ strategic priorities.
- 4.2.7 It is the overall responsibility of the Executive to approve the Council's risk management strategy and to promote a culture of risk management awareness throughout the Council. The Accounts Audit and Risk Committee will have initial responsibility for approving the risk management strategy before sending it to the Executive for approval

## Key Controls

4.2.8 The key controls for risk management are:

- (a) Procedures are in place to identify, assess, prevent or contain material known risks, and these procedures are operating effectively throughout the Council
- (b) A monitoring process is in place to review regularly, in this case monthly, the effectiveness of risk reduction strategies and the operation of these controls. The risk management process should be conducted on a continuing basis
- (c) Managers know that they are responsible for managing relevant (e.g. operational, leadership, project risks) risks and are provided with relevant information on risk management initiatives
- (d) Provision is made for losses that might result from the risks that remain
- (e) Procedures are in place to investigate claims within required timescales
- (f) Acceptable levels of risk are determined and insured against where appropriate
- (g) The Council has identified business continuity plans for implementation in the event of disaster that results in significant loss or damage to its resources.

## Responsibilities of the Extended Leadership Team

4.2.9 To prepare and promote the Council's risk management policy strategy.

4.2.10 To develop risk management controls in conjunction with their service teams (operational risks) and understand the escalation process.

## Responsibilities of the Section 151 Officer

4.2.11 To include all appropriate employees of the Council in a suitable fidelity guarantee insurance scheme.

4.2.12 To review annually, or at such shorter period as he/she may consider necessary, all insurance cover in consultation with other Assistant Directors as appropriate.

4.2.13 To effect corporate insurance cover, through external insurance and internal funding, and to negotiate all claims in consultation with other officers, where necessary.

4.2.14 To maintain a leadership risk register.

4.2.15 To formulate the Annual Governance Statement.



## Responsibilities of Extended Leadership Team

- 4.2.16 To notify the Section 151 Officer immediately of any loss, liability or damage that may lead to a claim against the Council, together with any information or explanation required by the Section 151 Officer or the Council's insurers.
- 4.2.17 To take responsibility for risk management, ensuring that insurance covers are adequate and that good risk management practices are followed in their divisions, having regard to advice from the Assistant Director of Finance & Section 151 Officer or their nominated deputy and other specialist officers (e.g. crime prevention, fire prevention, health and safety).
- 4.2.18 To ensure that there are reviews of operational and leadership risk at least once a quarter within their divisions.
- 4.2.19 To notify the Assistant Director of Finance & Section 151 Officer or their nominated deputy promptly of all new risks, properties or vehicles that require insurance and of any alterations affecting existing insurances.
- 4.2.20 To consult the Assistant Director of Finance & Section 151 Officer or their nominated deputy on the terms of any indemnity that the Council is requested to give.
- 4.2.21 To ensure that employees, or anyone covered by the Council's insurances, do not admit liability or make any offer to pay compensation that may prejudice the assessment of liability in respect of any insurance claim.
- 4.2.22 To identify leadership risks in accordance with guidance issued by the Section 151 Officer
- 4.2.23 To identify operational risks and maintain and be responsible for operational risk registers in accordance with guidance issued by the Section 151 Officer

## 4.3 Internal Controls

- 4.3.1 The Council is complex and beyond the direct control of individuals. It therefore requires internal controls to manage and monitor progress towards strategic objectives.
- 4.3.2 The Council has statutory obligations and, therefore, requires internal controls to identify, meet and monitor compliance with these obligations.
- 4.3.3 The Council faces a wide range of financial, administrative and commercial risks, both from internal and external factors, which threaten the achievement of its objectives. Internal controls are necessary to manage these risks.

4.3.4 The system of internal controls is established in order to provide measurable achievement of:

- (a) efficient and effective operations
- (b) reliable financial information and reporting
- (c) compliance with laws and regulations
- (d) risk management.

### **Key Controls**

4.3.5 The key controls and control objectives for internal control systems are:

- (a) Key controls should be reviewed on a regular basis and the Council should make a formal statement annually as part of the Governance Statement that the systems of internal control are operating effectively
- (b) Managerial control systems, including defining policies, setting objectives and plans, monitoring financial and other performance and taking appropriate anticipatory and remedial action. The key objective of these systems is to promote ownership of the control environment by defining roles and responsibilities
- (c) Financial and operational control systems and procedures, which include physical safeguards for assets, segregation of duties, authorisation and approval procedures and information systems
- (d) An effective internal audit function that is properly resourced. It should operate in accordance with the Accounts and Audit Regulations 2015 and with any other statutory obligations and regulations.
- (e) The preparation of an annual governance statement

### **Responsibilities of the Section 151 Officer**

4.3.6 To assist the Council to put in place an appropriate control environment and effective internal controls which provide reasonable assurance of effective and efficient operations, financial stewardship, probity and compliance with laws and regulations.

4.3.7 To prepare the annual governance statement for signing by the Leader of the Council and the Head of Paid Service.

### **Responsibilities of Extended Leadership Team**

4.3.8 To manage processes to check that established controls are being adhered to and to evaluate their effectiveness, in order to be confident in the proper use of resources, achievement of objectives and management of risks.

4.3.9 To review existing controls in the light of changes affecting the Council and to establish and implement new controls with guidance from the Section 151

Officer. Assistant Directors should also be responsible for removing controls that are unnecessary or not cost- or risk-effective – for example, because of duplication.

4.3.10 To ensure staff have a clear understanding of the consequences of lack of control.

#### 4.4 Internal Audit

4.4.1 The requirement for an internal audit function for local authorities is implied by section 151 of the Local Government Act 1972, which requires that authorities “make arrangements for the proper administration of their financial affairs”.

4.4.2 The Accounts and Audit Regulations 2015 require the Council to maintain an adequate and effective Internal Audit Service in accordance with proper internal audit practices. The Public Sector Internal Audit Standards 2017 (PSIAS), which sets out proper practice for Internal Audit, requires the Chief Internal Auditor (CIA) to provide an annual report to those charged with governance, which should include an opinion on the overall adequacies and effectiveness of the internal control environment, comprising risk management, control and governance.

4.4.3 Internal audit is an independent and objective appraisal function established by the Council for reviewing the system of internal control. It examines, evaluates and reports on the adequacy of internal control as a contribution to the proper, economic, efficient and effective use of resources.

#### Key Controls

4.4.3 The key controls for Internal Audit are:

- (a) That it is under the independent control and direction of the Assistant Director of Finance.
- (b) The Chief Internal Auditor has direct access to the Chief Executive, all levels of management and directly to elected Members (where internal audit is outsourced the lead officer on the contract for the firm is treated as the Chief Internal Auditor).
- (c) The internal auditors comply with the Audit Commission’s “Code of Audit Practice for Local Government” and “Statements of Responsibilities of Auditors and Audited Bodies” and CIPFA’s Code of Practice for Internal Audit in Local Government in the United Kingdom.
- (d) Compliance with currently agreed Member reporting mechanism

#### Responsibilities of the Section 151 Officer

4.4.4 To ensure that internal auditors have the authority, without notice, to:

- (a) access Council premises at any reasonable times

- (b) access all assets, records, documents, correspondence and control systems
- (c) receive any information and explanation considered necessary concerning any matter under consideration
- (d) require any employee of the Council to account for cash, stores or any other Council asset under his or her control
- (e) access records belonging to third parties, such as contractors. (f) directly access the Chief Executive and the Executive.

4.4.5 To approve the strategic and annual audit plans prepared by the Chief Internal Auditor which take account of the characteristics and relative risks of the activities involved.

4.4.6 To ensure that effective procedures are in place to investigate promptly any fraud or irregularity.

### **Responsibilities of Extended Leadership Team**

4.4.7 To ensure that internal auditors are given access at all reasonable times to premises, personnel, documents and assets that the auditors consider necessary for the purposes of their work.

4.4.8 To ensure that auditors are provided with any information and explanations that they seek in the course of their work.

4.4.9 To consider and respond promptly to recommendations in audit reports.

4.4.10 To ensure that any agreed actions arising from audit recommendations are carried out in a timely and efficient fashion.

4.4.11 To notify the Section 151 Officer and Chief Executive immediately of any suspected fraud, theft, irregularity, improper use or misappropriation of the Council's property or resources. Pending investigation and reporting, the Assistant Director should take all necessary steps to prevent further loss and to secure records and documentation against removal or alteration. The Chief Executive and Section 151 Officer shall take whatever steps they consider necessary by way of investigation and reporting any matter.

4.4.12 To ensure that new systems for maintaining financial records or records of assets or changes to such systems are discussed with and agreed by the Section 151 Officer prior to implementation.

## **4.5 External Audit**

4.5.1 The basic duties of the external auditor are defined in the Local Government Act 1999. The Local Audit and Accountability Act 2014 sets out the regulatory framework for external audit. External Audit requirements are to review

- (a) the financial aspects of the audited body's corporate governance arrangements
- (b) the audited body's financial statements
- (c) arrangements for securing economy, efficiency and effectiveness in its use of resources

4.5.3 The Council's accounts are scrutinised by external auditors who must be satisfied that the statement of accounts 'presents fairly' the financial position of the Council and its income and expenditure for the year in question and complies with the legal requirements.

### **Key Controls**

4.5.4 Responsibility for the appointment of External auditors sits with the Full Council.

### **Responsibilities of the Section 151 Officer**

4.5.5 To ensure that external auditors are given access at all reasonable times to premises, personnel, documents and assets that the external auditors consider necessary for the purposes of their work.

4.5.6 To ensure there is effective liaison between external and internal audit.

4.5.7 To work with the external auditor and advise Full Council, Executive and Assistant Directors on their responsibilities in relation to external audit.

### **Responsibilities of Extended Leadership Team**

4.5.8 To ensure that external auditors are given access at all reasonable times to premises, personnel, documents and assets which the external auditors consider necessary for their purposes.

4.5.9 To ensure that all records and systems are up to date and available for inspection.

## **4.6 Preventing Fraud Bribery and Corruption**

4.6.1 The Council will not tolerate fraud bribery or corruption in the administration of its responsibilities, whether from inside or outside the Council.

4.6.2 The Council's expectation of propriety and accountability is that Members and staff at all levels will lead by example in ensuring adherence to legal requirements, rules, procedures and practices.

4.6.3 The Council also expects that individuals and organisations (e.g. suppliers, contractors, service providers) with whom it comes into contact will act towards

the Council with integrity and without thought or actions involving fraud bribery or corruption.

### **Key Controls**

4.6.4 The key controls regarding the prevention of financial irregularities are that:

- (a) The Council has an effective anti-fraud and anti-bribery and corruption policy and maintains a culture that will not tolerate fraud or corruption
- (b) All Members and staff act with integrity and lead by example
- (c) Senior managers are required to deal swiftly and firmly with those who defraud or attempt to defraud the Council or who are corrupt
- (d) High standards of conduct are promoted amongst Members
- (e) A register of interests is maintained in which any hospitality or gifts accepted must be recorded
- (f) A whistle blowing policy is in place and operates effectively
- (g) Legislation including the Public Interest Disclosure Act 1998 is adhered to
- (h) The Council has a money laundering policy in place.

### **Responsibilities of the Section 151 Officer**

4.6.4 To develop and maintain an anti-fraud and anti-bribery and corruption policy.

4.6.5 To maintain adequate and effective internal control arrangements.

4.6.6 To ensure that all suspected irregularities are reported to the Chief Executive and the Executive where deemed appropriate.

4.6.7 To ensure that, where a large cash payment is offered or made to the Council, these are immediately reported to him/her and to ensure that such occurrence is immediately reported to the National Crime Agency where appropriate. In such circumstances, any cash received should not be banked until appropriate clearance to do so has been received in line with the Money Laundering Policy

### **Responsibilities of Extended Leadership Team**

4.6.8 To ensure that all suspected irregularities are reported to the Section 151 Officer and Chief Executive

4.6.9 To instigate the Council's disciplinary procedures where the outcome of an audit investigation indicates improper behaviour.

4.6.10 To ensure that, where financial impropriety is discovered, the Chief Executive and Section 151 officer are informed, and, where sufficient evidence exists to believe that a criminal offence may have been committed, the police are called in to

determine with the Crown Prosecution Service whether any prosecution will take place.

#### **4.7 Security of Assets**

4.7.1 The Council holds assets in the form of property, vehicles, equipment, furniture and other items worth many millions of pounds. It is important that assets are safeguarded and used efficiently in service delivery, and that there are arrangements for the security of both assets and information required for service operations. An up-to-date asset register is a prerequisite for proper fixed asset accounting and sound asset management.

##### **Key Controls**

4.7.2 The key controls for the security of resources such as land, buildings, fixed plant machinery, equipment, software and information are:

- (a) Resources are used only for the purposes of the Council and are properly accounted for
- (b) Resources are available for use when required
- (c) Resources no longer required are disposed of in accordance with the law and the regulations of the Council so as to maximise benefits
- (d) An asset register is maintained for the Council, assets are correctly recorded when they are acquired by the Council and this record is updated as changes occur with respect to the location and condition of the asset
- (e) All staff are aware of their responsibilities with regard to safeguarding the Council's assets and information including the requirements of the Data Protection Act 1998 and software copyright legislation
- (f) All staff are aware of their responsibilities with regard to safeguarding the security of the Council's computer systems, including maintaining restricted access to the information held on them and compliance with the Council's computer and internet security policies.

##### **Responsibilities of Extended Leadership Team**

4.7.3 The Director for Property, Investment & Facilities Management shall maintain a terrier (a map-based record of all the Council's land ownership on GIS) of all property owned by the Council recording the location, extent and plan reference, purchase details, particulars of rents payable and tenancies granted. The Assistant Director of Finance keeps an asset register for financial accounting purposes but ensuring it is consistent with the land and property asset register held by the Head of Procurement & Contract Management.

4.7.4 To ensure that lessees and other prospective occupiers of Council land are not allowed to take possession, or enter, the land until a lease or agreement, in a form approved by the Assistant Director in consultation with the Assistant Director La and

Governance & Monitoring Officer or their nominated deputy has been established as appropriate.

- 4.7.5 To ensure the proper security of all buildings and other assets under their control.
- 4.7.6 Where land or buildings are surplus to requirements, a recommendation for sale should be the subject of a report by the Director for Property, Investment & Facilities Management
- 4.7.7 To pass title deeds to the Assistant Director Law and Governance who is responsible for custody of all title deeds.
- 4.7.8 To ensure that no Council asset is subject to personal use by an employee without proper authority which means in relation to property assets the Assistant Director Property and in relation to any other assets the Assistant Director of Finance.
- 4.7.9 To ensure the safe custody of vehicles, equipment, furniture, stock, stores and other property belonging to the Council.
- 4.7.10 To ensure that assets are identified, their location recorded and that they are appropriately marked and insured.
- 4.7.11 To consult the Section 151 Officer in any case where security is thought to be defective or where it is considered that special security arrangements may be needed.
- 4.7.12 To ensure cash holdings on premises are kept to a minimum and are within limits approved by the Section 151 officer which shall not be exceeded without his or her express approval.
- 4.7.13 To ensure that keys to safes and similar receptacles are carried on the person of those responsible at all times; loss of any such keys must be reported to the Section 151 Officer as soon as possible.
- 4.7.14 To record all disposal or part exchange of assets that should normally be by competitive tender or public auction, unless, following consultation with the Section 151 Officer it is agreed otherwise.
- 4.7.15 To advise the Director Digital & IT and Director Customers, who shall be responsible for maintaining a corporate asset register of the Council's ICT assets of any hardware and software acquisitions.
- 4.7.16 To provide the Director of Digital & IT and Director Customers & Cultural Services with copies of all software licences.
- 4.7.17 To ensure that all employees are aware that they have a personal responsibility with



regard to the protection and confidentiality of information, whether held in manual or computerised records. Information may be sensitive or privileged, or may possess some intrinsic value, and its disclosure or loss could result in a cost to the Council in some way.

4.7.18 Under the direction of the Assistant Director Law and Governance and Monitoring Officer, or their nominated Deputy, to ensure all employees are aware of their responsibilities for maintaining proper security and privacy in respect of information held in any computer and also for the need to comply at all times with the provisions of the Data Protection Act, 1998 and the Computer Misuse Act 1990.

## **4.8 Inventories**

### **Key Controls**

4.8.1 The key controls for inventories are:

- (a) That an up to date record is maintained of all relevant property of the Council.
- (b) That disposals, renewals, replacements and additions are recorded in a timely fashion.
- (c) That steps are taken to ensure the prevention of unauthorised use of Council property

### **Responsibilities of Extended Leadership Team**

4.8.2 To maintain inventories and record an adequate description of furniture, fittings, equipment, plant and machinery, the extent and format of which is to be determined by the Assistant Directors.

4.8.3 To carry out an annual check of all items on the inventory in order to verify location, review and condition and to take action in relation to surpluses or deficiencies, annotating the inventory accordingly. Attractive and portable items such as computers, cameras and video recorders should be identified, with security markings, as belonging to the Council.

4.8.4 To make sure that property is used only in the course of the Council's business, unless the Assistant Director concerned has given permission otherwise.

## **4.9 Stocks and Stores**

### **Key Controls**

4.9.1 The key controls for stocks and stores are:

- (a) The maintenance of properly maintained records of stocks and stores.
- (b) Steps to ensure the safe custody of Council property
- (c) Steps to ensure the prevention of unauthorised use of Council property

### **Responsibilities of Extended Leadership Team**

- 4.9.2 To make arrangements for the care and custody of stocks and stores in the division, providing the Assistant Director of Finance with a year-end return when required and in the approved format.
- 4.9.3 To ensure stocks are maintained at reasonable levels and are subject to a regular independent physical check. All discrepancies should be investigated and pursued to a satisfactory conclusion. All stocks are to be checked at least once per year, with large stock holdings (of a value of £50,000 or more) subject to in-year rolling reviews.
- 4.9.4 To investigate and remove from the Council's records (i.e. write off) discrepancies as necessary, or to obtain Executive approval if they are in excess of £5,000 in value.
- 4.9.5 To authorise or write off disposal of redundant stocks and equipment. Procedures for disposal of such stocks and equipment should be by competitive quotations or auction, unless, following consultation, the Section 151 officer decides otherwise in a particular case.
- 4.9.6 To seek authorisation from the Section 151 Officer to make adjustments to write off deficiencies and obsolete stores and equipment.

### **4.10 Intellectual Property**

- 4.10.1 Intellectual property is a generic term that includes inventions and writing. If these are created by the employee during the course of employment, then, as a general rule, they belong to the employer, not the employee. Legislation covers different types of intellectual property.
- 4.10.2 Certain activities undertaken within the Council may give rise to items that may be patentable, for example, software development. These items are collectively known as intellectual property.

### **Key Controls**

- 4.10.3 In the event that the Council decides to become involved in the commercial exploitation of inventions, the matter should proceed in accordance with the Council's approved intellectual property procedures.

4.10.4 To develop and disseminate good practice through the Council's intellectual property procedures.

4.10.5 To ensure that controls are in place to ensure that staff do not carry out private work in Council time and that staff are aware of an employer's rights with regard to intellectual property.

#### **4.11 Asset Disposal**

4.11.1 The procedure for the disposal of Council assets is covered by section 30 of the Contract Procedure Rules. There are specific rules to follow if the asset is valued above £50,000 unless a suitably qualified person confirms that an alternative procedure is appropriate because of the nature of the asset. If any asset is to be disposed of by scrapping, this shall be done using the most environmentally friendly method subject to such method being cost-effective.

##### **Key Controls**

4.11.2 Assets for disposal are identified and are disposed of at the most appropriate time, and only when it is in the best interests of the Council and the best price is obtained, bearing in mind other factors, such as environmental issues. For items of above £50,000, disposal should be in accordance with the process set out in section 30 of the Contract Procedure Rules.

4.11.3 Procedures protect staff involved in the disposal from accusations of personal gain.

##### **Responsibilities of the Section 151 Officer**

4.11.4 To monitor and review the guidelines representing best practice for the disposal of assets in consultation with the Monitoring Officer.

4.11.5 To ensure appropriate accounting entries are made to remove the value of disposed assets from the Council's records and to include the sale proceeds if appropriate.

##### **Responsibilities of Extended Leadership Team**

4.11.6 To refer to the Contract Procedure Rules and seek advice from purchasing advisors on the disposal of surplus or obsolete materials, stores or equipment and to seek authorisation from the Section 151 Officer before such disposal.

4.11.7 To ensure that income received for the disposal of an asset is properly banked and coded

4.11.8 To ensure that sales of land and buildings are dealt with in the following way:

## 4.12 Sales

4.12.1 Land and buildings valued at less than £250,000 shall be disposed of by the Director for Property, Investment & Facilities Management in a manner consistent with the Council's statutory duties under Section 123 of the Local Government Act 1972

4.12.2 Unless otherwise agreed by the Executive, all land or buildings valued at £50,000 or more shall be offered on the open market in accordance with one or other of the following procedures:

### **Sale by Tender - Ad-Hoc Tenders**

4.12.3 At least 14 days' notice shall be given in two or more of [the local newspapers circulating in the area of the Council and/or in such national journals or appropriate websites as the Director for Property, Investment & Facilities Management considers desirable stating the nature of the property and inviting tenders for its purchase and stating the last date when tenders will be accepted; or

### **Sale by Tender - Approved List**

4.12.4 Public notice shall be given in respect of a particular transaction in the manner described in 4.12.3 above inviting applications from interested persons to be placed on a list to be approved by the Council from which prospective purchasers shall be selected and invited to submit tenders.

### **Sale at a Named Figure**

4.12.5 An assessment of the value of the property shall be made by a qualified valuer. The Head of Procurement and Contract Management shall issue particulars of the property and the price to all enquiring persons. Details of the property shall be publicly advertised on at least one occasion and on a sign board erected upon the site.

### **Invited Offers**

4.12.6 The property shall be advertised in accordance with 4.12.3 above but no figure shall be placed in the particulars and interested parties shall be asked to make offers for consideration by the Council. In order to give guidance to would-be purchasers a minimum figure may be quoted where appropriate. The administration of 4.12.3 – 4.12.6 may be carried out by approved agents.

4.12.7 Properly qualified and experienced auctioneers shall be commissioned to act on behalf of the Council in offering for sale by auction land or buildings in the Council's ownership.

#### **4.13 Purchases**

4.13.1 All purchases of land and/or buildings shall be the subject of a valuation report by the District Valuer or an independent qualified valuer.

4.13.2 The Executive or Full Council shall approve all land and building purchases, other than exceptions covered by 4.13.3. The report seeking such approval will identify the purpose for which the land will be held. Where urgent action to make an offer is required, the Urgency Powers procedures specified within Delegated Powers will be sought through Lead Member decision making.

#### **Exceptions**

4.13.3 Every exception to the procedure shall require the approval of Full Council or the Executive following a report justifying the exception being made.

#### **4.14 Treasury Management**

4.14.1 Many millions of pounds pass through the Council's books each year. This has led to the establishment of codes of practice. These aim to provide assurances that the Council's money is properly managed in a way that balances risk with return, but with the overriding consideration being given to the security of the Council's capital sum.

#### **Key Controls**

4.14.2 That the Council's borrowings and investments comply with CIPFA's "Treasury Management in the Public Services: Code of Practice and Cross Sectoral Guidance Notes (2017 Edition) and with the Council's treasury policy statement.

#### **Responsibilities of Section 151 Officer – Treasury Management and Banking**

4.14.3 To arrange the borrowing and investments of the Council in such a manner as to comply with CIPFA's Treasury Management in the Public Services: Code of Practice and Cross Sectoral Guidance Notes (2017 Edition) and the Council's treasury management policy statement and annual strategy.

4.14.4 To operate bank accounts and order cheques if considered necessary. Opening or closing any bank account shall require his approval.

- 4.14.5 To ensure that all cheques on the Council's main bank accounts bear his or her facsimile signature or are signed by him/her or other person authorised by the Council to do so.
- 4.14.6 To ensure that all cheques drawn exceeding £25,000 in value are countersigned by an appropriately authorised signatory designated by the Head of Paid Service.
- 4.14.7 To ensure that all manually prepared cheques are stamped in accordance with procedures authorised by them.

**Responsibilities of Extended Leadership Team – Treasury Management and Banking**

- 4.14.8 To follow the instructions on banking issued by the Section 151 Officer.

**Responsibilities of Section 151 Officer – Investments and Borrowing**

- 4.14.9 To ensure that all investments of money are made in the name of the Council or in the name of nominees approved by the Full Council.
- 4.14.10 To ensure that all securities that are the property of the Council or its nominees and the title deeds of all property in the Council's ownership are held in the custody of the appropriate Assistant Director.
- 4.14.11 To effect all borrowings in the name of the Council.
- 4.14.12 To act as the Council's registrar of stocks, bonds and mortgages and to maintain records of all borrowing of money by the Council.
- 4.14.13 To comply with the best available professional published guidance insofar as is reasonably practicable to do so.

**Responsibilities of Extended Leadership Team – Investments and Borrowing**

- 4.14.14 To ensure that loans are not made to third parties and that interests are not acquired in companies, joint ventures or other enterprises without the approval of the Section 151 Officer.

**Responsibilities of Extended Leadership Team – Trust Funds and Funds held for Third Parties**

- 4.14.15 To arrange for all trust funds to be held, wherever possible, in the name of the Council. All officers acting as trustees by virtue of their official position shall deposit securities, etc. relating to the trust with the Section 151 Officer, unless the deed otherwise provides.

4.14.16 To arrange, where funds are held on behalf of third parties, for their secure administration, approved by the Section 151 Officer, and to maintain written records of all transactions.

4.14.17 To ensure that trust funds are operated within any relevant legislation and the specific requirements for each trust.

#### **Responsibilities of the Section 151 Officer - Imprest Accounts**

4.14.18 To provide employees of the Council with cash or bank imprest accounts or purchasing cards to meet minor expenditure on behalf of the Council and to prescribe rules for operating these accounts.

4.14.19 To determine the petty cash limit and to maintain a record of all transactions and petty cash advances made, and periodically to review the arrangements for the safe custody and control of these advances.

4.14.20 Purchasing Cards and Credit Cards can be used for a variety of small payments instead of the use of petty cash and imprest floats.

#### **Responsibilities of Extended Leadership Team – Imprest Accounts**

4.14.21 To ensure that employees operating an imprest account:

- (a) obtain and retain vouchers to support each payment from the imprest account. Where appropriate, an official receipted VAT invoice must be obtained
- (b) make adequate arrangements for the safe custody of the account
- (c) produce upon demand by the Section 151 Officer cash and all vouchers to the total value of the imprest amount
- (d) record transactions promptly
- (e) reconcile and balance the account at least monthly; reconciliation sheets to be signed and retained by the imprest holder
- (f) provide the Section 151 Officer with a certificate of the value of the account held at 31 March each year
- (g) ensure that the float is never used to cash personal cheques or to make personal loans and that the only payments into the account are the reimbursement of the float and change relating to purchases where an advance has been made
- (h) on leaving the Council's employment or otherwise ceasing to be entitled to hold an imprest advance, an employee shall account to the Section 151 Officer for the amount advanced to him or her.
- (i) ensure that the imprest account is not used for items which are subject to Income Tax i.e. wages, sub-contractors.

4.15.1 In order to provide the highest level of service, it is crucial that the Council recruits and retains high calibre, knowledgeable staff, qualified to an appropriate level.

### **Key Controls**

4.15.2 The key controls for staffing are:

- (a) To ensure that staffing requirements and budget allocations and work priorities are matched
- (b) To forecast staffing requirements and costs
- (c) To have in place controls to ensure that staff time is used efficiently and to the benefit of the Council
- (d) To undertake checks prior to employing new staff to ensure that they are appropriately qualified, experienced and trustworthy
- (e) To operate procedures to ensure the appropriate training and development of staff

### **Responsibilities of the Section 151 Officer**

4.15.3 To ensure that budget provision exists for all existing and new employees.

4.15.4 To act as an advisor to Assistant Directors on areas such as National Insurance and pension contributions, as appropriate.

4.15.5 To determine a sensible and prudent level of vacancy factor and to incorporate this into the budget where appropriate.

### **Responsibilities of Extended Leadership Team**

4.15.6 To produce an annual staffing budget.

4.15.7 To ensure that the staffing budget is an accurate forecast of staffing levels and is equated to an appropriate revenue budget provision (including on-costs and overheads).

4.15.8 To monitor staff activity to ensure adequate control over such costs as sickness, overtime, training and temporary staff.

4.15.9 To ensure staffing budgets are not exceeded without appropriate approval.

4.15.10 To ensure development needs are identified via the Annual Staff Appraisal Process and that the agreed training plan and programme is supported and attended.



4.15.11 To monitor the level of staffing vacancies against the vacancy factor budget for which they are responsible.

## **5. Financial Systems and Procedures**

### **5.1 Introduction**

5.1.1 Sound systems and procedures are essential to an effective framework of accountability and control.

#### **General**

5.1.2 The Section 151 Officer is responsible for the operation of the Council's accounting systems, the form of accounts and the supporting financial records. Any changes made by Assistant Directors to the existing financial systems or the establishment of new systems must be approved by the Section 151 Officer. However, Assistant Directors are responsible for the proper operation of financial processes in their own divisions.

5.1.3 Any changes to procedures by Assistant Directors to meet their own specific service needs should be agreed with the Section 151 Officer.

5.1.4 Assistant Directors should ensure that their staff receive relevant financial training that has been approved by the Section 151 Officer.

5.1.5 Assistant Directors must ensure, in consultation with the Assistant Director – Law and Governance and Monitoring Officer or their nominated Deputy, that, where appropriate, computer and manual filing systems are registered in accordance with data protection legislation. Assistant Directors must ensure, in consultation with the Assistant Director Law and Governance, that staff are aware of their responsibilities under freedom of information and environmental information regulations legislation.

#### **Income and Expenditure**

5.1.6 It is the responsibility of Assistant Directors to ensure that a proper scheme of delegation has been established within their area and is operating effectively. The scheme of delegation should identify staff authorised to act on the Assistant Director's behalf, or on behalf of the Executive, in respect of payments, income collection and placing orders, together with the limits of their authority. The scheme of delegation should be consistent with those granted in the Council's financial systems. The Executive is responsible for approving procedures for writing off debts as part of the overall control framework of accountability and control.

## Payments to Employees and Members

5.1.7 The Section 151 Officer is responsible for all payments of salaries and wages to all staff, including payments for overtime, and for payment of allowances to Members.

## Taxation

5.1.8 The Section 151 Officer is responsible for advising Assistant Directors, in the light of guidance issued by appropriate bodies and relevant legislation as it applies, on all taxation issues that affect the Council.

5.1.9 The Section 151 Officer is responsible for maintaining the Council's tax records, making all tax payments, receiving tax credits and submitting tax returns by their due date as appropriate.

## Trading Accounts/Units

5.1.10 It is the responsibility of the Section 151 officer to advise on the establishment and operation of trading accounts and units

## 5.2 General

5.2.1 Divisions have many systems and procedures relating to the control of the Council's assets, including purchasing, costing and management systems. Divisions rely on computers for their financial management information. The information must therefore be accurate and the systems and procedures sound and well administered. They should contain controls to ensure that transactions are properly processed and errors detected promptly.

5.2.2 The Section 151 Officer has a professional responsibility to ensure that the Council's financial systems are sound and he/she should therefore be notified of any new developments or changes.

## Key Controls

5.2.3 The key controls for systems and procedures are:

- (a) Basic data exists to enable the Council's objectives, targets, budgets and plans to be formulated
- (b) Performance is communicated to the appropriate managers on an accurate, complete and timely basis

- (c) Early warning is provided of deviations from target, plans and budgets that require management attention
- (d) Operating systems and procedures are secure.

### **Responsibilities of the Section 151 Officer**

5.2.4 To make arrangements for the proper administration of the Council's financial affairs, including to:

- (a) issue advice, guidance and procedures for officers and others acting on the Council's behalf
- (b) determine the accounting systems, form of accounts and supporting financial records
- (c) establish arrangements for audit of the Council's financial affairs
- (d) approve any new financial systems to be introduced
- (e) approve any changes to be made to existing financial systems.

### **Responsibilities of Extended Leadership Team**

5.2.5 To ensure that accounting records are properly maintained and held securely.

5.2.6 To ensure that vouchers and documents with financial implications are not destroyed, except in accordance with arrangements approved by the Section 151 officer

5.2.7 To ensure that a complete management trail, allowing financial transactions to be traced from the accounting records to the original document, and vice versa, is maintained.

5.2.8 To incorporate appropriate controls to ensure that, where relevant:

- (a) all input is genuine, complete, accurate, timely and not previously processed
- (b) all processing is carried out in an accurate, complete and timely manner
- (c) output from the system is complete, accurate and timely.

5.2.9 To ensure that the organisational structure provides an appropriate segregation of duties to provide adequate internal controls and to minimise the risk of fraud or other malpractice.

- 5.2.10 To ensure there is a documented and tested business continuity plan to allow information system processing to resume quickly in the event of an interruption.
- 5.2.11 To ensure that systems are documented and staff trained in operations.
- 5.2.12 To consult with the Section 151 Officer before changing any existing system or introducing new systems.
- 5.2.13 To establish a scheme of delegation identifying officers authorised to act upon the Assistant Director's behalf in respect of payments, income collection and placing orders, including variations, and showing the limits of their authority.
- 5.2.14 To supply lists of authorised officers, with specimen signatures and delegated limits, to the Section 151 Officer, together with any subsequent variations.
- 5.2.15 To ensure that effective contingency arrangements, including back-up procedures, exist for computer systems. Wherever possible, back-up information should be securely retained in a fireproof location, preferably off site or at an alternative location within the building. The Assistant Director ICT and Digital will have overall responsibility for business continuity in relation to ICT systems.
- 5.2.16 To ensure that, where appropriate, computer systems are registered in accordance with data protection legislation, that staff are aware of their responsibilities under the legislation and that no system operates live unless the Head of Legal has confirmed that all legislative requirements have been met.
- 5.2.17 To ensure that relevant standards and guidelines for computer systems issued by the Director Digital and IT are observed.
- 5.2.18 To ensure that computer equipment and software are protected from loss and damage through theft, vandalism, etc.
- 5.2.19 To comply with the copyright, designs and patents legislation and, in particular, to ensure that:
- (a) only software legally acquired and installed by the Council is used on its computers
  - (b) staff are aware of legislative provisions
  - (c) in developing systems, due regard is given to the issue of intellectual property rights.

## 5.3 Computing

### 5.3.1 Key Controls

The key controls for computing are:

- (a) The existence of and adherence to a corporate ICT Strategy.
- (b) The existence of a corporate procurement procedure for all hardware and software acquisitions in accordance with the Contract Procedure Rules

### Responsibilities of Director of Digital & IT

- 5.3.2 To ensure the currency and relevance of the ICT Strategy through regular review.
- 5.3.3 To ensure that all software acquired by the Council is licensed for use.
- 5.3.4 To ensure appropriate steps are in place to back up key systems.

### Responsibilities of the Extended Leadership Team

- 5.3.6 To seek the final approval for all Information and Communications Technology (ICT) development acquisitions and implementation from the Assistant Director ICT and Digital and the Assistant Director of Finance or the Chief Executive unless otherwise delegated.
- 5.3.7 To ensure that all activities and processes relating to the evaluation, development, acquisition and implementation of ICT conform to the Council's IT Strategy, Standards and Procedures.
- 5.3.8 To ensure that all ICT acquisitions are conducted in accordance with the Council's Contracts Procedure Rules and, where appropriate, relevant legislation and EU directives.
- 5.3.9 To ensure that all ICT acquisitions and developments are cost-justified and that the benefits are required and necessary to meet the Council's service and business objectives.
- 5.3.10 To ensure that before any new acquisition or development of information systems is undertaken, a project plan, business specification and estimated costs are submitted to the Director of Digital & IT for consideration before the project commences.

- 5.3.11 To submit all bids for the acquisition or the development of new information systems or information technology, whether to be met from within existing budgets, through growth bids or centrally controlled re-investment, in the first instance, to the Director Digital and IT for initial evaluation and, where appropriate, authorisation.
- 5.3.12 Prior to any ICT projects or acquisitions being submitted to Executive Members for approval, to ensure that authorisation is obtained from the Director of Digital & IT and the Assistant Director of Finance or the Chief Executive, as appropriate.
- 5.3.13 To ensure that, in order to facilitate the co-ordination and efficient use of the Council's IS/IT resources, the Director Digital & IT is consulted before any negotiations commence or commitments are made to acquire, rent or lease any computer equipment (including communications technologies and peripherals), software or computer training.
- 5.3.14 To ensure that, in order that the Council's interests are protected, any contracts for ICT are submitted to the Assistant Director Law and Governance before being entered into.

## **5.4 Income and Expenditure**

### **Income**

- 5.4.1 Income can be a vulnerable asset and effective income collection systems are necessary to ensure that all income due is identified, collected, receipted and banked properly. It is preferable, though not always possible, to obtain income in advance of supplying goods or services as this improves the Council's cash-flow and also avoids the time and cost of administering debts.

### **Key Controls**

- 5.4.2 The key controls for income are:
- (a) All income due to the Council is identified and charged correctly, in accordance with an approved charging policy, which is regularly reviewed
  - (b) All income is collected from the correct person, at the right time, using the correct procedures and the appropriate stationery
  - (c) All money received by an employee on behalf of the Council is

paid without delay to the Section 151 Officer or, as he or she directs, to the Council's bank accounts, and properly recorded. The responsibility for cash collection should be separated from that:

- for identifying the amount due
- for reconciling the amount due to the amount received
- (d) Effective action is taken to pursue non-payment within defined timescales
- (e) Formal approval for debt write-off is obtained
- (f) Appropriate write-off action is taken within defined timescales
- (g) Appropriate accounting adjustments are made following write-off action
- (h) All appropriate income documents are retained and stored for the defined period in accordance with the document retention schedule
- (i) Money collected and deposited is reconciled to the bank account by a person who is not involved in the collection or banking process.
- (j) No income received is paid into an imprest account.

### **Responsibilities of the Section 151 Officer**

- 5.4.3 To agree arrangements for the collection of all income due to the Council and to supervise/approve the procedures, systems and documentation for its collection.
- 5.4.4 To order and supply to divisions all receipt forms, books or tickets and similar items and to satisfy himself or herself regarding the arrangements for their control.
- 5.4.5 To approve all debts to be written off in consultation with the relevant Assistant Director and to keep a record of all sums written off up to:
  - £5,000 for all debts with the exception of non-domestic rates
  - £10,000 for all debts relating to non-domestic rates
- 5.4.6 In consultation with Assistant Directors, to report to the Executive any irrecoverable sums over £5,000 in respect of all debts with the exception of non-domestic rates and £10,000 in respect of debts relating to non-domestic rates
- 5.4.7 To obtain the approval of the Executive in consultation with the relevant Assistant Director for writing off debts in excess of the approved limits specified in 5.4.5 and 5.4.6.
- 5.4.8 To ensure that appropriate accounting adjustments are made following write-off action.
- 5.4.9 To ensure that outdoor collections of Rates, Council Tax, Benefits

Overpayments and other miscellaneous income are, subject to proper safeguards, are paid in at approved Post Offices, bank branches or locations. . Any remaining outdoor and any indoor collections not banked during normal banking hours on the day of receipt, shall be placed either in a night safe or in a locked safe and banked the following day. These should be kept to a minimum and the night safe facility used for all weekend and bank holiday bankings.

5.4.10 To ensure that proper procedures for collection of income by credit or debit card, in person, by telephone or by electronic methods, are in place to minimise risk and ensure proper accountability of such transactions.

### **Responsibilities of Extended Leadership Team**

5.4.11 To establish a charging policy for the supply of goods or services, including the appropriate charging of VAT, and to review it regularly, in line with corporate policies.

5.4.12 To separate the responsibility for identifying amounts due and the responsibility for collection as far as is practicable.

5.4.13 To establish and initiate appropriate recovery procedures, including legal action where necessary, for debts that are not paid promptly subject to authorisation from the Section 151 Officer.

5.4.14 To issue official receipts or to maintain other documentation for income collection.

5.4.15 To ensure, where possible that at least two employees are present when post is opened so that money received by post is properly identified and recorded.

5.4.16 To hold securely receipts, tickets and other records of income for the appropriate period.

5.4.17 To ensure that income is paid fully, without deduction, and promptly into the appropriate Council bank account or cashier service (where relevant) in the form in which it is received. Appropriate details should be recorded onto paying-in slips to provide an audit trail. Money collected and deposited must be reconciled to the bank account on a regular basis. Every cheque or similar instrument shall have a crossing approved by the Section 151 Officer.

5.4.18 To ensure the safe keeping of cash and cheques received until such time as they can properly be banked which in any event must be within 24 hours of receipt unless it is impracticable to do so.

5.4.19 To ensure income is not used to cash personal cheques or other payments



other than under arrangements approved by the Section 151 Officer and supported by a valid banker's cheque or credit card as appropriate.

- 5.4.20 To supply the Section 151 Officer with details relating to work done, goods supplied, services rendered or other amounts due, in order to enable the Section 151 Officer to record correctly the sums due to the Council and to ensure accounts are sent out promptly. To do this, Assistant Directors should use established performance management systems to monitor recovery of income and flag up areas of concern to the Section 151 Officer. Assistant Directors have a responsibility to assist the Section 151 Officer in collecting debts that they have originated, by providing any further information requested by the debtor, and in pursuing the matter on the Council's behalf.
- 5.4.21 To keep a record of every transfer of money between employees of the Council. The receiving officer must sign for the transfer and the transferor must retain a copy.
- 5.4.22 To recommend to the Section 151 Officer all debts to be written off and to keep a record of all sums written off up to the approved limit. Once raised, no bona fide debt may be cancelled, except by full payment or by its formal writing off. A credit note to replace a debt can only be issued to correct a factual inaccuracy or administrative error in the calculation and/or billing of the original debt.
- 5.4.23 To notify the Section 151 Officer of outstanding income relating to the previous financial year as soon as possible after 31 March in line with the timetable determined by the Section 151 Officer.
- 5.4.24 In consultation with the Section 151 Officer and the Chief Executive, to submit, at least annually, a schedule of recommended fees and charges for services for consideration and approval by the Executive.
- 5.4.25 To raise sundry debtor requisition forms immediately after providing a service for which a cash payment was not received.

## **5.5 Ordering and Paying For Work, Goods And Services**

- 5.5.1 Public money should be spent with demonstrable probity and in accordance with the Council's policies. The Council's procedures should help to ensure that services obtain value for money from their purchasing arrangements.

### **General**

- 5.5.2 Every Officer and Member of the Council has a responsibility to declare any links or personal interests that they may have with purchasers, suppliers,

and/or contractors if they are engaged in contractual or purchasing decisions on behalf of the Council.

- 5.5.3 Official orders must be in a form approved under section 19 of the Contract Procedure Rules. Official orders must be issued for all work, goods or services to be supplied to the Council, except for supplies of utilities, periodic payments such as rent or rates, petty cash purchases, instructions to Counsel or other exceptions specified by the Section 151 Officer.
- 5.5.4 Each order must conform with the Contract Procedure Rules. Standard terms and conditions must not be varied without the prior approval of the Section 151 Officer.
- 5.5.5 Apart from petty cash and other payments from advance accounts, the normal method of payment from the Council shall be electronic, drawn on the Council's bank accounts by the Section 151 Officer. The use of direct debit shall require the prior agreement of the Section 151 officer. The use of a Council credit card is subject to compliance with the Council Credit Card Usage Protocol attached.
- 5.5.6 Official orders must not be raised for any personal or private purchases, nor must personal or private use be made of Council contracts, unless specifically authorised by the Section 151 Officer.

### Key Controls

- 5.5.7 The key controls for ordering and paying for work, goods and services are:
- (a) All goods and services shall be ordered only by authorised persons and are correctly recorded
  - (b) All goods and services shall be ordered in accordance with the Council's Contracts Procedure Rules for tenders and contracts unless they are purchased from sources within the Council.
  - (c) Goods and services received shall be checked to ensure they are in accordance with the order. Goods should not be received by the person who placed the order
  - (d) Payments shall not be made unless goods have been received by the Council to the correct price, quantity and quality standards
  - (e) All payments shall be made to the correct person, for the correct amount and are properly recorded, regardless of the payment method
  - (f) All appropriate evidence of the transaction and payment documents shall be retained and stored for the defined period, in accordance with the document retention schedule
  - (g) All expenditure, including VAT, shall be accurately recorded against the right budget and any exceptions are corrected
  - (h) In addition, the effect of e-business/e-commerce and electronic

- purchasing requires that processes are in place to maintain the security and integrity of data for transacting business electronically
- (i) All purchases made by Council credit card shall comply with the Council Credit Card Usage protocol appended to these Rules.

### **Responsibilities of the Section 151 Officer**

- 5.5.8 To ensure that all the Council's financial systems and procedures are sound and properly administered.
- 5.5.9 To approve any changes to existing financial systems and to approve any new systems before they are introduced.
- 5.5.10 To approve the form of official orders and associated terms and conditions.
- 5.5.11 To make payments from the Council's funds on the Assistant Director's authorisation that the expenditure has been duly incurred in accordance with financial procedure rules.
- 5.5.12 To make payments, whether or not provision exists within the estimates, where the payment is specifically required by statute or is made under a court order.
- 5.5.13 To make payments to contractors on the certificate of the appropriate Assistant Director, which must include details of the value of work, retention money, amounts previously certified and amounts now certified.
- 5.5.14 To provide advice and encouragement on making payments by the most economical means.
- 5.5.15 To examine such final accounts for contracts, to the extent he/she considers necessary. They shall be entitled to make any enquiries and receive any information and explanations which he considers necessary to satisfy himself of the accuracy of the accounts. On completion, to notify the certifying officer that the examination is complete and that a final certificate can be issued.

### **Responsibilities of Extended Leadership Team**

- 5.5.16 To ensure that the appropriate order form within the accountancy software system is used for all goods and services, other than the exceptions specified in 5.5.3, and that the order includes an estimate of the cost.
- 5.5.17 Except where the Section 151 Officer expressly authorises it, to ensure that orders are only used for goods and services provided to the relevant department or division.

- 5.5.18 To ensure that only those staff authorised by him or her authorise orders and to maintain an up-to-date list of such authorised staff, including specimen signatures (where appropriate) identifying in each case the limits of their authority. The authoriser of the order should be satisfied that the goods and services ordered are appropriate and needed, that there is adequate budgetary provision and that any necessary quotations or tenders and any trade discounts have been obtained. Value for money should always be achieved and orders must take account of the Council's Contract Procedure Rules .
- 5.5.19 To ensure that goods and services are checked on receipt to verify that they are in accordance with the order. This check should, where possible, be carried out by a different officer from the person who authorised the order. Appropriate entries should then be made in inventories or stores records.
- 5.5.20 To ensure that payment is not made unless a proper VAT invoice has been received, checked, coded and certified for payment, confirming:
- (a) receipt of goods or services
  - (b) that the invoice has not previously been paid and is properly due from the Council.
  - (c) that expenditure has been properly incurred and is within budget provision
  - (d) that prices and arithmetic are correct and accord with quotations, tenders, contracts or catalogue prices
  - (e) correct accounting treatment of tax
  - (f) that the invoice is correctly coded
  - (g) that discounts have been taken where available
  - (h) that appropriate entries will be made in accounting records, inventories, stores books etc.
- 5.5.21 To ensure that two authorised Members of staff are involved in the ordering, receiving and payment process. If possible, a different officer from the person who authorised the order, and in every case, a different officer from the person checking a written invoice should authorise the invoice.
- 5.5.22 To ensure that the department maintains and reviews periodically a list of staff approved to authorise invoices. Names of authorising officers together with specimen signatures (where appropriate) and details of the limits of their authority shall be forwarded to the Section 151 Officer.
- 5.5.23 To ensure that payments are not made on a photocopied or faxed invoice, statement or other document other than the formal invoice, except where authorised by the Section 151 Officer and providing the supplier has confirmed that the document is an exact match of the original and can be supported by relevant documentation. The reason for the copy must be stated on the invoice.

- 5.5.24 To encourage suppliers of goods and services to receive payment by the most economical means for the Council. It is essential, however, that payments made by direct debit have the prior approval of the Section 151 officer
- 5.5.25 To ensure that the Council obtains best value from purchases by taking appropriate steps to obtain competitive prices for goods and services of the appropriate quality, in line with the Council's Contract Rules of Procedure
- 5.5.26 To ensure that no amendment is made to incorrect accounts which include VAT. These accounts must be returned for correction or held pending receipt of a credit note and a correct account.
- 5.5.27 To ensure that all employees follow any guidance on invoice processing issued from time to time by the Section 151 Officer in relation to the requirements of the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.5.28 To ensure that invoices are passed promptly for payment once all the necessary checks have been carried out in order for the Council to ensure that invoices are paid within 30 days of receipt.
- 5.5.29 To make payments to contractors on account of contracts only on a certificate issued by the appropriate Assistant Director, or an employee nominated by him in writing for the purpose. A certificate issued by a private architect, engineer or consultant engaged by the Council must be countersigned by the appropriate Assistant Director or nominee.
- 5.5.30 To authorise every extra or variation, in writing, unless carried out by a private architect, engineer or consultant or nominated employee and subject to the provisions of the contract in each case.
- 5.5.31 To ensure that any variation or extra, which exceeds £20,000 or 2.5% of the contract value whichever is the greater, is reported to the Executive as soon as practicable, setting out any measures which may be available to minimise the additional cost.
- 5.5.32 To report to the Executive on the final cost of any capital scheme.  
Where the total cost of the contract exceeds the contract sum by 5% in the case of contracts of less than or equal to £500,000 and 2.5% in the case of contracts in excess of £500,000 a report on the cost shall, after agreement of the final account, be made to the Executive. For the purposes of this regulation the contract sum shall include any increases or decreases made under price adjustment clauses.
- 5.5.33 To seek legal advice on claiming liquidated damages where completion of a

contract is delayed and to report accordingly to the Executive.

- 5.5.34 To ensure that employees are aware of the code of conduct for local government employees.
- 5.5.35 To ensure that loans, leasing or rental arrangements are arranged only by the Section 151 Officer, who has authority to approve operating leases without prior Executive approval providing there is no impact on the Council's capital resources. A notice period of (up to) four months is required for full details of requirements.
- 5.5.36 To notify the Section 151 Officer of outstanding expenditure relating to the previous financial year as soon as possible after 31 March in line with the timetable determined by the Section 151 Officer and, in any case, not later than a date specified by the Section 151 Officer from year to year.
- 5.5.37 With regard to contracts for construction and alterations to buildings and for civil engineering works, to document and agree with the Section 151 Officer the systems and procedures to be adopted in relation to financial aspects, including certification of interim and final payments, checking, recording and authorising payments, the system for monitoring and controlling capital schemes and the procedures for validation of subcontractors' tax status.
- 5.5.38 To notify the Section 151 Officer immediately of any expenditure to be incurred as a result of statute/court order where there is no budgetary provision.
- 5.5.39 To ensure that all appropriate payment records are retained and stored for the defined period, in accordance with the Council's record retention schedule.

## **5.6 Payments to Employees and Members**

- 5.6.1 Staff costs are the largest item of expenditure for most Council services. It is therefore important that payments are accurate, timely, made only where they are due for services to the Council and that payments accord with individuals' conditions of employment. It is also important that all payments are accurately and completely recorded and accounted for and that Members' allowances are authorised in accordance with the scheme adopted by the Full Council.

### **Key Controls**

- 5.6.2 The key controls for payments to employees and Members are:
  - (a) Proper authorisation procedures are in place and there is adherence to corporate timetables

starters  
 leavers  
 variations  
 enhancements

and that payments are made on the basis of timesheets or claims

- (b) Frequent reconciliation of payroll expenditure against approved budget and bank account are undertaken
- (c) All appropriate payroll documents are retained and stored for the defined period in accordance with the document retention schedule
- (d) That HMRC regulations are complied with.

### **Responsibilities of the Section 151 Officer**

- 5.6.3 To arrange and control secure and reliable payment of salaries, wages, compensation or other emoluments to existing and former employees, in accordance with procedures prescribed by him or her, on the due date.
- 5.6.4 To record and make arrangements for the accurate and timely payment of tax, superannuation and other deductions.
- 5.6.5 To make arrangements for payment of all travel and subsistence claims or allowances.
- 5.6.6 To make arrangements for paying Members travel or other allowances upon receiving the prescribed form, duly completed and authorised.
- 5.6.7 To provide advice and encouragement to secure payment of salaries and wages by the most economical means.
- 5.6.8 To ensure that there are adequate arrangements for administering superannuation matters on a day-to-day basis.

### **Responsibilities of Extended Leadership Team**

- 5.6.9 To ensure appointments are made in accordance with the regulations of the Council and approved establishments, grades and scale of pay and that budget provision is adequate.
- 5.6.10 To notify the Section 151 Officer as soon as possible and in the form prescribed by them, of all matters affecting the payment of salaries, wages and pension emoluments, in particular:
  - (a) appointments, resignations, dismissals, suspensions, secondments and transfers

- (b) absences from duty for sickness or other reasons, apart from approved leave with pay.
- (c) details of approved leave with pay which has been authorised for any employee who is leaving the Council's service.
- (d) changes in remuneration, other than pay awards and agreements of general application.
- (e) information necessary to maintain records of service for pensions, income tax, national insurance and similar payroll related data.

5.6.11 To ensure that adequate and effective systems and procedures are operated, so that:

payments are only authorised to bona fide employees  
 payments are only made where there is a valid entitlement  
 conditions and contracts of employment are correctly applied  
 employees' names listed on the payroll are checked at regular intervals to verify accuracy and completeness.  
 all salary related input data is received by the Section 151 Officer by the 5<sup>th</sup> working day of the month in which the payment is to be made.

5.6.12 To ensure that all time records or other pay documents are in a form prescribed or approved by the Section 151 officer and are certified in writing by, or on behalf of, the Assistant Director. The names of employees authorised to countersign these records shall be sent to the Section 151 officer by each Assistant Director, together with specimen signatures and any changes which may occur from time to time.

5.6.13 To ensure that payroll transactions are processed only through the payroll system. Assistant Directors should give careful consideration to the employment status of individuals employed on a self-employed consultant or subcontract basis. The HMRC applies a tight definition for employee status, and, in cases of doubt, advice should be sought from the Assistant Director of HR & OD

5.6.14 Where necessary to certify travel and subsistence claims and other allowances and to submit them, together with any supporting documents (including appropriate VAT receipts for fuel purchases in support of mileage claims subject to any exceptions that may be agreed by the Section 151 officer), to the Section 151 officer in the approved form, made up to the last day of the month. Claims should be submitted for the previous month (wherever possible) in line with the deadlines published on the intranet. Certification is taken to mean that journeys were authorised and expenses properly and necessarily incurred, and that allowances are properly payable by the Council ensuring that the effective use of travel arrangements is



achieved. Employees claims submitted more than three months after the expenses were incurred will be paid only with the express approval of the Section 151 officer. Due consideration should be given to tax implications and the Section 151 officer be informed where appropriate.

5.6.15 To ensure that the Section 151 Officer is notified of the details of any employee benefits in kind, to enable full and complete reporting within the income tax self-assessment system.

5.6.16 To ensure that all appropriate payroll documents are retained and stored for the defined period in accordance with the document retention schedule.

5.6.17 To ensure that the Section 151 Officer is regularly provided with the names of employees currently authorised to countersign these records together with specimen signatures.

### **Responsibilities of Members**

5.6.18 To submit claims for Members' travel and subsistence allowances on a regular basis to the Assistant Director Law and Governance using the prescribed form and including all supporting documents within two months of the meeting to which they apply. Exceptions to this rule are at the discretion of the Section 151 Officer.

## **5.7 Taxation**

5.7.1 The Council is responsible for ensuring its tax affairs are in order. Tax issues are often very complex and the penalties for incorrectly accounting for tax are severe. It is therefore very important for all officers to be aware of their role.

### **Key Controls**

5.7.2 The key controls for taxation are:

- (a) Budget managers are provided with relevant information and kept up to date on tax issues
- (b) Budget managers are instructed on required record keeping
- (c) All taxable transactions are identified, properly carried out and accounted for within stipulated timescales
- (d) Records are maintained in accordance with instructions
- (e) Returns are made to the appropriate authorities within the stipulated timescale.

### **Responsibilities of the Section 151 Officer**

- 5.7.3 To complete all HMRC returns regarding PAYE.
- 5.7.4 To complete a monthly return of VAT inputs and outputs to HMRC.
- 5.7.5 To provide details to the HMRC regarding the construction industry tax deduction scheme.
- 5.7.6 To maintain up-to-date guidance for Council employees on taxation issues.

### **Responsibilities of Extended Leadership Team**

- 5.7.7 To ensure that the correct VAT liability is attached to all income due and that all VAT recoverable on purchases complies with HMRC regulations.
- 5.7.8 To ensure that, where construction and maintenance works are undertaken, the contractor fulfils the necessary construction industry tax deduction requirements.
- 5.7.9 To ensure that all persons employed by the Council are added to the Council's payroll and tax deducted from any payments, except where the individuals are bona fide self-employed or are employed by a recognised staff agency.
- 5.7.10 To follow the guidance on taxation issued by the Section 151 officer.

## **5.8 Trading Accounts and Units**

- 5.8.1 Trading accounts and business units are important as local authorities have developed a more commercial culture. Authorities are required to keep trading accounts for services provided on a basis other than straightforward recharge of cost.

### **Responsibilities of the Section 151 Officer**

- 5.8.2 To advise on the establishment and operation of trading accounts and business units.

### **Responsibilities of Extended Leadership Team**

- 5.8.3 To consult with the Section 151 officer and the Assistant Director Law and Governance & Monitoring Officer where a business unit wishes to enter into a contract with a third party where the contract expiry date exceeds the remaining life of their main contract with the Council. In general, such

contracts should not be entered into unless they can be terminated within the main contract period without penalty. Reference should be made to the Contract Procedure Rules and legal advice must be sought.

- 5.8.4 To observe all statutory requirements in relation to business units, including the maintenance of a separate revenue account to which all relevant income is credited and all relevant expenditure, including overhead costs, is charged, and to produce an annual report in support of the final accounts.
- 5.8.5 To ensure that the same accounting principles are applied in relation to trading accounts as for other services or business units.

## **6. External Relationships and Partnerships**

### **6.1 Introduction**

- 6.1.1 The Council provides a leadership role for the community and brings together the contributions of various stakeholders. It also acts to achieve the promotion or improvement of the economic, social or environmental well-being of its area.

### **Partnerships**

- 6.1.2 The Executive is responsible for approving delegations, including frameworks for any proposed partnerships.
- 6.1.3 The Executive can delegate functions – including those relating to partnerships – to officers. These are set out in the scheme of delegation that forms part of the Council's constitution. Where functions are delegated, the Executive remains accountable for them to Full Council.
- 6.1.4 The appropriate member of the Leadership Team will represent the Council on partnership and external bodies, in accordance with the scheme of delegation.
- 6.1.5 The Section 151 Officer must ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory. He or she must also consider the overall corporate governance arrangements and legal issues when arranging contracts with external bodies. He or she must ensure that the risks have been fully appraised before agreements are entered into with external bodies.
- 6.1.6 Assistant Directors are responsible for ensuring that appropriate approvals are obtained before any negotiations are concluded in relation to work with external bodies.

## 6.2 Partnerships

6.2.1 A partnership is an agreement between two or more independent bodies to work collectively to achieve an objective. Partnerships play a key role in delivering community strategies and in helping to promote and improve the well-being of the area. Local authorities are working in partnership with many outside bodies – public agencies, private companies, community groups and voluntary organisations. Local authorities still deliver some services, but their distinctive leadership role is to bring together the contributions of various stakeholders. They therefore need to deliver a shared vision of services based on user wishes.

6.2.2 Local authorities mobilise investment, bid for funds, champion the needs of their areas and harness the energies of local people and community organisations. Local authorities are measured by what they achieve in partnership with others.

### General

6.2.3 The main reasons for entering into a partnership are:

- (a) clear objectives and timescales which can be better achieved together
- (b) the ability to access new resources
- (c) the provision of new and better ways of delivering services
- (d) the creation of new relationships.

6.2.4 A partner is defined as either:

- (a) an organisation (private or public) undertaking, part funding or participating as a beneficiary in a project or a body whose nature or status give it a right or obligation to support the project.

or

- (b) a body whose nature or status gives it a right or obligation to support the project

6.2.5 Partners participate in projects by:

- (a) acting as a project deliverer or sponsor, solely or in concert with others
- (b) acting as a project funder or part funder
- (c) being the beneficiary group of the activity undertaken in a project.

6.2.6 Partners have common responsibilities:

- (a) to be willing to take on a role in the broader programme appropriate to the skills and resources of the partner organisation
- (b) to act in good faith at all times and in the best interests of the partnership's aims and objectives

- (c) to be open about any conflict of interests that might arise
- (d) to encourage joint working and promote the sharing of information, resources and skills between public, private and community sectors
- (e) to hold confidentially any information received as a result of partnership activities or duties that is of a confidential or commercially sensitive nature
- (f) to act wherever possible as ambassadors for the project.

### **Key Controls**

6.2.7 The key controls for Council partners are:

- (a) If appropriate, to be aware of their responsibilities under the Council's Financial Procedure rules and Contract Procedure Rules
- (b) To ensure that risk management processes are in place to identify and assess all known risks
- (c) To ensure that project appraisal processes are in place to assess the viability of the project in terms of resources, staffing and expertise
- (d) To agree and accept formally the roles and responsibilities of each of the partners involved in the project before the project commences
- (e) To communicate regularly with other partners throughout the project so that problems can be identified and shared to achieve their successful resolution.
- (f) A partnership agreement should be in place containing details of how resources will be pooled and controls will be operated in partnership spending.
- (g) Regular spending statements should be available to all parties.

### **Responsibilities of the Section 151 Officer**

6.2.8 To advise on effective controls that will ensure that resources are not wasted.

6.2.9 To advise on the key elements of funding a project. They include:

- (a) a scheme appraisal for financial viability in both the current and future years
- (b) risk appraisal and management
- (c) resourcing, including taxation issues
- (d) audit, security and control requirements
- (e) carry-forward arrangements.

6.2.10 To ensure that the accounting arrangements are satisfactory.

### **Responsibilities of Extended Leadership Team**

- 6.2.11 To maintain a register of all contracts entered into with external bodies in accordance with procedures specified by the Section 151 Officer. NB a contract for services is NOT a partnership.
- 6.2.12 To ensure that, before entering into agreements with external bodies, a risk management appraisal has been prepared for the Section 151 Officer.
- 6.2.13 To ensure that such agreements and arrangements do not impact adversely upon the services provided by the Council.
- 6.2.14 To ensure that all agreements and arrangements are properly documented.
- 6.2.15 To provide appropriate information to the Section 151 Officer to enable a note to be entered into the Council's statement of accounts concerning material items.

### **6.3 External Funding**

- 6.3.1 External funding is potentially a very important source of income, but funding conditions need to be carefully considered to ensure that they are compatible with the aims and objectives of the Council. Local authorities are increasingly encouraged to provide seamless service delivery through working closely with other agencies and private service providers. Funds from external agencies such as the National Lottery provide additional resources to enable the Council to deliver services to the local community. However, in some instances, although the scope for external funding has increased, such funding is linked to tight specifications and may not be flexible enough to link to the Council's overall plan.

#### **Key Controls**

- 6.3.2 The key controls for external funding are:
- (a) To ensure that key conditions of funding and any statutory requirements are complied with and that the responsibilities of the accountable body are clearly understood
  - (b) To ensure that funds are acquired only to meet the priorities approved in the policy framework by Full Council
  - (c) To ensure that any match-funding requirements are given due consideration and are affordable prior to entering into long-term agreements and that future revenue budgets reflect these requirements.
  - (d) To ensure that grant conditions are approved as appropriate by the Chief Executive, Corporate Directors and Directors or the Executive, prior to acceptance of grant or implementation of any scheme or

project associated  
with the grant.

### **Responsibilities of the Section 151 Officer**

- 6.3.3 To ensure that all funding notified by external bodies is received and properly recorded in the Council's accounts.
- 6.3.4 To ensure that the match-funding requirements are considered prior to entering into the agreements and that future revenue budgets reflect these requirements.
- 6.3.5 To ensure that audit requirements are met.

### **Responsibilities of Extended Leadership Team**

- 6.3.6 To ensure that all claims for funds are made by the due date.
- 6.3.7 To ensure that the project progresses in accordance with the agreed project plan and that all expenditure is properly incurred and recorded.
- 6.3.8 To ensure that the terms and conditions of the grant are complied with in full.
- 6.3.9 To prepare appropriate working papers and documentary evidence to enable the Section 151 Officer to sign grant declaration forms.

## **6.4 Work For Third Parties (Charging And Trading)**

- 6.4.1 Current legislation enables the Council to provide a range of services to other bodies. Such work may enable a unit to maintain economies of scale and existing expertise. Arrangements should be in place to ensure that any risks associated with this work are minimised and that such work is intra-vires.

### **Key Controls**

- 6.4.2 The key controls for working with third parties are:
  - (a) To ensure that proposals are costed properly in accordance with guidance provided by the Section 151 Officer
  - (b) To ensure that contracts are drawn up using guidance provided by the Section 151 Officer and the Head of Legal and that the formal approvals process is adhered to
  - (c) To issue guidance with regard to the financial aspects of third party contracts and the maintenance of the contract register.

**Responsibilities of Section 151 Officer**

- 6.4.3 To issue guidance with regard to the financial aspects of third party contracts and the maintenance of the contract register.

**Responsibilities of Extended Leadership Team**

- 6.4.4 To ensure that any necessary approvals are obtained before any negotiations are concluded to work for third parties.
- 6.4.5 To maintain a register of all contracts entered into with third parties in accordance with procedures specified by the Section 151 Officer.
- 6.4.6 To ensure that appropriate insurance arrangements are made.
- 6.4.7 To ensure that the Council minimises the risk of any bad debts.
- 6.4.8 To ensure that no contract is subsidised by the Council.
- 6.4.9 To ensure that, wherever possible, payment is received in advance of the delivery of the service.
- 6.4.10 To ensure that the department/unit has the appropriate expertise to undertake the contract.
- 6.4.11 To ensure that such contracts do not impact adversely upon the services provided for the Council.
- 6.4.12 To ensure that all contracts are properly documented.
- 6.4.13 To provide appropriate information to the Section 151 Officer to enable a note to be entered into the statement of accounts.



## APPENDIX

### Credit Card Usage Protocol

Council credit cards are used to replace other methods of ordering. Particularly where it is an emergency, if a payment is required immediately or payment is made via the internet.

Such credit cards shall be used for the payment of valid business goods and expenses only and the misuse of such cards shall be grounds for disciplinary action

Just like all forms of ordering a budget or funding stream needs to be identified prior to a purchase being made.

Where goods are being purchased for an area where the cardholder is not the budget holder, cardholders must obtain approval to purchase from the relevant budget holder. In all circumstances the cardholder must ensure that there is sufficient budget available to meet the costs of the order.

Holders of purchasing cards must use them only for the purposes for which they have been issued and within the authorised purchase limits.

Cards must not be loaned to another person but other people can place an order on behalf of the cardholder if permission is expressly granted by the cardholder for this to happen.

Cards must never be used for personal or private purchases. Only in absolutely exceptional circumstances should cash be withdrawn using the card and receipts must then be provided for all items of that cash expenditure.

If in doubt advice should be sought from the Assistant Director of Finance & Section 151 Officer

#### **Prevention against Fraud**

Reasonable precautions should be taken to prevent fraudulent use of the card. Corporate Cards should not be used by anyone other than the named card holder (unless express permission is given by the cardholder) and PIN numbers (if applicable) should not be written down or disclosed to third parties.

Cardholders should also take care when giving out card details over the phone. The cardholder (or those ordering on the cardholders' behalf) should always initiate the

phone call and be certain that it is the correct person they are giving the card details to.

Users should avoid providing their full card details on any application/registration forms. It is safer to provide the details by phone.

Users should ensure that any purchases placed via the internet are made at secure and reputable web sites.

Card details should never be sent by email.

### **Budget and Payment Process**

Users should use the card as if using a debit card or any other credit card.

Users should ensure that any purchases placed via the internet are made at secure and reputable web sites.

The card holder is solely responsible for every transaction processed on their card and must obtain an itemised receipt/payment confirmation for each transaction.

Expenditure will come through in a statement and the card user will be contacted to identify which budget it should be charged to

Statements will be reviewed and reconciled monthly by Finance but it is the responsibility of budget holders to ensure cards are used appropriately and purchases have an auditable trail.

**CHERWELL DISTRICT COUNCIL  
CONTRACT PROCEDURE RULES  
(March 2024)**

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**1. INTRODUCTION**

This part of the Constitution sets out the Council's ('Council') rules for buying goods, services and works on behalf of the Council and disposing of some types of property. In this document they are referred to as the "Contract Rules".

The Council must have contract rules under section 135 of the Local Government Act 1972.

Officers must have regard to the Council's Procurement Guidance or any replacement of such guidance from time to time in force ("the Guidance").

**2. SCOPE OF CONTRACT PROCEDURE RULES**

These Rules (and those complementary rules in the Council's Constitution, including its Financial Procedure Rules) apply to all spending on works, supplies and services by the Council. They also apply to the disposal of all Council assets.

The Rules also apply whether the Council is dealing on a commercial basis with entities in the private sector or the public sector.

These Rules must also be followed where the Council decides to accept an expression of interest received from a relevant body under the community right to challenge.

Further, the Rules apply to arrangements which the Council wishes to enter into in consequence of its having received grant funding from an outside body to procure a service, or to receive an income in return for giving another body the right (a concession) to run a service.

The Rules do not apply, however, to:

- contracts of employment
- contracts with Counsel and specialist legal advice
- grant/funding agreements

The Monitoring Officer may amend these Rules where required by statutory change, updates in government procurement policy, managerial adjustment or administrative error.

### **3. COMMENCING A PROCUREMENT**

No procurement shall commence without there being sufficient budget available to cover the estimated cost of the Works, Supplies or Services being procured, or an outside body providing grant for the procurement of Works, Supplies or Services having given a binding commitment to the Council to provide those funds.

Further, for all procurements above £50,000 (inclusive of VAT) the relevant Officer shall first consider and agree with the Procurement and Contracts Manager agree a procurement strategy that is most likely to achieve the procurement's intended outcomes and objectives, having regard, therefore, to such matters as:

- the likely total cost of the project;
- the amount and source of the money earmarked for it;
- the length of the proposed arrangement;
- the procedure to be adopted for achieving effective competition;
- the proposed procurement timetable;
- whether procurement jointly with another public body would be of benefit;
- how Value for Money and/or Service improvements may be achieved;
- how Social Value might be secured for the Council's area by the procurement;
- details as to whether TUPE is likely to apply; and
- any risk to the Council in undertaking (or not undertaking) the procurement.

#### 4. ROLE OF THE PROCUREMENT & CONTRACTS GROUP

The Procurement and Contracts Group (PCG) is an officer led board with its terms and reference set out at Appendix 1.

#### 5. REQUIREMENTS IN RELATION TO TUPE

TUPE, and the interpretation of it, changes frequently, and only a brief reference to it is therefore contained within these Rules. Officer should consult Human Resources and Legal for further TUPE guidance and advice as necessary or appropriate.

Whenever a new supplier is appointed to take over the provision of an existing Service, employees of the original supplier engaged in the provision of that Service (or the Council, if the Service was provided in-house) may be affected by transferring that Service to another provider. If so, it will be necessary to form a view as to whether TUPE applies, and advice from Legal and HR must therefore be obtained by the Project Officer before commencing a procurement.

#### 6. FINANCIAL THRESHOLDS AND PROCUREMENT PROCESS

Where a Relevant Contract is being procured the minimum procurement process and rules for inviting tenders are as follows.

Estimated Total Contract Value (inclusive of VAT)	Minimum Process	Method of Invitation & Transparency Obligation	Authority to award	Authority to sign
<b>Less than £10,000</b>	At least one quote must be sought from an appropriate source via the procurement portal (or alternative method with prior approval of the Procurement and Contracts Unit)	None mandated	Relevant Assistant Director	Relevant Assistant Director
<b>£10,000 to £100,000</b>	Invitation to quote or tender must be sent via the procurement portal to at least three	Method to be approved by the Procurement and Contracts Unit.	Relevant Assistant Director and if over £50,000 in value with the prior approval of	Authorised Signatory (Legal Services)

	suppliers - including at least one SME* or VCSE* organisation - where appropriate and possible		Procurement & Contracts Group Manager.	
<b>Over £100,000 to the relevant FTS (Find a Tender Service) threshold.</b>	Tender process via the procurement portal, with at least five written tenders sought, where appropriate and possible	Advertise open invitation to tender (ITT) on the Council's portal and Contracts Finder	Relevant Assistant Director with the approval of 151 and Monitoring Officer. If over £200,000 approval of Procurement & Contracts Group.	Executed as Deed under Seal (Legal Services) or alternative method approved by the Monitoring Officer
<b>Over Relevant FTS threshold</b>	Full competitive tender process applies via the procurement portal.	Advertise relevant Procurement Procedure by on the Council's portal. Advertise on Contracts Finder and Find a Tender system Other media may also be used	Relevant Assistant Director with the approval of Procurement & Contracts Group  If over £500,000 Executive decision is required	Executed as Deed under Seal (Legal Services) or alternative method approved by the Monitoring Officer

## Purchasing Schemes

An officer responsible for the procurement exercise may use Purchasing Schemes subject to the following conditions:-

An officer responsible for the procurement must seek advice in advance that:

- the Council is legally entitled to use the Purchasing Scheme;
- the purchases to be made do properly fall within the coverage of the Purchasing Scheme;
- the establishment and operation of each Purchasing Scheme is in compliance with the Procurement Legislation and meets the Council's own requirements.

A "Purchasing Scheme" may include:

- Contractor prequalification lists/select lists;
- Framework arrangements (including those set up by the Government Procurement Service);
- Purchasing arrangements set up by central purchasing bodies and commercial organizations; Consortium purchasing;

- Collaborative working arrangements;
- Formal agency arrangements;
- E-procurement / purchasing schemes and methods;
- Other similar arrangements.

Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Rules of Procedures in respect of the choice and conduct of procedures. Advice should be sought from the Procurement and Contracts Services prior to entering to such arrangements.

### **Getting Tenders and Quotations**

Where quotations or Tenders are required, the documentation comprising the ITT or the ITQ shall be based on relevant model documents available from the Procurement and Contracts Unit.

### **Evaluation Criteria**

Any ITT or ITQ must contain details as to the criteria for awarding the Contract to which it relates. Those criteria must be robust, fair, auditable, compliant with any relevant Public Procurement Legislation and, for any ITT, weighted wherever possible.

The award criteria may be based on price alone or on that which represents the Most Economically Advantageous Offer received. In relation to Contracts above the FTS Threshold, any award *must* be based on the Most Economically Advantageous Offer.

### **Lowest Price**

Awards based on price alone will usually only be suitable for Supply Contracts where the Supplies required can be specified in significant detail at the outset and no after sales service or other special requirements are needed in connection with that Supply. Where appropriate, guidance should be sought on price assessment and lifecycle costs from the Procurement and Contracts Unit.

### **Most Economically Advantageous Offer**

Where the Council intends to award a Contract on the basis of the proposal which is the Most Economically Advantageous Offer received, the criteria (and any sub-criteria) to be used in the evaluation shall, as a minimum:

- be pre-determined,
- have relevant weightings set out with applicable criteria
- be strictly observed at all times throughout the competition for the Contract,
- include (with any relevant weightings) criteria where appropriate in respect of Social Value
- reflect value for money,

- include price and quality criteria,
- be capable of objective assessment, and
- have regard to environmental impact and sustainability considerations relevant to the Works, Supplies or Services being procured.

Where a contract award is to be made following the above approach, it should be awarded to the tenderer obtaining the highest overall score (i.e., the Most Economically Advantageous Offer) from the evaluation process with a compliant tender.

## **7. INSURANCE**

At the commencement of any procurement exercise, the relevant Officer and the Assistant Director of Finance (or nominated officer) shall together determine the type and level of insurance cover required in relation to a particular procurement. The appropriate Officer shall ensure the successful bidder has any required insurance cover in place before performance of the Contract begins, and shall further ensure, at appropriate intervals, that such cover is maintained by the supplier throughout the Contract period.

## **8. PARENT COMPANY GUARANTEES AND PERFORMANCE BONDS**

Before commencing any tendering exercise for a Contract exceeding £150,000 in value of amount, the relevant Officer and the Assistant Director of Finance (or nominated officer) shall together determine the need for, and value of, any parent company guarantee and/or performance bond necessary in relation to that procurement.

The Assistant Director of Finance (or nominated officer) may also require any Contract below £150,000 to be supported by a parent company guarantee and/or performance bond for such amount as the Assistant Director of Finance (or nominated officer) may consider necessary or appropriate in all the circumstances.

In determining the need for appropriate guarantees, regard should be had to using performance bond and/or a parent company guarantee only in specific and justified circumstances where the contract is judged to be at high risk of supplier or performance failure. Key points include: is the contract with the ultimate parent company; is the balance sheet commensurate with the liabilities in the contract; what proportion of the net assets are represented by the maximum liability under the contract; and to what extent are the assets are tied to the contracting party?

The appropriate Officer shall ensure the successful tenderer has any required parent company guarantee and/or performance bond in place before the Contract is commenced.

## **9. TENDER ADMINISTRATION: PROCEDURE FOR ISSUING AND RECEIVING TENDERS**

An electronic Invitation to Tender shall be issued by the Council for all



contracts with an estimated value of £100,000, or more and tenders shall be submitted electronically via the Council's Procurement Portal.

The Council Procurement Portal and the Invitation to Tender must specify the format in which an electronic tender is submitted by tenderers and such tenders shall be stored in a secure portal account which is locked until the date and time specified for its opening.

No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless the Monitoring Officer is satisfied that there are exceptional circumstances and the other tenders have not been opened.

The electronic opening of tenders submitted on the Procurement Portal shall be conducted by a Procurement or Legal Officer and the relevant Assistant Director or their nominated representative.

Only in limited circumstances a tender process should be undertaken by hard copy submissions. In such cases written approval of the Monitoring Officer is required.

All Tenders must be returned strictly in accordance with the instructions prescribed in the ITT and must not be returned directly to the Project Officer, a Council Member or to any consultant acting on the Council's behalf.

## 10. EXCLUSIONS

The requirement to conduct a competitive procurement process is excluded in the following circumstances:

	Type of circumstance	Written record and approval
a)	the proposed contract is excluded under the Procurement Legislation; or	Prior written approval from the Monitoring Officer is required.
b)	the proposed contract is being awarded under a Purchasing Scheme of a type where a competition has already been undertaken on behalf of the Council or other public sector organisation; or	Prior written approval from the Monitoring Officer is required.
c)	the proposed contract is an extension to or a variation of the scope of an existing contract where the existing contract provides for such extension or a variation or where the variation is a modification permitted under the Procurement Legislation.	For contract extension or variation where annual value is greater than £200,000, approval of the Procurement & Contracts Group.

## 11. EXCEPTIONS

The Council does not have the power to waive the applicability of Public Procurement Legislation.

Subject to Public Procurement Legislation the requirement to seek Tenders or Quotations may be waived as follows:

Value	Authority to Waive
Below £200,000	Monitoring Officer and Section 151 Officer
Above £200,000	Monitoring Officer and Section 151 Officer with a report approved by Procurement & Contracts Group

All exceptions or waivers to these Contract Rules of Procedure must be:

fully documented with a record noting the reasons for the waiver and that the circumstance are genuinely exceptional; and

noted on the waiver register to be kept by the Procurement and Contracts Unit.

## 12. CONTRACT FORMALITIES

### 12.1 The Form of Contract

- 12.1.1. All contracts should be made in writing and on the Council's standard written terms unless Legal Services approves otherwise. Contracts made on the supplier's written terms must be reviewed and approved by Legal Services. In advance of the tender process, the procuring Officer must seek advice from Legal Services on the form of contract to be used.
- 12.1.2. Advice from the Finance team must be obtained where the contract involves a finance leasing arrangement.
- 12.1.3. Every contract shall specify the goods, materials or services to be supplied and the work to be executed; the price to be paid together with a statement as to the amount of any discount(s) or other deduction(s); the period(s) within which the contract is to be performed and such other conditions and terms as may be agreed between the parties and are required by law.
- 12.1.4. Consideration must be given as to whether or not a performance bond, parent company guarantee, or other form of security acceptable to the S151 officer and Legal Services, is required from the supplier.

### 12.2 Required Terms

- 12.2.1 **Boilerplate Clauses** - The Council is required to include statutory terms which include non-exhaustively: Anti Bribery; Anti-Money Laundering; Freedom of Information; Data Protection; Safeguarding of Vulnerable Adults and Children; Transparency; Prevention of Terrorism; Audit; Anti-Discrimination Equality and Diversity; Payment of Subcontractors;

Termination and Exit of Above Threshold Contracts; Compliance with Anti-Slavery and Human Trafficking laws; Force Majeure; Health and Safety.

If Officers consider one of the above clauses is more appropriate to their contract, they must notify Legal Services when asking them to consider the contract terms. For example, where personal data is being controlled or processed by a third party on the Council's behalf, an additional data sharing agreement may be required.

**12.2.2 Liquidated Damages** - Officers must consider the effect on the Council of any delay in performance of the contract, and whether that delay is likely to cause the Council financial loss which requires protection. If so, the Officer must estimate the reasonable and genuine loss that the Council is likely to suffer as a result of the delay and that would fairly compensate the Council, usually at a daily or weekly rate for that loss.

**12.2.3 Standards** - Where an appropriate British Standard or code of practice (or other applicable standard) applies to the procurement, the relevant Officers are required to the relevant standard is included in the contract or specification.

### **12.3 Execution of Contracts**

**12.3.1.** Where any contract is required as a result of any legal procedure or legal proceedings on behalf of the Council, it will be signed by the Monitoring Officer or another person authorised by them, unless any enactment otherwise authorises.

**12.3.2.** Contracts with a value of less than £5,000 (inclusive of VAT) can be signed by the relevant Assistant Director. Contracts of £5,000 (inclusive of VAT) to £100,000 are to be executed in Legal Services, unless Legal Services approves otherwise.

**12.3.3.** Any contract for an amount of or greater than £100,000 (inclusive of VAT) is to be to be executed as a deed using the common seal of the Council, signed by an authorised signatory and witnessed as formality requires.

### **12.4 Electronic Signatures & Seals**

**12.4.1.** For all contracts below £5,000 (inclusive of VAT), the Council may execute the contract via a method of e-signature which has been pre-approved by Legal Services. Any contract with a value between £5000 and £100,000 (inclusive of VAT) must be authorised, signed and completed by Legal Services.

**12.4.2.** For contracts that require a seal, the Monitoring Officer may adopt such means of sealing as from time to time they consider appropriate. This may include allowing electronic sealing in accordance with section 7A(1) of the Electronic Communications Act 2000 (or other subsequent legislation).

Affixing of an electronic seal approved in this way shall be of the same legal effect as affixing the common seal of the Council. Any additional formality relating to the witnessing of such contracts are complied with.

### **13. ENGAGEMENT OF CONSULTANTS**

- 13.1 The financial limits in these Contract Rules apply to the engagement of consultants and the appointment must be based on approved evaluation. If a consultant is to provide services over the lifetime of a project then the whole lifetime cost should be taken into account when procuring the consultant.
- 13.2 External legal consultants must be appointed through Legal Services in accordance with the Council's Constitution.
- 13.3 Prior to the engagement of the consultant the Officer must:
- a) Prepare a business case in advance of the appointment which as a minimum, should detail the reason for seeking external expertise, for example, lack of internal capacity or capability due to the specialist nature of services;
  - b) This business case should be approved by either the Director or the Head of Service or their delegated nominee;
  - c) Financial checks of lead consultants' financial stability and professional indemnity insurance should be made (which should also include any sub-consultants);
  - d) Insurance expiry date should be monitored by project managers except in those cases where the insurance Section is directly responsible for such insurance. Ongoing checks of valid insurance renewals should be undertaken during the lifetime of contracts;
  - e) Where the consultant is an individual, check with Payroll and Procurement to find out if the consultant is acting in the capacity of an employee and therefore subject to IR35 (tax and national insurance payments at source)
- 13.4 The terms of engagement of a consultant (not being an Officer of the Council) shall be set down in a form approved by Legal Service.
- 13.5 Previous employees should not be engaged as consultants until a period of at least 6 months has elapsed since they ended their employment with the Council.

### **14. CONTRACT PERFORMANCE MONITORING**

- 14.1 The relevant Officer should ensure that the contractor's performance is monitored against the contractually agreed terms, by an appropriate Officer responsible for contract management in their department. The extent of the monitoring should be proportionate to the nature, duration and associated cost of the contract.

- 14.2 Assistant Directors and managers are required to ensure Officers carry out proper contract management and that any issues in contract performance are brought to their attention. PCG may also require an updating report on contract performance.
- 14.3 Contract managers are to periodically revise how delivery and processes under ongoing contracts might be improved and to ensure that those improvements are implemented by the supplier and monitored by the contract manager.
- 14.4 Where further goods, works, or services will be required at the end of an existing contract term, contract managers must consult with the Procurement and Contracts Service prior to the expiration of the existing contract in sufficient time to plan the re-procurement to avoid disruption to Council services.

## **15. CONTRACT COMMENCEMENT**

As a general rule, the Project Officer shall not authorise performance of any Contract, nor raise any Purchase Order in connection with it, unless and until all of the documents comprising the Contract have been executed by all of the parties to it, unless the Purchase Order itself comprises the Contract

However, where there are exceptional circumstances requiring a successful tenderer to commence performance of a Contract prior to its execution as a matter of urgency (to avoid delay and increased costs on the Contract), the relevant Officer must satisfy the Monitoring Officer and the Section 151 Officer before authorising such commencement that:

- a. the supplier has confirmed in writing its unequivocal commitment to:
  - o perform the Contract in accordance with the established terms, and
  - o execute the document comprising those terms when it is available and to indemnify the Council against any breach of such undertakings;
- b. any performance bond or parent company guarantee required under the terms of the Contract has been received from the supplier's surety or parent company or the surety or parent company has written to the Project Officer confirming the relevant organisation's agreement to be bound by the terms of such performance bond or parent company guarantee from the date of such communication;
- c. a certificate of insurance has been received from the supplier's insurers to confirm all requisite insurance cover is in place; and
- d. the Section 151 Officer has undertaken appropriate financial checks on the supplier to establish its financial capability to undertake the Contract.

## **16. RECORD RETENTION**

All Contracts executed under seal (including the winning Tender and any

documentation supplementary thereto) shall be held by the Assistant Director Law and Governance for safe keeping and copy to be kept by relevant Assistant Director.

All other procurement documentation, including all expressions of interest, selection questionnaires, ITTs, unsuccessful Tenders, Quotations, clarification responses, internal deliberations and recorded decisions shall be kept safe and secure by the relevant Assistant Director for a period of at least 3 years from the date of Contract award whereupon such documents shall be destroyed.

Contracts executed under hand shall be held by the relevant Assistant Director and Procurement and Contracts Service for a period of 6 years from the date it is signed.

## 17. PROCEDURE FOR THE DISPOSAL OF COUNCIL ASSETS

Where the estimated value of an asset is £50,000 or more, or where the Executive so determines, disposal of that asset shall, unless a valuer with relevant qualifications has certified that an alternative method of disposal would better achieve the Council's aims and objectives, be conducted in one of the following ways using approved agents if appropriate:-

- Sale by Tender
  - Ad-hoc Tenders - At least 14 days' notice to be given in such local newspapers circulating in the Council's area and/or in such national journals as the relevant Assistant Director considers desirable stating the nature of the asset and inviting tenders for its purchase and stating the last date when tenders will be accepted; or
  - Approved List - Public notice to be given in respect of a particular transaction in the same manner as that described in *Ad-hoc Tenders* above inviting applications from interested persons to be placed on a list to be approved by the Executive from which prospective purchasers shall be selected and invited to submit tenders.

- Sale at a Named Figure

An assessment of the value of the asset shall be made by a valuer with relevant qualifications. The relevant Assistant Director shall issue particulars of the asset and the price to all enquiring persons. Details of the asset shall be publicly advertised on at least one occasion and, in the case of land or property, a sign board erected upon the site.

- Invited Offers

The asset shall be advertised in accordance with the rules for Sale by Tender but no figure shall be placed in the particulars and interested parties shall be asked to make offers for consideration by the Council. In order to give guidance to prospective purchasers a minimum figure may be quoted where appropriate.

- Sale by Public Auction

Properly qualified and experienced auctioneers shall be commissioned to act on behalf of the Council in offering for sale by auction assets in the Council's ownership.

## **COMPLIANCE**

### **18. STANDARDS OF CONDUCT AND OBSERVANCE OF RULES**

All employees involved in the award or the potential award of any Contract or the disposal or potential disposal of any asset shall:

- act with integrity and honesty; and
- exercise all fairness and impartiality; and
- comply with the Rules; and
- respect the Officer's Code of Conduct; and
- observe any policy adopted by the Council on measures to combat bribery and corruption

and shall report instances of suspected fraud and other irregular activity connected with such award or disposal under any whistleblowing policy adopted by the Council.

**ANY MANIFEST OR MATERIAL DEPARTURE FROM THESE RULES OR THE OFFICER'S CODE OF CONDUCT OR ADOPTED ANTI-BRIBERY POLICY IS A DISCIPLINARY OFFENCE.**

## PROCUREMENT & CONTRACTS GROUP TERMS OF REFERENCE

### 1. INTRODUCTION

#### 1.1 PCG means the Procurement & Contracts Group comprising of:

- Section 151 Officer or nominee
- Monitoring Officer or nominee
- Procurement & Contracts Manager
- Representative from each of the Directorates (where their procurement is under consideration).

For non-operational matters

- The portfolio holder responsible for Procurement and/or Governance; and
- Such other Council Members may be invited on a case by case basis or their nominees

#### 1.2 The PCG shall meet as required or where urgent transact its business electronically.

### 2. TERMS OF REFERENCE OF THE PCG

#### 2.1 approve the contract strategy report, extension, exception and award reports of all Contracts above £200,000 (inclusive of VAT):

- Perform a strategic and overview role in relation to the Council's procurement and contract management.
- Provide a forum for Officers to discuss policy development, seek strategic advice and raise questions, issues and problems with procurement and contract management.
- Define and spread best-practice as it relates to contracting and Contract management and monitoring.
- Provide advice to Officers as appropriate on contracting issues.

### 3. PROCEDURES FOR THE PCG

#### 3.1 The PCG shall both be chaired by the Monitoring Officer or their nominee.

#### 3.2 The Procurement and Contract Manager shall convene all meetings of the PCG, and at least two working days before such meeting shall send to every member an agenda and copies of all reports.

#### 3.3 Members of the PCG, or their nominees, shall attend any meeting of them when requested to do so.

#### 3.4 Action shall be made by the Procurement and Contract Manager of the proceedings of the PCG.

#### 3.5 Additional procedures and related arrangements may be issued in Guidance from time to time by the Monitoring Officer.