

# ROCHFORD DISTRICT COUNCIL



## CONSTITUTION

# CONSTITUTION OF THE COUNCIL

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# **PART 1**

## **SUMMARY AND EXPLANATION**



## **1. Summary and Explanation**

- 1.1 The Local Government Act 2000 requires the Council to prepare, keep up-to-date and publicise a document known as the Constitution. The Constitution sets out how the Council operates, how decisions are made and the procedures followed to ensure that these are efficient, transparent and accountable to local people. Some processes within the Constitution are required by the law, while others are a matter for the Council to choose.
- 1.2 The Constitution is divided into 15 articles that set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols at the end of the document.

## **2. What's in the Constitution?**

- 2.1 Article 1 of the Constitution commits the Council to provide clear leadership, involve residents and take decisions and deliver services efficiently and effectively to the community. Articles 2 – 15 explain the rights of residents and how the key parts of the Council operate. These are:-

- Members of the Council (Article 2)
- Residents and the Council (Article 3)
- The Full Council (Article 4)
- Chairing the Council (Article 5)
- Regulatory and Other Committees (Article 6)
- Joint Arrangements (Article 7)
- Officers (Article 8)
- Decision Making (Article 9)
- Finance, Contracts and Legal Matters (Article 10)
- Review and Revision of the Constitution (Article 11)
- Suspension, Interpretation and Publication of the Constitution (Article 12)

## **3. How the Council Operates**

- 3.1 The Council is composed of 39 Councillors, with one-third elected three years in four. 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. On acceptance of elected office, Councillors have to agree to follow a code of conduct to ensure high standards in the way they undertake their duties.

#### **4. Decision Making**

- 4.1 All Councillors meet together as the Council. Meetings of the Council are open to the public, except where exempt information is being considered. Here Councillors decide the Council's overall policies and set the budget each year. The Council decides on all major policies affecting the District and the services the Council provides. It also appoints the Leader and Deputy Leader of the Council, sets up Committees and appoints Councillors to sit on those Committees.
- 4.2 The Council appoints a number of Committees which make recommendations and decisions relating to the specific functions which fall within their remit. The Committees must act within the overall budget and policy framework agreed by the Council.
- 4.3 Meetings of the Council's Committees are open to the public except where personal or confidential matters are being discussed.

#### **5. The Council's Staff**

- 5.1 The Council has people working for it (called 'officers') to give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A Member-Officer Protocol has been adopted to help Members and Officers to work effectively together and to create a clear separation of roles and responsibilities.

#### **6. Residents' Rights**

- 6.1 Residents have a number of rights in their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others depend on the Council's own processes.
- 6.2 Where members of the public use specific Council services they may have additional contractual rights. These are not covered in this Constitution.
- 6.3 Residents have the right to:-
- Vote at local elections if they are registered;
  - Contact their local Councillor about any matters of concern to them;
  - Obtain a copy of the Constitution;
  - Attend meetings of the Council and its Committees, except where, for example, personal or confidential matters are being discussed;
  - Petition to request a referendum on a Mayoral form of Executive;
  - Submit and receive responses to questions on notice at Council and Committee meetings;
  - See Council Committee reports and background papers, and any record of decisions made by the Council and Committees;
  - Complain to the Council when dissatisfied with a service provided or action taken by the Council or on its behalf by a contractor;

- Complain to the Ombudsman if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's own complaints process;
- Complain to the Council's Monitoring Officer if they have evidence which they think shows that a Councillor has not followed the Council's Code of Conduct; and
- Inspect the Council's accounts and make their views known to the external auditor.



## **PART 2**

# **ARTICLES OF THE CONSTITUTION**



# Article 1 – The Constitution

## 1.01 Powers of the Council

The Council will exercise all its powers and duties in accordance with the law and this Constitution.

## 1.02 The Constitution

This Constitution, and all its appendices, is the Constitution of the Rochford District Council.

## 1.03 Purpose of the Constitution

The purpose of the Constitution is to:-

1. enable the Council to provide clear leadership to the community in partnership with residents, businesses and other organisations;
2. support the active involvement of residents in the process of local authority decision making;
3. assist Councillors represent their constituents more effectively;
4. enable decisions to be taken efficiently, effectively and transparently;
5. create a powerful and effective means of holding decision-makers to public account;
6. ensure that no-one will review or scrutinise a decision in which they were directly involved;
7. ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
8. provide a means of improving the delivery of services to the community.

## 1.04 Interpretation and Review of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above.

The Council may call upon the Monitoring Officer to provide an interpretation of any aspect of the Constitution from time to time.

The Procedural Rules provide mechanisms for interpreting and operating the Constitution. The Chairman of any particular meeting will have the final decision on the correct application of the procedure rules to said meeting, having taken into account the advice of the Monitoring Officer.

The Council will monitor and evaluate the operation of the Constitution as set out in Article 11.

## Article 2 – Members of the Council

### 2.01 **Composition and Eligibility**

- (a) **Composition.** The Council will comprise 39 Members, otherwise called Councillors. One or more Councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Boundary Commission for England and approved by the Secretary of State.
- (b) **Eligibility.** Only registered voters of the District or those living or working there will be eligible to hold the office of Councillor.

### 2.02 **Election and Terms of Councillors**

**Election and Terms.** The regular election of at least one third of Councillors will generally be held on the first Thursday in May each year (for three out of four years, with the County Council elections being held on the fourth year). The terms of office of Councillors, subject to them making a declaration of office, will start on the fourth day after their election and will finish on the fourth day after the date of the regular election four years later.

### 2.03 **Roles and Functions of All Councillors**

- (a) **Key Roles.** All Councillors will:-
  - (i) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
  - (ii) contribute to the good governance of the area and actively encourage community participation and residents' involvement in decision-making;
  - (iii) effectively represent the interests of their ward and of individual constituents;
  - (iv) respond to constituents' enquiries and representations, fairly and impartially;
  - (v) participate in the governance and management of the Council; and
  - (vi) maintain the highest standards of conduct and ethics.
- (b) **Rights and Duties**
  - (i) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
  - (ii) Councillors will not make public information that is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or officer entitled to know it.
  - (iii) For these purposes, "confidential" and "exempt" information are defined in the Access to Information Rules in Part 4 of this Constitution.

#### 2.04 **Conduct**

Councillors will at all times observe the Members' Code of Conduct and have proper regard for the Code of Conduct on Planning Matters and the Protocol on Member/Officer Relations set out in Part 5 of this Constitution.

#### 2.05 **Allowances**

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 6 of this Constitution.

#### 2.06 **Training**

The Council will ensure that Councillors have the opportunity for adequate training for their roles and duties.

## Article 3 – Residents and The Council

### 3.01 Residents' Rights

Residents have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:-

- (a) **Voting and Petitions.** Residents on the electoral roll for the area have the right to vote and sign a petition to request a referendum for an elected Mayor form of governance. The Council's petitions scheme (Part 5, page 5.31) enables residents' in the District to submit a petition on an issue of concern.
- (b) **Information.** Residents have the right to:-
  - (i) attend meetings of the Council and its Committees, except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
  - (ii) see reports and background papers and any records of decisions made by the Council; and
  - (iii) inspect the Council's accounts and make their views known to the external auditor.
- (c) **Participation.** Residents have the right to participate in the Council's question time and to contribute to investigations by the Scrutiny and Performance Committee.
- (d) **Complaints.** Residents have the right to complain to:-
  - (i) the Council itself under its complaints scheme;
  - (ii) the Ombudsman after using the Council's own complaints scheme;
  - (iii) the Council's Monitoring Officer about a breach of the Councillors' Code of Conduct.

### 3.02 Residents' Responsibilities

Residents must not be violent, abusive or threatening to Councillors or officers and must not wilfully harm things owned by the Council, Councillors or officers.

## Article 4 – The Full Council

### 4.01 Meanings

- (a) **Policy Framework.** The policy framework means the following plans and strategies:-
- (i) those required by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) to be adopted by the Council:-
- Community Safety Partnership Action Plan
  - Development Plan documents
  - Licensing Authority Policy Statement
  - Plans and alterations which together comprise the Development Plan
  - Plans or strategies for the control of the Council's borrowing or capital expenditure
  - Plans or strategies or draft plans or strategies of any of the above descriptions which have to be submitted to the Secretary of State or a Minister for approval.
- (ii) other plans and strategies of a kind recommended by guidance to be adopted by the Council as part of the Policy Framework:-
- Council's Business Plan
  - Local Code of Corporate Governance
  - Corporate Equality Policy
- (b) **Budget.** The budget includes 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, but does not include the approval of supplementary estimates, the setting of fees and charges and other minor variations to budget or capital programme, so far as these are delegated to an officer or a Committee.

### 4.02 Functions of the Full Council

Only the Council will exercise the following functions:-

- (a) adopting and changing the Constitution other than set out in Article 11;
- (b) approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any Housing Land Transfer;



- (c) appointing the Leader and Deputy Leader of the Council;
- (d) removal of the Leader and Deputy Leader of the Council;
- (e) receiving any resignation of the Leader or Deputy Leader of the Council;
- (f) appointing the Chairman of the Council;
- (g) receiving any resignation of the Chairman of the Council;
- (h) agreeing and/or amending the terms of reference for Committees, deciding on their composition and making appointments to them (except for authorised substitutions to Committees under Rule 2 of the Committee and Sub-Committee Procedure Rules in Part 4 of this Constitution);
- (i) appointing representatives to outside bodies unless the appointment has been delegated by the Council;
- (j) adopting an allowances scheme under Article 2.05 (details of which can be found under Part 6 of this Constitution);
- (k) adopting a Members' Code of Conduct;
- (l) changing the name of the district;
- (m) conferring the title of Honorary Alderman;
- (n) approving the appointment or dismissal of Statutory Officers;
- (o) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills; and
- (p) all other matters which by law must be reserved to Council.

#### 4.03 **The Full Council is not required to approve:-**

- (i) amendments or revocations of any plan or strategy necessary to give effect to the requirements of the Secretary of State or Minister made when he was asked to approve it;
- (ii) amendments or revocations to any plan or strategy if the Council has delegated the power to amend or revoke it to a Committee or Sub-Committee or officer, either in this Constitution or at the time it approved the plan or strategy.

#### 4.04 **Council Meetings**

There are three types of Council meeting:-

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings

and they will be conducted in accordance with the Council Procedure Rules in Part 4 of this Constitution.

#### 4.05 **Responsibility for Functions**

The Council will maintain the provisions in Part 3 of this Constitution setting out the responsibilities for the Council's functions including those responsibilities which have been delegated to committees or officers

## Article 5 – Chairing The Council

Whilst this constitution refers to the person Chairing the Council as ‘The Chairman’ the person elected to that post may use such other title as fits their personal preference, provided that said title does not misrepresent the role and responsibilities. Examples of suitable alternatives include ‘Chair’, ‘Chairwoman’ or ‘Chairperson’.

### 5.01 Role and Function of the Chairman

The Chairman of the Council and, in their absence, the Vice-Chairman, will have the following roles and functions:-

#### **CEREMONIAL ROLE**

The Chairman acts in a non-political capacity as a symbol of the Authority. On civic and ceremonial occasions the Chairman represents the District and its inhabitants and fulfils the role of ambassador for the Council in its relationship with society at large.

#### **CHAIRING THE COUNCIL MEETING**

The Chairman will be elected by the Council annually. The Chairman will have the following responsibilities:-

1. to uphold and promote the purposes of the Constitution and to interpret the Constitution when necessary;
2. to preside over meetings of the Council in an impartial fashion so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
3. to ensure that the Council meeting is a forum for the debate of matters of concern to the local community;
4. to promote public involvement in the Council’s activities;
5. to be the conscience of the Council; and
6. to attend such civic and ceremonial functions of the Council as they determine appropriate.

## Article 6 – Regulatory and Other Committees

### 6.01 **Appointment of Committees**

The Council will appoint the Committees set out in Part 3 of this Constitution to discharge the functions as detailed in each Committee's terms of reference. All committees of the Council will be subject to the political balance rules as set out in s.15 of the Local Government and Housing Act 1989.

### 6.02 **Sub-Committees**

A Committee may appoint a Sub-Committee of its members for a specific function within that Committee's terms of reference. A Sub-Committee will be subject to the political balance rules and all usual rules of procedure applicable to an ordinary Committee.

### 6.03 **Working Groups**

A Committee can form a working group to consider a topic informally and at pace. The membership of the working group will be decided by the Committee, which may include non-committee members and people from outside the Council. Working groups will not be subject to the political balance rules nor will substitutions be allowed as continuity of membership is important. Meetings of the working group will not be held in public and all agendas and minutes will not be publicly available. The working group will report back to the parent Committee with its findings.

## Article 7 – Joint Arrangements

### 7.01 Arrangements to Promote Well-Being

The Council, in order to promote the economic, social or environmental well-being of its area, may:-

- (a) enter into arrangements or agreements with any person or body;
- (b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- (c) exercise on behalf of that person or body any functions of that person or body.

Subject in all cases to compliance with any relevant statutory provisions.

### 7.02 Joint Arrangements

- (a) The Council may establish joint arrangements with one or more Local Authorities to exercise functions in any of the participating Authorities, or advise the Council. Such arrangements may involve the appointment of a joint Committee with these other Local Authorities.
- (b) A joint committee is a committee set up with one or more local authorities, or with a combination of one or more local authorities and another body or bodies for purposes in respect of which they are jointly interested.
- (c) The political balance requirements do not apply to such appointments.
- (d) Details of any joint arrangements including any delegations to Joint Committees will be found in the Council's scheme of delegations in Part 3 of this Constitution.

### 7.03 Access to information

- (a) The Access to Information Rules in Part 4 of this Constitution apply.

### 7.04 Delegation to and from Other Local Authorities

- (a) The Council may delegate functions to another Local Authority or, in certain circumstances, the Executive of another Local Authority.
- (b) The decision whether or not to accept such a delegation from another Local Authority shall be reserved to the Council meeting.

## 7.05 **Contracting Out**

The Council may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

# Article 8 – Officers

## TERMINOLOGY

### 8.01 Management Structure

- (a) **General.** The Full Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.
- (b) **Chief Officers.** The Full Council will engage persons for the following posts, who will be designated Chief Officers:-

Post	Functions and Areas of Responsibility
Chief Executive (and Head of Paid Service)	<p>Overall corporate management and operational responsibility (including overall management responsibility for all officers) as set out in the management structure contained in Part 7 of the Constitution.</p> <p>Ensuring appropriate professional advice to all parties in the decision-making process.</p> <p>Together with the Monitoring Officer, responsibility for a system of record keeping for all the Council's decisions.</p> <p>Representing the Council on partnership and external bodies (as required by statute or the Council).</p>

- (c) **Head of Paid Service, Monitoring Officer and Chief Finance (S.151) Officer.**

The Council will designate the following posts as shown:-

Post	Designation
Chief Executive	Head of Paid Service
Director of People & Governance*	Monitoring Officer
Director of Resources*	Chief Finance (S.151) Officer

\*or successor in title

Such posts will have the functions described in Article 8.02 – 8.04 below.

- (d) **Structure.** The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers.

## 8.02 Functions of the Head of Paid Service

- (a) **Discharge of functions by the Council.** The Head of Paid Service will report to Full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- (b) **Restrictions on Functions.** The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if they are a qualified accountant.

## 8.03 Functions of the Monitoring Officer

- (a) **Maintaining the Constitution.** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Members, staff and the public.
- (b) **Ensuring lawfulness and fairness of decision-making.** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Full Council in relation to executive functions if they consider that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) **Supporting the Standards Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- (d) **Conducting investigations.** The Monitoring Officer will conduct investigations into matters of conduct and make reports and recommendations the Standards Committee.
- (e) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors.
- (f) **Restrictions on posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.
- (g) **Designation of Deputy.** An officer will be designated by the Monitoring Officer to deputise for them during any absence.

## 8.04 Functions of the Chief Finance Officer

- (a) **Ensuring lawfulness and financial prudence of decision-making.** After consulting with the Head of Paid Service and the Monitoring Officer, the



Chief Finance Officer will report to the Full Council and the Council's external auditor if they consider that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.

- (b) **Administration of financial affairs.** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management.** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice.** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors and will support and advise Councillors and officers in their respective roles.
- (e) **Give financial information.** The Chief Finance Officer will provide financial information to the media, members of the public and the community.

#### 8.05 **Duty to Provide Sufficient Resources to the Monitoring Officer and Chief Finance Officer**

The Council will provide the Monitoring Officer and Chief Finance Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

#### 8.06 **Conduct**

Officers will comply with the Officers' Code of Conduct and the Member and Officer Protocol set out in Part 5 of this Constitution.

#### 8.07 **Employment**

The recruitment, selection and dismissal of officers will comply with the Officer Employment Procedure Rules set out in Part 4 of this Constitution.

#### 8.08 **Pay Policy Statement**

The Council is required by the Localism Act 2011 to annually approve and publish a pay policy statement that sets out:

- (a) the remuneration of its chief officers
- (b) the remuneration of its lowest paid employees, and
- (c) the relationship between –
  - (i) the remuneration of its chief officers and
  - (ii) the remuneration of its employers who are not chief officers.

## Article 9 – Decision Making

### 9.01 Responsibility for Decision-Making

The Council will issue and keep up to date a record of what part of the Council or which individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

### 9.02 Principles of Decision-Making

All decisions of the Council will be made in accordance with the following principles:-

- (a) proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) due consultation and the taking of professional advice from officers;
- (c) respect for human rights;
- (d) a presumption in favour of openness;
- (e) clarity of aims and desired outcomes;
- (f) consideration of all options available;
- (g) only relevant matters to be taken into account;
- (h) due weight to be given to all material considerations and
- (i) proper procedures shall be followed.

### 9.04 Decision-Making by the Full Council

The Council meeting will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

### 9.07 Decision Making by Committees and Sub-Committees Established by this Council

Council Committees and Sub-Committees will follow those parts of the Committee and Sub-Committee Procedure Rules set out in Part 4 of this Constitution as apply to them.

### 9.08 Decision Making by Council Bodies Acting as Tribunals

The Council, a Councillor or an officer acting as a tribunal or in a quasi judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice

and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

# Article 10 – Finance, Contracts and Legal Matters

## 10.01 Financial Management

The management of the Council's financial affairs will be conducted in accordance with the Financial Regulations set out in Part 4 of this Constitution.

## 10.02 Contracts

Every contract made by the Council will comply with the Contract Procedure Rules set out in Part 4 of this Constitution.

## 10.03 Legal Proceedings

The Monitoring Officer is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Monitoring Officer considers such action is necessary to protect the Council's interests.

## 10.04 Authentication of Documents

Where any document is necessary for any legal procedure or proceedings on behalf of the Council, it will be signed by the Monitoring Officer or other person authorised by them, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

## 10.05 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Monitoring Officer. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Monitoring Officer should be sealed. The affixing of the Common Seal will be attested by the Monitoring Officer or some other person authorised by them.

# Article 11 – Review and Revision of the Constitution

## 11.01 Duty to Monitor and Review the Constitution

The Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect and to bring forward any recommendations that are necessary.

The Chief Finance Officer shall be responsible for keeping under review the Financial Regulations and Contract Procedure Rules set out in the Constitution and shall make any necessary amendments and revisions as are required from time to time. If revisions are made they should be reported to Council for approval.

## 11.02 Changes to the Constitution

Changes to the Constitution shall only be approved at a meeting of the Council after consideration of the proposal by the Audit & Governance Committee unless in the reasonable opinion of the Monitoring Officer a change is:

- (a) a legislative requirement;
- (b) a minor variation which is of a non-substantive nature;
- (c) required to be made to remove any inconsistency or ambiguity; or
- (d) required to be made so as to put into effect any decision of the Council or its Committees, in which case the Monitoring Officer may make such a change and publicise such changes on the council's website.

Any such change made by the Monitoring Officer shall come into force with immediate effect but shall be referred to Full Council as soon as is reasonably possible and shall continue to have effect only if Full Council agrees.

Other changes to the Constitution shall come into effect at such a date as the Council may stipulate.

The Council should review the Constitution at least annually.



# Article 12 – Interpretation and Publication of the Constitution

## 12.01 Suspension of the Constitution

- (a) **Limit to suspension.** The Articles in Part 2 of this Constitution may not be suspended. The Rules in Part 4, except for rules 17.5, 18.2 and 23.1 of the Council Procedure Rules and of the Committee and Sub-Committee Procedure Rules may be suspended to the extent permitted within those Rules and the law. Other parts of the Constitution may be suspended in any lawful manner from time to time.
- (b) **Procedure to suspend.** A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of Councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.

## 12.02 Interpretation

The ruling of the Chairman of the Council as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

## 12.03 Publication

- (a) The Monitoring Officer will give details of the website address for this Constitution to each member of the authority upon delivery to them of that individual's declaration of acceptance of office on the member first being elected to the Council and will provide a hard copy if so requested by the elected member.
- (b) The Monitoring Officer will ensure that copies are available for inspection at council offices, libraries and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.
- (c) The Monitoring Officer will ensure that the Constitution is published on the Council's website.
- (d) The Monitoring Officer will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary.

# **RESPONSIBILITY FOR FUNCTIONS**

## **PART A**

### **ALLOCATION OF RESPONSIBILITY FOR FUNCTIONS**

#### **1. INTRODUCTION**

- 1.1 The Full Council is the ultimate decision making body of Rochford District Council and the principal forum for major political debate. All 39 Councillors who have been elected to represent the district attend the Council meetings. The Full Council will meet at least 6 times per municipal year in addition to the Annual Council Meeting.
- 1.2 The Council decides the overall objectives, major policies and financial strategies of the Council. It also considers recommendations from the Policy, Scrutiny and Regulatory Committees on issues of significance.
- 1.3 In order to operate effectively, the Council delegates powers through the Constitution to Committees and Officers. Part 3 of the constitution sets out the way these functions and powers have been distributed in order that there is clarity as to who may exercise powers or make decisions in the name of the Council.
- 1.4 This Part is divided into three sections dealing with the distribution of functions and exercise of powers by the Full Council (Part A), Committees (Part B) and Officers (Part C).
- 1.5 This Part of this Constitution should be read in conjunction with Articles 4 (The Full Council), 8 (Officers) and 9 (Decision Making).
- 1.6 Part 3 of this Constitution shall be interpreted in accordance with the relevant provisions of the Local Government Act 2000 and The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (as amended). In the event of any conflict between this Part and a provision in any piece of legislation, the latter shall prevail.

#### **2. SOLE RESPONSIBILITY OF FULL COUNCIL**

- 2.1 Decisions about the Council's policy framework and budget, and other constitutional matters may only be taken by Full Council. A full list of these matters is contained in Article 4 to this Constitution ('The Full Council'). The exercise of these functions may not be delegated to a committee or officer.
- 2.2 Full Council is also responsible for most regulatory functions and has established regulatory committees (the Development Committee and the Licensing & Regulatory Committee) to discharge these functions.



### **3. POLICY COMMITTEES**

- 3.1 The Council will appoint a number of policy committees whose function is to take decisions in respect of the key priority areas of the Council, wherever those decisions are not reserved to the Full Council.

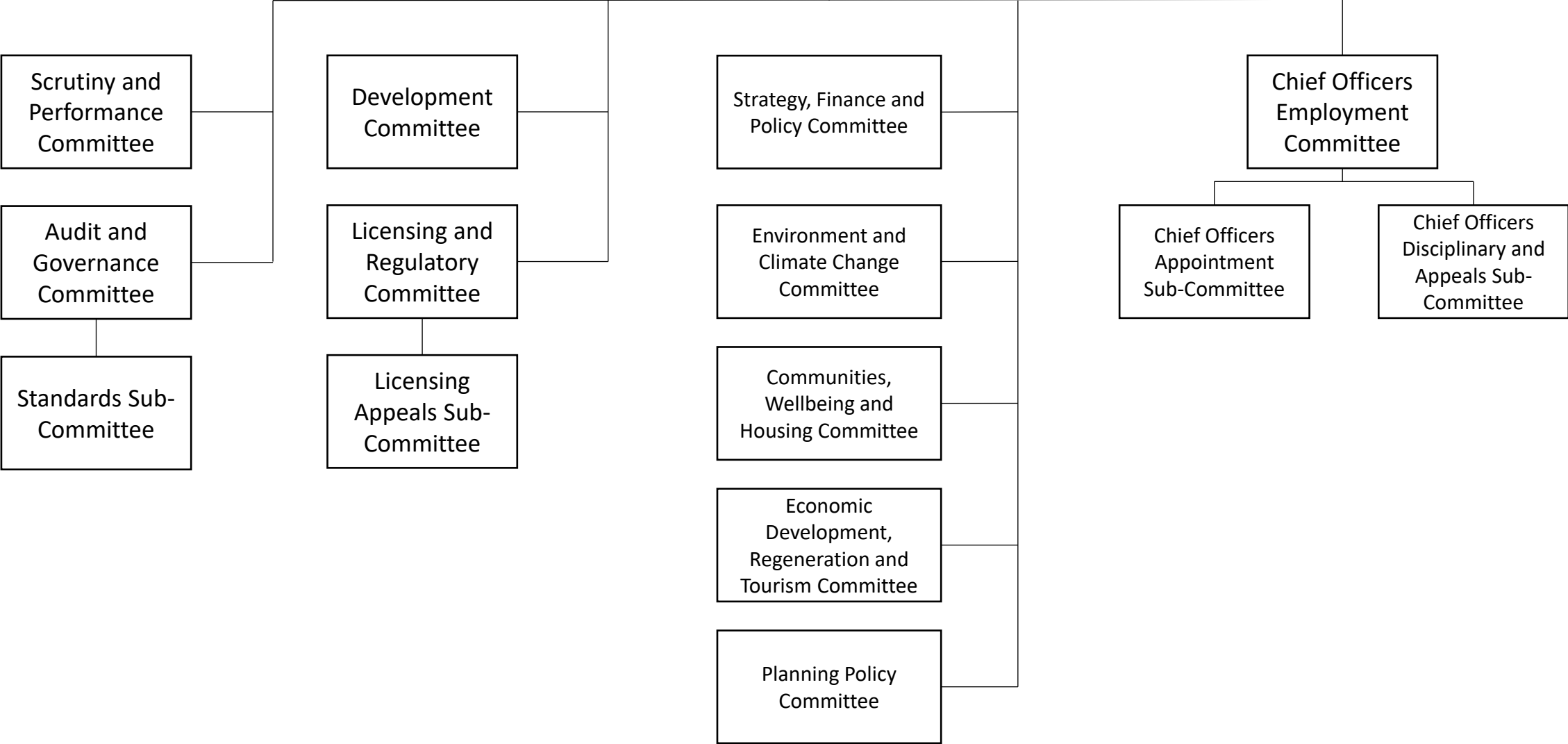
### **4. REGULATORY COMMITTEES**

- 4.1 The Council will appoint regulatory committees to discharge its statutory functions in respect of planning and licensing and gambling regulations.

### **5. SCRUTINY COMMITTEES**

- 5.1 The Council will appoint at least one committee to provide a scrutiny function in addition to the Audit Committee.

Council



## **Terms of Reference**

### **AUDIT AND GOVERNANCE COMMITTEE**

**Number of Members:** 9

**Quorum:** 3

**Substitutes:** Any Member from the same political group

**Frequency of Meetings:** 4 meetings per municipal year

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#### **Main Purpose**

To provide independent assurance of the adequacy of the risk management framework and the associated control environment.

To assess the Authority's financial and non-financial performance to the extent that it affects the Authority's exposure to risk and weakens the control environment.

To oversee the financial reporting process including scrutiny of the treasury management strategy and policies.

To ensure that Members maintain high standards of probity in their public life by forming a sub-committee to consider standards complaints referred by the Monitoring Officer.

To appoint representatives to any outside bodies which fall within the remit of this committee.

#### **Responsibility for Functions**

1. Advise on the adequacy and effectiveness of the Council's corporate governance arrangements and internal control environment.
2. Consider the method of appointment of the Council's External Auditor and make recommendations to Council.
3. Monitor the adequacy and effectiveness of the Council's External Audit service and respond to its findings. Specifically:
  - a. Consider the nature and scope of the External Audit of the Council's services and functions;
  - b. Receive and consider External Audit Reports including the Annual Audit Letter and Governance Report;
  - c. Monitor management's response to the External Auditor's findings and the implementation of External Audit recommendations.

4. Monitor the adequacy and effectiveness of the Internal Audit service.  
Specifically:
  - a. Approve the terms of reference for Internal Audit;
  - b. To approve the annual Internal Audit Plan and monitor progress against the Plan through receipt of periodic progress reports;
  - c. Receive and consider major Internal Audit findings and recommendations;
  - d. Monitor management's response to Internal Audit findings and the implementation of its recommendations;
  - e. Evaluate the extent to which Internal Audit complies with best practice, is sufficiently resourced and meets agreed performance targets.
5. Monitor the arrangements for the identification, monitoring and control of strategic and operational risk within the Council including approval of the Council's Risk Management Strategy and Risk Appetite Statement.
6. Monitor the adequacy and effectiveness of the arrangements in place for combating fraud and corruption, including scrutiny of the Council's Anti-Fraud Policy.
7. To review and approve the annual Statement of Accounts and the Annual Governance Statement.
8. To be responsible for the formation and recommendation of the Treasury Management Strategy to Full Council and to scrutinise the quarterly Treasury Management Reports.
9. To formulate and keep under review the Employee Code of Conduct to promote high ethical standards amongst Officers and to do anything that is calculated to promote and maintain high standards of conduct by Officers.
10. To formulate and keep under review the Council's 'Whistle-blowing' Policy.
11. To consider amendments to the Council's constitution and make such recommendations to amend the constitution to the Full Council as necessary.
12. To develop and agree the annual programme of training and briefings for Members.
13. To promote, maintain and assist the achievement of high standards of conduct by Councillors and co-opted members in accordance with the Council's Code of Conduct for Members. Including:
  - a. To monitor the operation of the Code of Conduct for Members and receive regular standards complaints monitoring reports from the Monitoring Officer;
  - b. To advise the Council on any amendment or revision of the Code;

- c. To secure adequate and appropriate training of Councillors and co-opted Members on the Code of Conduct for Members;
- d. To monitor and review the Member and employee registers of interests and registers of gifts and hospitality.

14. To undertake an annual review of outside bodies to which representatives are appointed and to receive reports on the activity of outside bodies from the appointed Member representatives.

### Standards Sub-Committee

The Standards Sub-Committee will be convened as and when required by the Monitoring Officer to consider standards complaints in line with the Council's Code of Conduct complaints procedure.

The Sub-Committee will comprise of 3 Members of the Audit & Governance Committee and must be cross-party.

The primary functions of the Standards Sub-Committee are:

1. To receive reports referred from the Monitoring Officer following investigations into complaints against District and Parish Councillors.
2. To conduct standards hearings and all other steps associated with that function, including taking into account the advice of the Independent Person.
3. If the panel determines that a breach of the Council's Code of Conduct has occurred, the panel can impose one or more of the following sanctions, if appropriate:
  - a. Public Censure;
  - b. Report to Council;
  - c. Recommend actions to the Leader or Chairman of the Council;
  - d. Recommend actions to Group Leader;
  - e. Recommend removal from Outside Bodies;
  - f. Requesting the Member to undertake actions deemed appropriate e.g. training, issue of an apology.
4. The Sub-Committee will also act as an interview panel for the recruitment of Independent Persons before recommending appointments to the Full Council.

## **Terms of Reference**

### **CHIEF OFFICERS EMPLOYMENT COMMITTEE**

**Number of Members:** 9

**Quorum:** 3

**Substitutes:** No substitutes are permitted for this committee

**Frequency of Meetings:** As required

---

#### **Main Purpose**

To be responsible for employment matters pertaining to the Chief Officers of the Council, as defined by this Constitution.

To establish a Chief Officers Appointment Sub-Committee for the purposes of conducting interviews and making appointments of the Chief Officers of the Council, except for the Statutory Officers, Strategic Directors and the Chief Executive (if not Head of Paid Service) which will be reserved to the Full Council.

To establish a Chief Officers Disciplinary and Appeals Sub-Committee for the purposes of conducting disciplinary hearings for Chief Officers of the Council and agreeing the dismissal of the Chief Officers of the Council, except for the Statutory Officers, Strategic Directors and the Chief Executive (if not Head of Paid Service) which will be reserved to the Full Council

To ensure the effective operation of the Officer Employment Procedure Rules contained in Part 4 of this constitution.

#### **Responsibility for Functions**

##### **Chief Officers Appointment Sub-Committee**

The Sub-Committee will be formed of 3 Members of the Chief Officers Employment Committee on a case by case basis. The Sub-Committee will, in so far as is practicable, reflect the political balance of the Council.

It will be responsible for:

1. Considering applications and conducting interviews for the Chief Officer roles.
2. Making recommendations to the Full Council for the appointment of Statutory Officers and the Strategic Directors.
3. Agreeing the appointment of all other Chief Officers.

Interim appointments of Directors, for 12 months or less are delegated to the Head of Paid Service.

## **Chief Officers Disciplinary and Appeals Sub-Committee**

The Sub-Committee will be formed of 3 Members of the Chief Officers Employment Committee on a case by case basis. The Sub-Committee will, in so far as is practicable, reflect the political balance of the Council.

A Member will be prevented from sitting on the Disciplinary and Appeals Sub-Committee for any particular Officer if that Member was part of the Appointment Sub-Committee for that same Officer.

It will be responsible for:

1. Undertaking disciplinary procedures in relation Chief Officers, including having regard to the recommendations of the Independent Person in relation to disciplinary matters involving the Statutory Officers.
2. Agreeing the dismissal of Chief Officers, other than the Statutory Officers.
3. Reporting the outcome of disciplinary processes and making dismissal recommendations to the Full Council in respect of Statutory Officers.
4. To consider grievances, submitted by Chief Officers, at stage 2 of the Council's grievance policy in circumstances where, in the opinion of the Monitoring Officer, following consultation with the Service Manager – People and OD, it would be prejudicial to the fair consideration of the grievance for it to be considered by a Strategic Director or the Chief Executive.

## **Terms of Reference**

### **COMMUNITIES, WELLBEING AND HOUSING COMMITTEE**

**Number of Members:** 11

**Quorum:** 3

**Substitutes:** Any Member from the same political group

**Frequency of Meetings:** 4 meetings per municipal year

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#### **Main Purpose**

In respect of the areas listed below:

- Oversee the implementation of policies and strategies set by the Full Council.
- Develop, review and recommend policy to the Full Council.
- Formulate the budget for the committee's areas of responsibility for recommendation to the Full Council.
- Monitor the use of financial and other resources in the delivery of services.
- Monitor progress against delivery objectives and key performance indicators.
- Agree consultation responses to matters within the Committee's remit unless reserved to the Full Council.
- To appoint representatives to any outside bodies which fall within the remit of this committee.
- Responsibility for all decision-making in respect of matters within the Committee's remit unless restricted by other provisions contained within this constitution or by statute.

#### **Responsibility for Functions**

- Housing options and homelessness
- Leisure, Sports & Health Improvement
- Community Safety
- Assets of Community Value
- Environmental Health
- Public Health
- Safeguarding
- Community Grants
- Health and Well
- Tenant Engagement
- Disabled Adaptations Grants
- Youth provision



## **Terms of Reference**

### **DEVELOPMENT COMMITTEE**

**Number of Members:** 13

**Quorum:** 4

**Substitutes:** Any Member from the same political group who has undertaken the necessary training.

**Frequency of Meetings:** Monthly

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#### **Main Purpose**

To discharge those functions in relation to town and country planning and development control as specified in this terms of reference and Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended).

To operate within the provisions of the Code of Good Practice for Planning Matters contained within Part 5 of this Constitution.

To appoint representatives to any outside bodies which fall within the remit of this committee.

#### **Responsibility for Functions**

1. To exercise the Council's powers as local planning authority in respect of:
  - a. All aspects of planning and development control referred to Committee for determination which fall outside of the delegated authority to the Chief Planning Officer.
  - b. All aspects of planning and development control where the decision would not be in accordance with the overall policies and procedures approved by the Council.
  
2. For the purpose of the above all aspects of planning and development control including:
  - a. the consideration, modification and amendment of all aspects of planning obligations under Section 106 of the Town & Country Planning Act 1990 (as amended).
  - b. all aspects of planning enforcement including the enforcement of matters under The Planning (Listed Buildings & Conservation Areas) Act 1990 as amended.
  - c. in relation to Planning Policy the consideration of briefs for the development and/or redevelopment of land.

- d. all aspects of the Planning (Hazardous Substances) Act 1990 including enforcement matters.
  - e. all aspects of Tree Preservation control under the Town & Country Planning Act 1990 (as amended).
  - f. all aspects of the control of advertisements under the Town & Country Planning Act 1990 (as amended).
  - g. the revocation or modification of a planning permission, listed building consent or conservation area consent.
3. To consider and determine matters concerning public rights of way.
  4. To consider and make Orders under Section 215 of the Town and Country Planning Act 1990 relating to the proper maintenance of land and resolutions to prosecute for non-compliance with an order.
  5. To organise site visits in accordance with the planning protocol to aid the thorough consideration of a planning application.
  6. To receive notice of the outcome of planning appeals.

## **Terms of Reference**

### **ECONOMIC DEVELOPMENT, REGENERATION AND TOURISM COMMITTEE**

**Number of Members:** 7

**Quorum:** 3

**Substitutes:** Any Member from the same political group

**Frequency of Meetings:** 4 meetings per municipal year

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#### **Main Purpose**

In respect of the areas listed below:

- Oversee the implementation of policies and strategies set by the Full Council.
- Develop, review and recommend policy to the Full Council.
- Formulate the budget for the committee's areas of responsibility for recommendation to the Full Council.
- Monitor the use of financial and other resources in the delivery of services.
- Monitor progress against delivery objectives and key performance indicators.
- Agree consultation responses to matters within the Committee's remit unless reserved to the Full Council.
- To appoint representatives to any outside bodies which fall within the remit of this committee.
- Responsibility for all decision-making in respect of matters within the Committee's remit unless restricted by other provisions contained within this constitution or by statute.

#### **Responsibility for Functions**

- Tourism
- Public Relations
- Economic Development
- Relationships with Businesses
- Car Parking
- Business Improvement Districts
- Business Rates Relief
- Broadband Infrastructure
- Transport Infrastructure including matters related to Southend Airport
- The Rochford Environmental Business Alliance (REBA)

## **Terms of Reference**

### **ENVIRONMENT AND CLIMATE CHANGE COMMITTEE**

**Number of Members:** 11

**Quorum:** 3

**Substitutes:** Any Member from the same political group

**Frequency of Meetings:** 4 meetings per municipal year

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#### **Main Purpose**

In respect of the areas listed below:

- Oversee the implementation of policies and strategies set by the Full Council.
- Develop, review and recommend policy to the Full Council.
- Formulate the budget for the committee's areas of responsibility for recommendation to the Full Council.
- Monitor the use of financial and other resources in the delivery of services.
- Monitor progress against delivery objectives and key performance indicators.
- Agree consultation responses to matters within the Committee's remit unless reserved to the Full Council.
- To appoint representatives to any outside bodies which fall within the remit of this committee.
- Responsibility for all decision-making in respect of matters within the Committee's remit unless restricted by other provisions contained within this constitution or by statute.

#### **Responsibility for Functions**

- Sustainability and Climate Change
- Parks and Open Spaces
- Woodlands
- Flood Working Group
- Air Pollution
- Cemeteries
- Waterways
- Waste Management

## **Terms of Reference**

### **LICENSING AND REGULATORY COMMITTEE**

**Number of Members:** 15

**Quorum:** 4

**Substitutes:** Any Member from the same political group who has undertaken the required training.

**Frequency of Meetings:** 2 meetings per municipal year

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#### **Main Purpose**

To discharge those functions in relation to appeals, licensing and registration and those functions under the Town Police Clauses Act 1847, Local Government Act 1972, Local Government Misc Provisions Act 1977 & 1982, Licensing Act 2003, Gambling Act 2005, Policing and Crime Act 2009, Animal Welfare Act 2006, Zoo Licensing Act 1981, Business and Planning Act 2020, Dangerous Wild Animals Act 1976, Charities Act 2006, Scrap Metal Dealers Act 2013, Hypnotism Act 1952, House to House Collections Act 1939 and all associated or amending legislation as specified in these terms of reference and Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended).

To appoint representatives to any outside bodies which fall within the remit of this committee.

#### **Responsibility for Functions**

##### **Licensing Functions**

1. To review and make recommendations to Council upon policies in relation to licensing matters under the Licensing Act 2003 and the statement of licensing policy.
2. To discharge the Council's functions as a Licensing Authority under the Licensing Act 2003, with agreed policy.
3. To review and make recommendations to Council upon policies in relation to licensing matters under the Gambling Act 2005 and the statement principles.
4. To discharge the Council's functions as a Licensing Authority under the Gambling Act 2005, within agreed policy.
5. To discharge the Council's functions as a Licensing Authority under the Department of Transport Minimum Standards in relation to Private Hire and Hackney Carriage Policy.
6. To arrange for the discharge of any of the licensing functions exercisable by the Committee to an officer of the Licensing Authority subject to the limitations set out in Section 10(4) of the Licensing Act 2003 and Section 154 of the Gambling Act 2005.

7. To discharge any other Council function which relates to a matter which is a licensing function under the Licensing Act 2003 or the Gambling Act 2005, but which is not a licensing function (i.e. street trading) after consideration of a report from the Licensing Section.

### **Licensing Act 2003**

1. To carry out functions as the Licensing Committee pursuant to the Licensing Act 2003.
2. To advise the Council on its 'Statement of Licensing Policy', related Licensing policies and practices and make recommendations to the Council on their adoption and review.
3. To appoint Sub-Committees of three members (to be known as Licensing Sub Committees) and to delegate any of its functions within its terms of reference to the Licensing Sub-Committee or officers, subject to the restrictions set out in the Licensing Act 2003.

### **Regulatory Functions**

1. To establish and act through Committees made up of 3 members of the Regulatory Committee (to be known as Regulatory Sub-Committees) to determine a range of regulatory and other functions (including Naming of Streets, Trees, Staffing etc).
2. Power to issue licences, certificates or consents including (where legally possible):
  - a. a power to attach conditions to any licence, certificate or consent;
  - b. a power to refuse to grant any licence, certificate or consent;
  - c. a power to set general conditions and regulations with respect to all licences of a certain kind;
  - d. the power to revoke or suspend licences, certificates or consent;
  - e. any function for which the Council may charge and issue any approval or consent that may be needed under the terms of any licence.
3. The Licensing & Regulatory Committee shall decide its own procedures for dealing with applications and disciplinary hearings and in carrying out these functions shall have due regard to any relevant regulations/national guidance. It shall have the power to set enforcement and other licensing or regulatory policies.

### **Hackney Carriage and Private Hire Vehicle Licensing**

1. To determine suspension or revocation (or else no action) of licences for Hackney Carriage vehicles, Hackney Carriage drivers, Private Hire Vehicles, Private Hire Drivers, Private Hire Operators.
2. To determine applications for licences for Hackney Carriage Vehicles; Hackney Carriage Drivers; Private Hire Vehicles; Private Hire Drivers and

Private Hire Operators when the Principal Licensing Officer is disposed to recommend suspension or revocation of a licence or refusal to grant or refusal to renew and chooses not to exercise his/her delegated authority but refers the matter to the Licensing & Regulatory Committee for consideration in accordance with a protocol approved by the Licensing & Regulatory Committee.

### **General Matters**

1. Any other appeal arrangements as shall arise under any enactment or government regulation.
2. To determine licences, registrations and consents or to make, revoke or vary closing orders as necessary pursuant to licensing, regulatory, environmental, safety and other statutes (or any subsequent amendment thereto) if the appropriate officer is disposed to recommend revocation, variation, refusal or refusal to renew or does not wish to use his/her delegated authority.

### **Gambling Act Functions**

1. To carry out functions as the Licensing Committee pursuant to the Gambling Act 2005.
2. To advise the Council on its 'Statement of Licensing Principles', related Gambling Act 2005 policies and practices and make recommendations to the Council on their adoption and review.
3. To appoint Sub-Committees of three members to be known as the Licensing Sub-Committee.
4. To delegate any of its functions within its terms of reference to the Licensing Sub-Committee or officers, subject to the restrictions set out in the Gambling Act 2005.

## **LICENSING ACT 2003: SCHEME OF DELEGATIONS**

<b>Matter to be dealt with</b>	<b>Sub-Committee</b>	<b>Officers</b>
	<i>Where there is an objection, representation or review</i>	<i>No objection or representation</i>
Application for personal licence	✓	✓
Application for personal licence with unspent convictions	✓	
Application for premises licence/club premises certificate	✓	✓
Application for provisional statement	✓	✓
Application to vary premises licence/ club premises certificate	✓	✓
Application to vary a designated premises supervisor	✓	✓
Request to be removed as a designated premises supervisor	✓	✓
Application for transfer of premises licence	✓	✓
Applications for interim authorities	✓	✓
Application to review premises licence / club premises certificate	✓	
Decision on whether a representation is irrelevant, frivolous, vexatious etc	✓	✓
Decision to object when local authority is a consultee and not the relevant authority considering the application	✓	
Determination of a police representation to a temporary event notice	✓	
Determination of minor variation applications for premises licences and club premises certificates	✓	✓
Determination of applications to disapply mandatory conditions at community premises	✓	✓
Licensing Authority role as a responsible authority	✓	✓



## **GAMBLING ACT 2005: SCHEME OF DELEGATIONS**

<b>Matter to be dealt with</b>	<b>Council</b>	<b>Committee</b>	<b>Sub-Committee</b>	<b>Officers</b>
			<i>Where there is an objection, representation or review</i>	<i>No objection or representation</i>
Final approval of three year licensing policy	✓			
Policy not to permit casinos	✓			
Fee setting (when appropriate)		✓		
Application for premises licences			✓	✓
Application for a variation to a licence			✓	✓
Application for a transfer of a licence			✓	✓
Application for a provisional statement			✓	✓
Review of a premises licence			✓	
Application for club gaming/club machine permits			✓	✓
Cancellation of club gaming/club machine permits			✓	
Applications for other permits			✓	✓
Cancellation of licensed premises gaming machine permits			✓	✓
Consideration of temporary use notice			✓	✓
Decision to give a counter notice to a temporary use notice			✓	

## **Terms of Reference**

### **PLANNING POLICY COMMITTEE**

**Number of Members:** 7

**Quorum:** 3

**Substitutes:** Any Member from the same political group

**Frequency of Meetings:** 4 meetings per municipal year

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#### **Main Purpose**

In respect of the areas listed below:

- Oversee the implementation of policies and strategies set by the Full Council.
- Develop, review and recommend policy to the Full Council.
- Formulate the budget for the committee's areas of responsibility for recommendation to the Full Council.
- Monitor the use of financial and other resources in the delivery of services.
- Monitor progress against delivery objectives and key performance indicators.
- Agree consultation responses to matters within the Committee's remit unless reserved to the Full Council.
- To appoint representatives to any outside bodies which fall within the remit of this committee.
- Responsibility for all decision-making in respect of matters within the Committee's remit unless restricted by other provisions contained within this constitution or by statute.

#### **RESPONSIBILITY FOR FUNCTIONS**

- Planning Policy
- Infrastructure
- Development and review of the Local Plan (for recommendation to Full Council)

**Terms of Reference**  
**SCRUTINY AND PERFORMANCE COMMITTEE**

**Number of Members:** 9

**Quorum:** 3

**Substitutes:** Any Member from the same political group.

**Frequency of Meetings:** 6 meetings per municipal year

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**Main Purpose**

To review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions.

To make reports and/or recommendations to the Full Council and/or any Committee in connection with the discharge of any functions.

To consider any matter affecting the area or its inhabitants, including the ability to scrutinise the work of any other public sector body or partner of the Council.

To monitor the Council's performance against agreed indicators.

To appoint representatives to any outside bodies which fall within the remit of this committee.

**Responsibility for Functions**

1. Review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions.
2. Make reports and/or evidence based recommendations to the Council and any committee or joint committee in connection with the discharge of any functions.
3. Consider any matter affecting the area or its inhabitants.
4. Make reports and/or evidence based recommendations to the Council and/or its Committees and/or any joint committee on matters which affect the Council's area or the inhabitants of that area.
5. Policy development and review:
  - a. review existing policy and recommend changes to such policy or the creation of new policy;
  - b. assist the Council in the development of its Budget and Policy Framework by in-depth analysis of policy issues;

- c. conduct research, involve the community and carry out other consultation in the analysis of policy issues and possible options;
- d. consider and implement ways to encourage and enhance community participation in the development of policy options;
- e. question members of committees and senior officers about their views on issues and proposals affecting the area; and
- f. liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

In so doing, the Scrutiny and Performance Committee will be able to:

- a. Select significant issues to investigate, which are both strategic and linked to the Council's Corporate Priorities;
- b. Undertake pre-investigation project planning: drawing up terms of reference, plan for research methods to be used, timescales, officer support and reporting mechanisms;
- c. Involve partners, the public and outside experts: this can take the form of presenting orally or in writing evidence around the topic under investigation;
- d. Report findings and make evidence based recommendations to the appropriate Committee;
- e. Follow up on action agreed to ensure that Scrutiny and Performance Committee decisions have been implemented.

The focus of a policy development and review exercise could be on:

- a. Whether the intended policy outcomes have been achieved;
- b. Whether services have been taken up by the intended client group;
- c. Processes used in service delivery;
- d. Assessing whether service provision is addressing the needs of the community;
- e. How satisfied customers are with current service provision;
- f. Whether resources are allocated effectively for the service.

The policy development and review function could be discharged in a number of ways including:

- a. Meetings of the relevant whole Scrutiny and Performance Committee;
- b. Task and Finish Review Groups comprised of a selection of Scrutiny and Performance Committee Members, as well as potentially other co-opted Members (e.g. external experts) and members of the community

## 6. Scrutiny:

- a. review and scrutinise the performance of committees and Council officers and decisions made both in relation to individual decisions and over time;
- b. review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;

- c. question members of committees and senior 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 when necessary;
  - d. exercise the right to call-in, for re-consideration, decisions made but not yet implemented by any committee, where appropriate;
  - e. make evidence based recommendations to the appropriate committee and/or Council arising from the outcome of the scrutiny process;
  - f. review and scrutinise, with or without others, the performance and activities of other public bodies in the area on any relevant, general or specific issue;
  - g. question and gather evidence from any person (with their consent) when necessary; and
  - h. exercise overall responsibility for the work programme of the officers employed to support their work.
7. Responsibility for monitoring the performance of any partnership arrangement.
8. Ability to undertake joint scrutiny activity with Brentwood Borough Council for any matters of common interest to the strategic partnership.
9. To formulate and keep under review the Council's arrangements for handling complaints and investigations by the Local Government Ombudsman.
10. The Scrutiny and Performance Committee shall report annually to Council on its workings and make evidence based recommendations for future work programmes and amended working methods if appropriate.

## **Terms of Reference**

### **STRATEGY, FINANCE AND POLICY COMMITTEE**

**Number of Members:** 13

**Quorum:** 4

**Substitutes:** Any Member from the same political group

**Frequency of Meetings:** 4 meetings per municipal year

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#### **Main Purpose**

In respect of the areas listed below:

- Oversee the implementation of policies and strategies set by the Full Council.
- Develop, review and recommend policy to the Full Council.
- Formulate the budget for the committee's areas of responsibility for recommendation to the Full Council.
- Monitor the use of financial and other resources in the delivery of services.
- Monitor progress against delivery objectives and key performance indicators.
- Agree consultation responses to matters within the Committee's remit unless reserved to the Full Council.
- To appoint representatives to any outside bodies which fall within the remit of this committee.
- Responsibility for all decision-making in respect of matters within the Committee's remit unless restricted by other provisions contained within this constitution or by statute.

#### **Responsibility for Functions**

- Corporate Strategy / Business Plan (for recommendation to Full Council)
- Budget and Medium Term Financial Strategy (for recommendation to Full Council)
- Council Assets
- Information Technology
- Customer Services
- HR
- Finance
- Democratic Services
- External Grant Funding
- Partnerships
- Transformation / Change
- Programme and Project Management

## **PART C - DELEGATIONS TO OFFICERS**

### **1. INTRODUCTION**

1.1 The Scheme of Delegation to Officers set out below has been approved and adopted by the Council for the purposes of Section 101 of the Local Government Act 1972.

1.2 The following powers and duties are delegated to the officers named in this Scheme of Delegation within the normal constraints of Council policy but in the event of those officers being unavailable or unable to exercise the functions referred to, the following officers are authorised to act in their stead:

For the Chief Executive, the designated Deputy Chief Executive

For a Strategic Director, the relevant Director

For the Section 151 Officer, the Deputy Section 151 Officer

For the Monitoring Officer, the Deputy Monitoring Officer.

Any officer referred to by their title/post throughout this Constitution will automatically succeed their predecessor in title/post.

### **2. GENERAL PROVISIONS**

2.1 Any delegation to an officer which authorises the incurring of any capital or revenue expenditure will be subject to there being sufficient budgetary provision to cover that expenditure.

2.2 Any delegation to an officer to take action under a statutory provision shall be deemed to authorise action under any amendment or statutory re-enactment of that provision.

2.3 Any delegation to an officer shall require that delegation to be exercised in compliance with the Council's Procedure Rules, Financial Regulations and Contract Standing Orders, Human Resources Policies and any other policies or conditions imposed either by the Council or as required by this Constitution or by statute and any Code of Practice relating to specific functions which may be adopted.

2.4 Prior to exercising any delegation that consultation shall be carried out where required by law or by any other part of the Constitution.

2.5 Where delegated powers or proper officer functions have been granted to a post on the Council's staff and the designation of such post is changed then such delegated powers or proper officer functions shall vest in the post holder of the new post designation.

2.6 In addition to the constraints referred to in the Scheme of Delegations there are exceptions to officers' delegated powers. There is no delegation to officers of:

(a) matters specifically reserved to Council or a Committee and;

(b) any matter which by law may not be delegated to an officer.

### **3. GENERAL DELEGATIONS**

3.1 To the Chief Executive, Strategic Directors and Directors (together referred to as the "Chief Officers").

3.2 Any officer referred to by their title/post throughout this Constitution will automatically succeed their predecessor in title/post.

3.3 Each Chief Officer is authorised to act on behalf of the Council in relation to any matters (including spending decisions) within the service areas for which they are responsible, subject to any limitations imposed by any provision in law or within this Constitution. The Head of Paid Service will publish a [structure chart](#) detailing the broad areas of responsibility for each of the Chief Officers.

### **4. CONFLICTS OF INTEREST**

4.1 Every officer is responsible for identifying whether they have any conflict of interest in any matter which is under consideration, actual or perceived, within the Authority, and for notifying the Authority (including under section 117 of the Local Government Act 1972).

4.2 Where an officer has a conflict of interest in any matter, they shall not participate in that matter in their capacity as an officer except with the prior approval of their line manager, the Monitoring Officer or the Chief Executive.

4.3 Where the Chief Executive is unable to act on a matter because of a conflict of interest, the matter shall be discharged by the designated Deputy Chief Executive. Where the Monitoring Officer is unable to act the matter shall be discharged by the Deputy Monitoring Officer.

4.4 Where a Strategic Director is unable to act on a matter because of a conflict of interest, the Chief Executive shall discharge the matter themselves or allocate the matter to another officer.

4.5 Where the Monitoring Officer is unable to act on a matter in their statutory capacity under section 5 of the Local Government and Housing Act 1989, the matter shall be discharged by the Deputy Monitoring Officer.

4.6 Where the Monitoring Officer is unable to act on a matter in relation to Councillor conduct, the matter shall be discharged by the person appointed by



the Monitoring Officer for this purpose under section 82A of the Local Government Act 2000.

- 4.7 Where any other officer is unable to act on a matter, that matter shall be discharged by that officer's line manager or another officer assigned by the Chief Executive.

## **6. RESPONSIBILITIES OF STATUTORY OFFICERS**

- 6.1 The functions and responsibilities of the Statutory Officers are given below. The Section 151 Officer and the Monitoring Officer may appoint a deputy (or deputies) as they deem appropriate.

<b>Post</b>	<b>Function and areas of responsibility</b>
Chief Executive/Head of Paid Service	Overall corporate management and operational responsibility (including management responsibility for all officers and staffing matters). Returning Officer for Local Elections and Electoral Registration Officer
Section 151 Officer	Principal adviser to the Council on financial matters. Responsible for the overall management of the Council's financial affairs including Internal Audit.
Monitoring Officer	Responsible for ensuring that the Council acts in a lawful manner and that it does not do anything which might cause maladministration or injustice.

## **7. DELEGATION MATTERS SUBJECT TO CONSULTATION WITH CHAIRMAN (OR VICE-CHAIRMAN IN ABSENCE) OF APPROPRIATE COMMITTEE**

### **Power to act out of Council meeting – General Power**

- 7.1 Where, in their opinion, by reason of limitation of time, or urgency a decision is required on any matter, (other than those specifically excluded from delegation) the Chief Executive shall have power to make a decision on that matter subject to consultation with the Chairman of the appropriate Committee and the S.151 Officer on the action to be taken by the Chief Executive.
- 7.2 This power shall not apply to:-
- a) Matters reserved to the Council by statute or common law without power of delegation to a Committee.
  - b) The setting of Council taxes.

- c) Incurring of expenditure for which no allowance has been made in the annual budget unless the approval of the Chairman of the Council, and of the Leader has been given to such expenditure.
- d) Any proposal which involves the formulation of a major new policy or a major variation of an existing major policy.
- e) Any matter on which the Council or a Committee has given a specific direction.

7.3 At the next ordinary meeting of the Council or appropriate Committee a report is to be submitted setting out all relevant information in relation to the action taken and detailing the reasons why it was necessary to deal with the matter out of meeting.

## **8. RECORDING AND PUBLICATION OF OFFICER DECISIONS MADE UNDER EITHER EXPRESS AUTHORISATION OR THE SCHEME OF DELEGATIONS**

8.1 When any officer with delegated power takes a Non-Executive decision - under a specific express authorisation, or under a general authorisation where the effect of the decision is to:

- grant permissions or licences;
- affect the rights of individuals;
- award contracts or incur expenditure which, in either case, materially affects the Council's financial position (normally this will be a contract or expenditure above a total value of £10,000).

8.2 These decisions must be recorded in writing to comply with The Openness of Local Government Bodies Regulations 2014 no. 2095. The written record must be produced as soon as possible, (normally within 10 working days) after the decision has been made including:

- The date the decision was taken;
- A record of the decision taken along with reasons for the decision;
- Details of alternative options if any considered and rejected; and
- Where the decision is taken under a specific express authorisation to include the name of any member who has declared a conflict of interest in relation to the decision.

8.3 A copy of the record of the decision must be sent by the relevant officer to the Monitoring Officer for publication or inspection as soon as practicable after the decision has been made to enable publication within the timescales set out in 8.2.

## **9. AUTHORISATIONS TO OTHER OFFICERS**

9.1 Officers with delegated powers may, in writing, authorise another officer or officers to exercise those powers in any or particular circumstances. Such

authorisations may be subject to limitations and conditions. The officer with the delegated powers shall keep a register of all authorisations granted.

9.2 Copies of any authorisations must also be sent:

(a) to the Monitoring Officer: every authorisation;

(b) to the S151 officer: authorisations relating to the management of employees and authorisations to sign orders/requisitions, cheques etc.

## **10. RESERVE DELEGATIONS**

10.1 The delegated powers held by a post may be exercised by the line manager of that post (or by the line manager's line manager or by the Chief Executive) if:

(a) that post is vacant;

(b) the post-holder is not at work for any reason;

(c) the person who has the delegated power has a conflict of interest in the decision or matter.

## **11. TRANSFER OF FUNCTIONS**

11.1 Where the name of a post is changed for any reason, the renamed post shall retain any delegated powers possessed by the post prior to the name change.

11.2 Where a service area is restructured, the Chief Executive has authority to re-allocate any officer delegated powers (whether Council or executive functions) to other posts and shall give notice of this to the Monitoring Officer and shall also notify all Councillors. The officer to whom any delegated power is transferred is responsible for reauthorising any subordinate officers to take any action under his or her delegations.

11.3 When a post is vacant and an employee takes on the duties of the post in an "acting" capacity, they have the same delegated powers that they would have if they held the substantive post.

## **SPECIFIC DELEGATIONS**

### **CHIEF EXECUTIVE**

1. To take any action, including the incurring of expenditure, in connection with an emergency or disaster in the district.
2. To exercise powers delegated to any officer when that officer is unable or unwilling to act.

3. To employ outside consultants and off payroll staff and firms in cases where they is satisfied that it is necessary to do so in order to carry out work which cannot be dealt with by in-house staff within budget.

## **MONITORING OFFICER**

1. To institute, defend, appear and be responsible for the conduct of legal proceedings before any court, tribunal or public inquiry on behalf of and in the name of the Council where it is in the Council's interests to do so and in particular:
2. To instruct and retain Counsel and obtain advice in relation to any matter whenever this is considered to be in the interests of the Council;
3. To settle proceedings of any description including the payment of damages, compensation and legal costs in consultation with Strategic Directors. Where the settlement figure exceeds £50,000, the decision will be referred to the Full Council.
4. To authorise officers to appear in any civil or criminal court or tribunal, and act as authorised officers for the purposes of all legislation under which the Council has duties and powers.
5. To authorise officers to enter land and premises where an authorised officer of the Council may do so under any enactment.
6. To authorise, issue and serve all Statutory Notices (including Requisitions for Information) under any enactment.
7. To sign and seal documents on behalf of the Council.
8. To issue enforcement notices and/or serve stop notices under the Town and Country Planning Act 1990.
9. To determine applications for Lawful Development Certificates pursuant to Sections 191-194 of the Town and Country Planning Act 1990.
10. To accept statutory declarations for the purpose contained in the Housing Acts 1980, 1985 and 1988.
11. To sign indemnities and provide solicitors' undertakings where they are required to enable the Council to exercise any of its functions subject to consultation with the Section 151 Officer where the indemnity or undertaking has considerable financial implications.
12. To ensure compliance with the requirements specified in the Data Protection Act 1998, the Human Rights Act 1998, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

## PROPER OFFICER PROVISIONS

Any officer referred to by their title/post throughout this Constitution will automatically succeed their successor in title/post.

“Proper Officer” appointments in accordance with the relevant provisions of the specified legislation are as set out hereunder:-

Legislation	Description	Proper Officer
<b>Local Government Act 1972</b>		
13(3)	Chairman of Parish Meeting and Proper Officer shall become a body corporate where there is no separate parish Council.	Chief Executive
83(1)	Receipt of Declaration of Acceptance of Office.	Chief Executive
84	The officer to whom a person elected to any office under the Council may give written notice of resignation.	Chief Executive
88(2)	The officer who may convene a meeting of the Council for the election to fill a vacancy.	Chief Executive
89(1)(b)	The officer who may receive notice in writing of a casual vacancy in the office of Councillor from two local government electors.	Chief Executive
96(1)	Receipt of notices of pecuniary interest.	Monitoring Officer
96(2)	The officer who shall keep the record of disclosures of interest under Section 94 and of notices under Section 96(1) and of Section 19 of the Local Government and Housing Act 1989.	Monitoring Officer
100A-100K	Access to Meetings and Documents of Certain Authorities Committees and Sub Committees	Monitoring Officer
115(2)	The officer who shall receive all money due from every officer employed by the Council.	Section 151 Officer
146(1)(a) and (b)	The officer who shall give statutory declarations and certificates with regard to securities on the change of name or status.	Section 151 Officer
151	The officer responsible for the proper administration of financial affairs.	Section 151 Officer
191	The officer to whom applications under Section 1 of the Ordnance Survey Act 1841 should be sent.	Strategic Director

225(1)	Deposit of Documents with the Proper Officer and making of notes or endorsements and receipts.	Monitoring Officer
229(5)	The officer who shall certify that a document is a photographic copy of a document in the custody of the Council.	Monitoring Officer
234	The officer who may authenticate documents.	Monitoring Officer
236(9) and (10)	The officer who is responsible for sending certified copies of byelaws to appropriate bodies.	Monitoring Officer
238	The officer who shall certify copies of Byelaws as true copies.	Monitoring Officer
Sch 12 Para 4(2)(b)	The officer who may sign a summons to Council meetings.	Chief Executive
Sch 12 Para 4(3)	The officer who may receive notice from a Member of the address to which a summons to a meeting is to be sent.	Chief Executive
Sch 14 Para 25(7)	The officer who may certify copies of resolutions passed under the Public Health Acts 1875 to 1925 as true copies for production in legal proceedings.	Monitoring Officer
<b>Local Government Act 1974</b>		
30(5)	Publication in newspapers of reports of Local Commissioner.	Chief Executive
<b>Building Act 1984</b>		
S93	Authentication of documents	Section 151 Officer
<b>Public Health Act 1936</b>		
84	Cleansing of filthy and verminous articles.	Director of Communities & Health
85	Cleansing of filthy and verminous persons and their clothing.	Director of Communities & Health
<b>Public Health (Control of Disease Act) 1984 as amended, and any subordinate Regulations or Orders</b>		
61	Powers of entry	Director of Communities & Health

62	Supplementary powers of entry	Director of Communities & Health
<b>National Assistance Act 1948 (as amended) and Section 61 of the National Assistance Act 1951</b>		
47	Removal to suitable premises of persons in need of care and attention	Director of Communities & Health
<b>Representation of the People Act 1983</b>		
8	The Electoral Registration Officer for any constituency or part of a constituency coterminous with the District	Chief Executive
35	The Returning Officer for the elections of Councillors of the District and of Councillors of Parishes within the District	Chief Executive
<b>Local Elections (Principal Areas) Rules 1986</b>		
	All references to the Proper Officer in these Rules relate to the:-	Chief Executive
<b>Housing Act 1985</b>		
606(1) and (2)	Reports on unfitness and clearance.	Director - Housing
<b>Local Government Finance Act 1988</b>		
114	Financial Report to the Authority	Section 151 Officer
<b>Local Government and Housing Act 1989</b>		
4	Head of Paid Service	Head of Paid Service
5	Monitoring Officer	Monitoring Officer
19	Receipt of information about Members' interests	Monitoring Officer
<b>Localism Act 2011</b>		
33	The officer to receive a written request for a dispensation to be granted.	Monitoring Officer
<b>Anti-Social Behaviour, Crime and Policing Act 2014</b>		

1	Power to seek an Injunction	Director of Communities & Health
43	Power to issue Community Protection Notices	Director of Communities & Health
52	Power to issue Fixed Penalty Notices	Director of Communities & Health
59	Power to make Public Spaces Protection Orders	Director of Communities & Health
76	Power to seek Closure Orders and/or Issue Closure Notices	Director of Communities & Health
<b>Data Protection Act 2018</b>		
69	Data Protection Officer	Director – People and Governance

## **DEPUTY PROPER OFFICER PROVISIONS**

In respect of the purposes for which the Head of Paid Service is the Proper Officer of the Council, the designated Deputy Chief Executive is authorised to act as such Proper Officer when the Chief Executive is unable to act.

In other cases where the designated Proper Officer is unable to act, the following are designated Deputy Proper Officers:-

For any Director, a Strategic Director, or the Chief Executive.

For a Strategic Director, another Strategic Director or the Chief Executive.

For the Section 151 Officer, the Deputy Section 151 Officer.

For the Monitoring Officer, a Deputy Monitoring Officer.

Any Proper Officer may appoint any other person in writing to act on their behalf.



# Council Procedure Rules

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## **1. ANNUAL MEETING OF THE COUNCIL**

### **1.1 Timing and Business**

In a year when there is an ordinary election of Councillors, the annual meeting will take place within 21 days of the retirement of the outgoing Councillors. In any other year, the annual meeting will take place in March, April or May.

The annual meeting will:-

- (i) accept that the Chief Executive or Monitoring Officer will preside over the election of the Chairman of the Council if the outgoing Chairman or Vice-Chairman of Council is not present;
- (ii) elect the Chairman of Council for the municipal year;
- (iii) elect the Vice-Chairman of Council for the municipal year;
- (iv) receive apologies for absence;
- (v) receive declarations of interests;
- (vi) approve the Minutes of the last Council meeting;
- (vii) receive any announcements from the Chairman of the Council and/or Head of Paid Service;
- (viii) elect the Leader of the Council for the municipal year;
- (ix) elect the Deputy Leader of the Council for the municipal year;
- (x) respond to questions on notice from Councillors or Members of the Public in accordance with Council Procedure Rules **xx**.
- (xi) consider any business set out in the notice convening the meeting.

### **1.2 Annual Meeting following an Ordinary Election**

In a year of ordinary elections of Members to the Council the Council shall, at its annual meeting, in addition to the requirements set out above:

- (i) receive a report of the Chief Executive on the return of Members elected;
- (ii) receive notification of the memberships of political groups;
- (iii) receive notification of the names of Group Leaders and their Deputies;

### 1.3 **Selection of Councillors on Committees**

At the annual meeting, Council will:-

- (i) appoint Committees and Sub-Committees as the Council considers appropriate;
- (ii) elect Chairmen and Vice-Chairmen of Committees and Sub-Committees;
- (iii) decide the allocation of seats to Committees and substitutes of political groups in accordance with the political balance rules;
- (iv) receive nomination and appoint Councillors to serve on each Committee.

## 2. **ORDINARY MEETINGS**

Ordinary meetings will:-

- (i) elect a person to preside if the Chairman and Vice-Chairman are not present;
- (ii) receive apologies for absence;
- (iii) receive declarations of interest;
- (iv) approve the Minutes of the last Council meeting for signing by the Chairman, subject to any agreed amendments;
- (v) receive any announcements from the Chairman, Leader or Head of Paid Service;
- (vi) receive petitions in accordance with the Council's Petitions Scheme contained in Part 5 of the Constitution;
- (vii) respond to questions on notice from Councillors or Members of the Public in accordance with Council Procedure Rules 11 and 13.
- (viii) deal with any business deferred from the last Council meeting;
- (ix) receive reports from the Chairmen of Committees and receive questions and answers on any of those reports and on their work in accordance with Council Procedure Rule 13;
- (x) receive reports about, and receive questions and answers on, the business of joint arrangements and external organisations;
- (xi) consider any other business specified in the summons to the meeting;

- (xii) consider motions on notice received in accordance with Council Procedure Rule 14;
- (xiii) consider any changes to Councillor placings on committees.

### **3. EXTRAORDINARY MEETINGS**

#### **3.1 Calling Extraordinary Meetings**

Those listed below may request the Chief Executive to call Council meetings in addition to ordinary meetings:-

- (i) the Council by resolution;
- (ii) the Chairman of the Council;
- (iii) the Monitoring Officer; and
- (iv) any five Members of the Council if they have signed a requisition presented to the Chairman of the Council and he/she has refused to call a meeting or has failed to call a meeting within seven days of the presentation of the requisition.

### **4. SUBSTITUTE MEMBERS OF COMMITTEES AND SUB-COMMITTEES**

- 4.1 Substitute Members may be nominated for Committees or their Sub-Committees by each political group represented on the Committee or Sub-Committee and shall comprise a number no greater than the number equal to the number of ordinary Members nominated by a political group to that Committee or Sub-Committee.
- 4.2 A Substitute Member attending a meeting of a Committee or Sub-Committee has the same powers and responsibilities as a full Member of the Committee or Sub-Committee.
- 4.3 A Substitute Member attending a meeting is expected to have read all relevant papers and to be fully prepared to participate in the meeting.
- 4.4 A Member or Substitute Member first in attendance at a meeting of a Committee or Sub-Committee cannot be substituted or replaced during the course of that meeting.
- 4.5 Substitute Members may attend meetings in that capacity only:
  - (i) to take the place of the ordinary Member for whom they are the designated substitute.

In the event of the ordinary Member of the Committee or Sub-Committee being present at the start of the meeting, the substitution shall not take place.

- 4.6 Substitute Members are not appropriate in the case of working parties.

## **5. TIME AND PLACE OF MEETINGS**

- 5.1 An annual calendar of meetings will be agreed by the Council. The Chief Executive will convene ordinary meetings of the Council in accordance with this calendar and determine the time and place of such meetings, which will be notified in the summons. Meetings will usually commence at 7:30pm.
- 5.2 The Chief Executive may, with the approval of the Chairman, give notice to all Members of the cancellation of a scheduled ordinary meeting of the Council if there is insufficient substantive business to be transacted or if some other special circumstance would render the convening of a meeting impossible or inappropriate. The Chief Executive will endeavour to consult with the Group Leaders before such a cancellation.

## **6. NOTICE OF AND SUMMONS TO MEETINGS**

- 6.1 The Chief Executive will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules.
- 6.2 At least 5 clear working days before a meeting, the Chief Executive will send a summons signed by him or her by first class post or electronic delivery to every Member of the Council or leave it at their usual place of residence. The summons will give the date, time and place of each meeting and specify the business to be transacted and will be accompanied by such reports as are available.

## **7. URGENT BUSINESS**

- 7.1 No business shall be transacted at a meeting of the Council other than that specified in the agenda except business brought before the meeting as a matter of urgency as certified by the Chairman for specific reasons which are to be included in the Minutes.

## **8. APPOINTMENTS**

### **8.1 Appointment and Removal of the Chairman**

- 8.1.1 The Council will appoint a Chairman of the Council for the municipal year at the Annual Council meeting.
- 8.1.2 The Chairman may be removed from the office of Chairman of the Council by motion on notice to an ordinary meeting of the Council or an

extraordinary meeting convened for that purpose. The vote will succeed by simple majority.

8.1.3 A successful vote to remove the Chairman will take immediate effect and the Vice-Chairman will assume the chair until a new Chairman is appointed at the next ordinary meeting of the Council or at an extraordinary meeting convened for that purpose.

8.1.4 At any time, by motion with or without notice, the Council may take a vote of no confidence in the Chairman. If the vote succeeds, the Chairman will consider their position and provide their response to the next ordinary meeting of the Council.

## **8.2 Appointment and Removal of the Vice-Chairman**

8.2.1 The Council will appoint a Vice-Chairman of the Council for the municipal year at the Annual Council meeting.

8.2.2 The Vice-Chairman may be removed from the office of Vice-Chairman of the Council by motion on notice to an ordinary meeting of the Council or an extraordinary meeting convened for that purpose. The vote will succeed by simple majority.

8.2.3 A successful vote to remove the Chairman will take immediate effect. A new Vice-Chairman will be appointed at the next ordinary meeting of the Council or at an extraordinary meeting convened for that purpose.

8.2.4 At any time, by motion with or without notice, the Council may take a vote of no confidence in the Vice-Chairman. If the vote succeeds, the Vice-Chairman will consider their position and provide their response to the next ordinary meeting of the Council.

## **8.3 Appointment and Removal of the Leader and Deputy Leader**

8.3.1 The Council will appoint a Leader of the Council and a Deputy Leader of the Council for the municipal year at the Annual Council meeting.

8.3.2 The Leader may be removed from the office of Leader of the Council by motion on notice to an ordinary meeting of the Council or an extraordinary meeting convened for that purpose. The vote will succeed by simple majority.

8.3.3 A successful vote to remove the Leader will take immediate effect and the Deputy Leader will assume the position of Leader until a new Leader is appointed at the next ordinary meeting of the Council or at an extraordinary meeting convened for that purpose.

8.3.4 A successful vote to remove the Deputy Leader will take immediate effect. A new Deputy Leader will be appointed at the next ordinary meeting of the Council or at an extraordinary meeting convened for that purpose.

## **8.4 Committees**

- 8.4.1 Group Leaders may amend appointments to committees at any time by giving written notice to the Monitoring Officer, provided that the overall political balance of the committee is maintained. Any such amendments will be reported to the next ordinary meeting of the Council.

## **9. QUORUM**

- 9.1 The quorum of a meeting will be one quarter of the whole number of Members rounded up. During any meeting if the Chairman counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chairman. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.

## **10. DURATION OF MEETING**

- 10.1 Any meeting that has lasted for 2½ hours will adjourn immediately, unless the majority of Members present vote for the meeting to continue. The resolution to continue will specify the maximum amount of time for such an extension, usually in increments of 30 minutes.
- 10.2 If the meeting is not extended all remaining business will be deferred to a future meeting at a time and date fixed by the Chairman. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting of the Council. Any matters deferred by virtue of this procedure rule will be considered as the first item of substantive business at the next meeting.

## **11. QUESTIONS BY THE PUBLIC**

### **11.1 General**

Members of the public will be entitled to ask questions on notice at any ordinary meeting of the Council and the Annual Council meeting. Questions may be put to the Chairman of the Council, the Leader of the Council or a Committee Chairman. Each member of the public will be entitled to submit a maximum of 1 questions. The maximum total time allowed for questions at a meeting will be 15 minutes.

### **11.2 Order of Questions**

Questions will be asked in the order notice of them was received.

### **11.3 Notice of Questions**

A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Monitoring Officer no later than midday (12:00), 3 clear working days before the day of the meeting. Each question

must:

- I. give the name and address of the questioner, and
- II. state name the Member of the Council to whom it is to be put.

#### **11.4 Scope of Questions**

The Monitoring Officer, in consultation with the Chairman, may reject a question if it:-

- is not about a matter for which the local authority has a responsibility or which affects the district;
- is defamatory, frivolous, offensive or personal in nature;
- is substantially the same as a question which has been put at a meeting of the Council or a Committee the past six months; or
- requires the disclosure of confidential or exempt information.

Any preamble to a question will not normally be allowed unless it is essential to understanding the nature of the question to be put.

#### **11.5 Record of Questions**

Copies of all questions will be circulated to all Members and will be made available to the public attending the meeting. All questions and answers will be recorded verbatim in the minutes of the meeting.

The Monitoring Officer will maintain a record of rejected questions and the reasons for rejection.

#### **11.6 Asking the Question at the Meeting**

The Chairman will invite the questioner to put the question. If a questioner who has submitted a written question is unable to be present, they may ask the Chairman to put the question on their behalf.



The Chairman may ask the question on the questioner's behalf, indicate that a written reply will be given or decide, in the absence of the questioner, that the question will not be dealt with.

#### **11.7 Supplementary Question**

A questioner will be entitled to ask one supplementary question. The supplementary question must relate directly to the original question or arise directly from the response given to the original question. The Chairman will have discretion to reject a supplementary question.

#### **11.8 Form of Response**

A response to a question on notice by a member of the public may take the form of a verbal or written response. The written response will normally be read out at the meeting by the relevant Member or by the Chairman for the benefit of those watching the meeting online.

Responses to supplementary questions may be given immediately or may be provided in writing to the questioner within 5 clear working days of the date of the meeting. A copy of the response will be circulated to all Members.

#### **11.9 Written Answers**

Any question which cannot be dealt with during public question time will be dealt with by a written answer within 5 clear working days of the date of the meeting. A copy of the response will be circulated to all Members.

#### **11.10 Reference of Question to a Committee**

Unless the Chairman decides otherwise, no discussion will take place on any question, but any Member may move that a matter raised by a question be referred to the appropriate Committee or Sub-Committee. Once seconded, such a Motion will be voted on without discussion.

### **12 PETITIONS**

Petitions will be dealt with in accordance with the petitions policy contained in Part 5 of this Constitution.

### **13 QUESTIONS BY MEMBERS**

#### **13.1 Questions on Agenda Items**

Members may be asked as many questions as is necessary to aid understanding of any item under consideration on the agenda. The Chairman will have the final ruling on the suitability of any such question.

### **13.2 Questions on the Reports of Leader or Committee Chairmen**

13.2.1 Each member may ask a maximum of 1 question without notice on each of the reports submitted by either the Leader of the Council or a Chairman of a Committee. The questions must relate directly to the information provided in the report.

13.2.2 There will be no supplementary questions

13.2.3 The maximum time allowed for the presentation of reports by the Leader and Chairmen of Committee and for questions and answers will be 30 minutes.

### **13.3 Questions on Notice at Full Council**

#### **13.3.1 General**

Members will be entitled to ask questions on notice at any ordinary meeting of the Council and the Annual Council meeting. Questions may be put to the Chairman of the Council, the Leader of the Council or a Committee Chairman. Each Member will be entitled to submit a maximum of 1 question. The maximum total time allowed for questions at a meeting will be 15 minutes.

#### **13.3.2 Order of Questions**

Questions will be asked in the order notice of them was received.

#### **13.3.2 Notice of Questions**

A Member may only ask a question on notice if either:-

- a) Notice has been given in writing or by electronic mail to the Monitoring Officer no later than midday (12:00), 3 clear working days before the day of the meeting.
- b) The question relates to urgent matters, they have the consent of the Chairman to whom the question is to be put and the content of the question is given to the Monitoring Officer by midday (12:00) on the day of the meeting.

### **13.4 Scope of Questions**

The Monitoring Officer, in consultation with the Chairman, may reject a question if it:-

- is not about a matter for which the local authority has a direct responsibility or which has a direct effect on the district;
- is defamatory, frivolous, offensive or personal in nature;
- is substantially the same as a question which has been put at a meeting of the Council or a Committee the past six months; or
- requires the disclosure of confidential or exempt information.

Any preamble to a question will not normally be allowed unless it is essential to understanding the nature of the question to be put.

### **13.5 Record of Questions**

Copies of all questions will be circulated to all Members and will be made available to the public attending the meeting. All questions and answers will be recorded verbatim in the minutes of the meeting.

The Monitoring Officer will maintain a record of rejected questions and the reasons for rejection.

### **13.6 Asking the Question at the Meeting**

The Chairman will invite the Member to put the question. If a Member who has submitted a written question is unable to be present, they may ask the Chairman or another Member to put the question on their behalf.

The Chairman may indicate that a written reply will be given or decide, in the absence of the Member, that the question will not be dealt with.

### **13.7 Supplementary Question**

A Member will be entitled to ask one supplementary question. The supplementary question must relate directly to the original question or arise directly from the response given to the original question. The Chairman will have discretion to reject a supplementary question.

### **13.8 Form of Response**

A response to a question on notice by a Member may take the form of a verbal or written response. The written response will normally be read out at the meeting by the relevant Member or by the Chairman for the benefit of those watching the meeting online.

Responses to supplementary questions may be given immediately or may be provided in writing to the Member within 5 clear working days of the date of the meeting. A copy of the response will be circulated to all Members.

### **13.9 Written Answers**

Any question which cannot be dealt with during the period for questions by Members will be dealt with by a written answer within 5 clear working days of the date of the meeting. A copy of the response will be circulated to all Members.

### **13.10 Reference of Question to a Committee**

Unless the Chairman decides otherwise, no discussion will take place on any question, but any Member may move that a matter raised by a question be referred to the appropriate Committee or Sub-Committee. Once seconded, such a Motion will be voted on without discussion.

## **14 MOTIONS ON NOTICE**

### **14.1 Notice**

Except for Motions which can be moved without notice under Rule 15, written notice of every Motion, on the authority of at least 2 Members, must be delivered to the Monitoring Officer not later than midday (12:00) 5 clear working days before the date of the meeting.

### **14.2 Motion Set Out in Agenda**

Motions for which notice has been given will be listed on the agenda in the order in which notice was received, unless the Member giving notice states, in writing, that they propose to move it to a later meeting or withdraw it.

### **14.3 Scope**

Motions must be about matters for which the Council has a responsibility or which affect the District.

The Monitoring Officer may, in consultation with the Chairman, reject a motion if it:

- is not about a matter for which the local authority has a responsibility or which affects the district;
- is defamatory, frivolous, offensive or personal in nature;
- is substantially the same as a motion which has been put at a meeting of the Council in the past six months; or
- would be ultra vires or unconstitutional for the Council to consider such a motion.

- 14.4 At the meeting a valid motion on notice must be moved and seconded before any consideration or debate can take place. The Councillor proposing the motion must move and explain the purpose of it. No speeches or debate can take place until the motion has been seconded.
- 14.5 Any motion on notice which is duly proposed and seconded will be debated by the Full Council at the meeting at which it is proposed, unless in the view of the Chairman it would be inappropriate or ultra vires for the full Council to do so. If the motion relates to a function reserved to the Full Council the Chairman will also take a vote on the motion at said meeting.
- 14.8 If the subject matter of any motion in respect of which notice has been duly given is related to a function reserved to a Committee then it shall, upon being duly moved, seconded and debated, stand referred to the relevant Committee to take the final decision in respect of the motion. The comments from any debate at full Council about the motion will be reported to the Committee for them to take into account when considering the motion.
- 14.9 If the motion stands referred to a Committee for decision and the member who moved the original motion is not an ordinary member of the Committee then they shall be invited to attend and address the Committee meeting. A member who is not an ordinary member of Committee shall not have a vote at the meeting.

#### 14.10 **Alteration of Motion**

A Councillor may alter a motion of which he/she has given notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.

A Councillor may alter a motion which he/she has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.

Only alterations which could be made as an amendment may be made.

### **15. MOTIONS WITHOUT NOTICE**

The following Motions may be moved without notice:-

- (a) to appoint a Chairman of the meeting at which the Motion is moved;
- (b) in relation to the accuracy of the Minutes;
- (c) to change the order of business in the agenda;
- (d) to reduce the time allowed for speeches under rule 15.4;

- (e) to refer something to an appropriate body or individual;
- (f) to appoint a Committee or Member arising from an item on the summons for the meeting;
- (g) to receive reports or adoption of recommendations of Committees or officers and any resolutions following from them;
- (h) to withdraw a Motion;
- (i) to amend a Motion;
- (j) to proceed to the next business;
- (k) that the question be now put;
- (l) to adjourn a debate;
- (m) to adjourn a meeting;
- (n) that the meeting continue beyond 2½ hours in duration;
- (o) to suspend a particular Council procedure rule;
- (p) to exclude the public and press in accordance with the Access to Information Rules;
- (q) to not hear further a Member named under Rule 21.4 (Member not to be heard further) or to exclude them from the meeting under Rule 21.5 (Member to leave the meeting); and
- (r) to give the consent of the Council where its consent is required by this Constitution.

## **16. RULES OF DEBATE**

### **16.1 No Speeches Until Motion Seconded**

No speeches may be made until after the mover has moved a proposal and explained the purpose of it and the Motion has been seconded.

### **16.2 Right to Require Motion in Writing**

Unless notice of the Motion has already been given, the Chairman may require it to be written down and handed to him/her before it is discussed.

### **16.3 Seconded's Speech**

When seconding a Motion or amendment, a Member may reserve their speech until later in the debate.

#### **16.4 Content and Length of Speeches**

Speeches must be directed to the question under discussion, to a personal explanation or point of order. No speech may exceed 5 minutes without the consent of the Chairman. Before commencement of the main business, a meeting may agree by a majority vote to a lesser time.

#### **16.5 When a Member May Speak Again**

A Member who has spoken on a Motion may not speak again whilst it is the subject of debate, except:-

- (a) to speak once on an amendment moved by another Member;
- (b) to move a further amendment if the Motion has been amended since he/she last spoke;
- (c) if his/her first speech was on an amendment moved by another Member, to speak on the main issue (whether or not the amendment on which he/she spoke was carried);
- (d) in exercise of a right of reply (see paragraph 16.9);
- (e) on a point of order (see paragraph 16.12); and
- (f) by way of personal explanation or clarification (see paragraph 16.13).

#### **16.6 Amendments to Motions**

16.6.1 An amendment to a Motion must be relevant to the Motion and will either be:-

1. to refer the matter to an appropriate body or individual for consideration or reconsideration;
2. to leave out words;
3. to leave out words and insert or add others; or
4. to insert or add words.

as long as the effect of (1) to (4) is not to negate the Motion.

- 16.6.2 Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.
- 16.6.3 If an amendment is not carried, other amendments to the original Motion may be moved.
- 16.6.4 If an amendment is carried, the Motion as amended takes the place of the original Motion. This becomes the substantive Motion to which any further amendments are moved. The substantive Motion will proceed to be debated and voted upon in accordance with these procedure rules.

#### 16.7 **Alteration of Motion**

- 16.7.1 A Member may alter their Motion of which he/she has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.
- 16.7.2 A Member may alter their Motion which he/she has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.
- 16.7.3 Only alterations which could be made as an amendment may be made.

#### 16.8 **Withdrawal of Motion**

A Member may withdraw their Motion which he/she has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No Member may speak on the Motion after the mover has asked permission to withdraw it unless permission is refused.

#### 15.9 **Right of Reply**

- 15.9.1 The mover of a Motion has a right to reply at the end of the debate on the Motion, immediately before it is put to the vote.
- 15.9.2 If an amendment is moved, the mover of the original Motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.
- 15.9.3 The mover of the amendment has no right of reply to the debate on his or her amendment.

#### 15.10 **Motions Which May be Moved During Debate**

When a Motion is under debate, no other Motion may be moved except the following procedural Motions:-

- (a) to withdraw a Motion;



- (b) to amend a Motion;
- (c) to proceed to the next business;
- (d) that the question be now put;
- (e) to adjourn a debate;
- (f) to adjourn a meeting;
- (g) that the meeting continue beyond 2½ hours in duration;
- (h) to exclude the public and press in accordance with the Access to Information Rules; and
- (i) to not hear further a Member named under **Rule 21.4** or to exclude them from the meeting under **Rule 21.5**.

#### 15.11 Closure Motions

A Member may move, without comment, the following Motions at the end of a speech of another Member:-

- (i) to proceed to the next business – if a Motion to proceed to the next business is seconded and the Chairman thinks the item has been sufficiently discussed, he or she will give the mover of the original Motion a right of reply and then put the procedural Motion to the vote.
- (ii) that the question be now put – if a Motion that the question be now put is seconded and the Chairman thinks the item has been sufficiently discussed, he/she will put the procedural Motion to the vote. If it is passed he/she will give the mover of the original Motion a right of reply before putting his/her Motion to the vote.
- (iii) to adjourn a debate – if a Motion to adjourn the debate or to adjourn the meeting is seconded and the Chairman thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, he/she will put the procedural Motion to the vote without giving the mover of the original Motion the right of reply.

#### 15.12 Point of Order

A Member may raise a point of order at any time. The Chairman will hear them immediately. A point of order may only relate to any alleged breach of these Council Rules of Procedure or the law. The Member must indicate the rule or law and the way in which he/she considers it has been broken. The ruling of the Chairman on the matter will be final.

#### 15.13 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 on the admissibility of a personal explanation will be final.

## **17 PREVIOUS DECISIONS AND MOTIONS**

### **16.1 Motion to Rescind a Previous Decision**

A Motion or amendment to rescind a decision made at a meeting of Council within the past six months cannot be moved unless the Notice of Motion is signed by at least 10 Members.

### **16.2 Motion Similar to One Previously Rejected**

A Motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved unless the notice of Motion or amendment is signed by at least 10 Members. Once the Motion or amendment is dealt with, no one can propose a similar Motion or amendment for six months.

## **17 VOTING**

### **17.1 Majority**

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those Members voting and present in the room at the time the question was put.

### **17.2 Chairman's Casting Vote**

If there are equal numbers of votes for and against, the Chairman will have a second or casting vote provided he or she has already exercised a substantive vote. There will be no restriction on how the Chairman chooses to exercise a casting vote.

### **17.3 Method of Voting**

Voting will be by show of hands or by electronic voting (if available). The Chairman may also take the consent of the meeting by an indication of consensus.

In extenuating circumstances, the Chairman may use another appropriate form of voting after consultation with the Monitoring Officer.

### **17.4 Recorded Vote**

If one-fifth (rounded up) of the Members present at the meeting and entitled to vote stand to demand it, the names for and against the Motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

**17.5 Right to Require Individual Vote to be Recorded**

Where any Member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the Motion or abstained from voting.

## **17.6 Voting on Appointments**

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person. (see explanatory note)

## **18. MINUTES**

### **18.1 Signing the Minutes**

The Chairman will sign the Minutes of the proceedings at the next suitable meeting. The Chairman will move that the Minutes of the previous meeting be signed as a correct record. The only part of the Minutes that can be discussed is their accuracy.

### **18.2 No Requirement to Sign Minutes of Previous Meeting at Extraordinary Meeting**

There is no requirement to sign the minutes of a previous meeting at Extraordinary Council. The minutes will be signed at the next suitable meeting for the purposes of paragraph 41(1) and (2), Schedule 12 of the Local Government Act 1972.

### **18.3 Form of Minutes**

Minutes will contain all Motions and amendments in the exact form and order the Chairman put them.

## **19. RECORD OF ATTENDANCE**

All Members present during the whole or part of a meeting will be recorded by the Committee Administrator.

## **20. EXCLUSION OF PUBLIC AND PRESS**

Members of the public and press may only be excluded either in accordance with the Access to Information Rules in Part 4 of this Constitution or **Rule 22 (Disturbance by Public)**.

## **21. MEMBERS' CONDUCT**

### **21.1 Standing to Speak**

When a Member speaks at Full Council they must stand and address the meeting through the Chairman. Other Members must remain seated whilst a Member is speaking unless they wish to make a point of order or a point of personal

explanation.

## **21.2 Chairman Standing**

When the Chairman stands during a debate, any Member speaking at the time must stop and sit down. The meeting must be silent.

## **21.3 Withdrawal from Meetings**

If a Member has a Disclosable Pecuniary Interest in an item of business they must withdraw from the meeting room (including from the public gallery) during the whole of consideration of that item of business, except where they are permitted to remain as a result of the grant of a dispensation.

If a Member has an Other Registrable Interest or Non-Registrable Interest in an item of business they must consider withdrawing from the meeting room during the whole of consideration of that item of business, except where they are permitted to remain as a result of the grant of a dispensation. Members must have regard to the code of conduct guidance on these categories of interests and may take advice from the Monitoring Officer.

## **21.4 Member Not to be Heard Further**

If a Member persistently disregards the ruling of the Chairman by behaving improperly or offensively or deliberately obstructing business, the Chairman may move that the Member not be heard further. If seconded, the Motion will be voted on without discussion.

## **21.5 Member to Leave the Meeting**

If the Member continues to behave improperly after such a Motion is carried, the Chairman may move that either the Member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the Motion will be voted on without discussion.

## **21.6 General Disturbance**

If there is a general disturbance making orderly business impossible, the Chairman may adjourn the meeting for as long as he/she thinks fit.

## **22. DISTURBANCE BY PUBLIC**

### **22.1 Removal of Member of the Public**

If a Member of the public interrupts proceedings, the Chairman will warn the person concerned. If they continue to interrupt, the Chairman will order their removal from the meeting room.

### **22.2 Clearance of Part of Meeting Room**

If there is a general disturbance in any part of the meeting room open to the public, the Chairman may call for that part to be cleared.

## **23. SUSPENSION AND AMENDMENT OF COUNCIL PROCEDURE RULES**

### **23.1 Suspension**

All of these Council Rules of Procedure except this Rule and **Rules 17.5 and 18.2** may be suspended by Motion on notice or without notice if at least one half of the whole number of Members of the Council are present. Suspension can only be for the duration of the meeting.

### **23.2 Amendment**

Any Motion to add to, vary or revoke these Council Rules of Procedure will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.

# Committee and Sub-Committee Procedure Rules

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## **1. APPOINTMENT OF SUB-COMMITTEES AND WORKING GROUPS**

- 1.1 In addition to Sub-Committees appointed by the Council, a Committee may appoint Sub-Committees or Working Groups as it deems appropriate.
- 1.2 The membership of a Sub-Committee will reflect the political balance of the Council where so far as is reasonably practicable. Sub-Committee meetings will be subject to the procedure rules contained within this section.
- 1.3 Working Groups need not be politically balanced and will not generally be open to attendance by the public. The normal rules of procedure will not apply to Working Groups.

## **2. APPOINTMENT OF SUBSTITUTE MEMBERS OF COMMITTEES AND SUB-COMMITTEES**

- 2.1 Substitute Members may be nominated for Committees or their Sub-Committees by each political group represented on the Committee or Sub-Committee and shall comprise a number no greater than the number equal to the number of ordinary Members nominated by a political group to that Committee or Sub-Committee. Substitutes for Regulatory Committees must have completed the required training, as determined by the Monitoring Officer.
- 2.2 A Substitute Member attending a meeting of a Committee or Sub-Committee has the same powers and responsibilities as a full Member of the Committee or Sub-Committee.
- 2.3 A Substitute Member attending a meeting is expected to have read all relevant papers and to be fully prepared to participate in the meeting.
- 2.4 A Member or Substitute Member first in attendance at a meeting of a Committee or Sub-Committee cannot be substituted or replaced during the course of that meeting.
- 2.5 Substitute Members may attend meetings in that capacity only to take the place of the ordinary Member for whom they are the designated substitute.  
  
In the event of the ordinary Member of the Committee or Sub-Committee being present at the start of the meeting, the substitution shall not take place.
- 2.6 Substitute Members are not appropriate in the case of Working Groups.

## **3. ORDINARY MEETINGS**

Ordinary meetings will:-



- (i) elect a person to preside if the Chairman and Vice-Chairman are not present;
- (ii) receive apologies for absence;
- (iii) receive declarations of interest;
- (iv) approve the Minutes of the last Committee meeting for signing by the Chairman, subject to any agreed amendments;
- (v) respond to questions on notice from Councillors or Members of the Public in accordance with Committee Procedure Rules xx.
- (vi) deal with any business deferred from the last Committee meeting;
- (vii) consider any other business specified in the summons to the meeting.

#### **4. TIME AND PLACE OF MEETINGS**

- 4.1 An annual calendar of meetings will be agreed by the Council. Meetings of Committees will be convened in accordance with this schedule. The time and place of the meeting will be notified in the summons. Meetings will usually commence at 7:30pm.
- 4.2 The Committee or Sub-Committee Chairman may convene additional meetings of the Committee or Sub-Committee as required. Members of the Committee or Sub-Committee will be consulted before the date of any additional meeting is fixed.
- 4.3 The Committee or Sub-Committee Chairman may cancel any meeting where there is insufficient business to be transacted. All Members will be notified of the cancellation of a meeting.

#### **5. NOTICE OF AND SUMMONS TO MEETINGS**

- 5.1 The Monitoring Officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules.
- 5.2 At least 5 clear working days before a meeting, the Monitoring Officer will send a summons signed by him or her by first class post or electronic delivery to every Member of the Committee or Sub-Committee and any appointed substitutes or leave it at their usual place of residence. The summons will give the date, time and place of each meeting and specify the business to be transacted and will be accompanied by such reports as are available.

#### **6 URGENT BUSINESS**

- 6.1 No business shall be transacted at a meeting of the Committee or Sub-Committee other than that specified in the agenda except business brought before the meeting as a matter of urgency as certified by the Chairman for specific reasons which are to be included in the Minutes.

## **7 NO CONFIDENCE IN THE COMMITTEE CHAIRMAN**

- 7.1 At any time a motion of no confidence in the Chairman of a Committee may be moved without notice. If seconded, the motion will be immediately voted on without discussion.
- 7.2 If the motion succeeds, by simple majority, the Vice-Chairman of the committee will temporarily assume the Chair.
- 7.3 The matter will be referred to the next ordinary meeting of the Council at which the Council will consider the vote of no confidence and decide whether to remove the Committee Chairman or reaffirm their appointment.
- 7.4 The mover of the vote of no confidence and the Committee Chairman will be entitled to state their case to the Council.

## **8. QUORUM**

- 8.1 The quorum of a meeting will be one quarter of the whole number of Members rounded up. During any meeting if the Chairman counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chairman. If he/she does not fix a date, the remaining business will be considered at the next meeting of the Committee.

## **9. DURATION OF MEETING**

- 9.1 Any meeting that has lasted for 2½ hours will adjourn immediately, unless the majority of Members present vote for the meeting to continue. The resolution to continue will specify the maximum amount of time for such an extension, usually in increments of 30 minutes.
- 9.2 If the meeting is not extended all remaining business will be deferred to a future meeting at a time and date fixed by the Chairman. If he/she does not fix a date, the remaining business will be considered at the next meeting of the Committee. Any matters deferred by virtue of this procedure rule will be considered as the first item of substantive business at the next meeting.

## **10. QUESTIONS BY THE PUBLIC**

- 10.1 **General**

Members of the public will be entitled to ask questions on notice at any Committee meeting. Questions may be put to the Chairman of the Committee. Each member of the public will be entitled to submit a maximum of 1 question. The maximum total time allowed for questions at a meeting will be 15 minutes.

#### **10.2 Order of Questions**

Questions will be asked in the order notice of them was received.

#### **10.3 Notice of Questions**

A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Monitoring Officer no later than midday (12:00), 3 clear working days before the day of the meeting. Each question must give the name and address of the questioner.

#### **10.4 Scope of Questions**

The Monitoring Officer, in consultation with the Chairman, may reject a question if it:-

- is not about a matter for which the local authority has a responsibility or which affects the district;
- is defamatory, frivolous, offensive or personal in nature;
- is substantially the same as a question which has been put at a meeting of the Council or a Committee the past six months; or
- requires the disclosure of confidential or exempt information.

Any preamble to a question will not normally be allowed unless it is essential to understanding the nature of the question to be put.

#### **10.5 Record of Questions**

Copies of all questions will be circulated to all Members and will be made available to the public attending the meeting. All questions and answers will be recorded verbatim in the minutes of the meeting.

The Monitoring Officer will maintain a record of rejected questions and the reasons for rejection.

#### **10.6 Asking the Question at the Meeting**

The Chairman will invite the questioner to put the question. If a questioner who has submitted a written question is unable to be present, they may ask the Chairman to put the question on their behalf.

The Chairman may ask the question on the questioner's behalf, indicate that a written reply will be given or decide, in the absence of the questioner, that the question will not be dealt with.

#### **10.7 Supplementary Question**

A questioner will be entitled to ask one supplementary question. The supplementary question must relate directly to the original question or arise directly from the response given to the original question. The Chairman will have discretion to reject a supplementary question.

#### **10.8 Form of Response**

A response to a question on notice by a member of the public may take the form of a verbal or written response. The written response will normally be read out at the meeting by the Chairman for the benefit of those watching the meeting online.

Responses to supplementary questions may be given immediately or may be provided in writing to the questioner within 5 clear working days of the date of the meeting. A copy of the response will be circulated to all Members.

#### **10.9 Written Answers**

Any question which cannot be dealt with during public question time will be dealt with by a written answer within 5 clear working days of the date of the meeting. A copy of the response will be circulated to all Members.

### **11 QUESTIONS BY MEMBERS**

#### **11.1 Questions by Committee Members**

Members may be asked as many questions as is necessary to aid understanding of any item under consideration on the agenda. The Chairman will have the final ruling on the suitability of any such question.

#### **11.2 Questions by Visiting Members**

Any Member of the Council may attend a meeting of a Committee or Sub-Committee. Visiting Members may ask questions of the Committee Members or Officers at the discretion of the Chairman.

## **12. RULES OF DEBATE**

NOTE: These rules of debate will not apply to the Development Committee, which will instead follow the procedures set out in the Planning Good Practice Guidelines set out in Part 5 of this constitution.

### **12.1 No Speeches Until Motion Seconded**

No speeches may be made until after the mover has moved a proposal and explained the purpose of it and the Motion has been seconded.

### **15.1 Right to Require Motion in Writing**

Unless notice of the Motion has already been given, the Chairman may require it to be written down and handed to him/her before it is discussed.

### **15.2 Secunder's Speech**

When seconding a Motion or amendment, a Member may reserve their speech until later in the debate.

### **15.3 Content and Length of Speeches**

Speeches must be directed to the question under discussion, to a personal explanation or point of order. No speech may exceed 5 minutes without the consent of the Chairman. Before commencement of the main business, a meeting may agree by a majority vote to a lesser time.

### **15.4 When a Member May Speak Again**

A Member who has spoken on a Motion may not speak again whilst it is the subject of debate, except:-

- (a) to speak once on an amendment moved by another Member;
- (b) to move a further amendment if the Motion has been amended since he/she last spoke;
- (c) if his/her first speech was on an amendment moved by another Member, to speak on the main issue (whether or not the amendment on which he/she spoke was carried);
- (d) in exercise of a right of reply (see paragraph 15.9);
- (e) on a point of order (see paragraph 15.12); and

- (f) by way of personal explanation or clarification (see paragraph 15.13).

## 15.5 Amendments to Motions

15.6.1 An amendment to a Motion must be relevant to the Motion and will either be:-

1. to refer the matter to an appropriate body or individual for consideration or reconsideration;
2. to leave out words;
3. to leave out words and insert or add others; or
4. to insert or add words.

as long as the effect of (1) to (4) is not to negate the Motion.

15.6.2 Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.

15.6.2 If an amendment is not carried, other amendments to the original Motion may be moved.

15.6.3 If an amendment is carried, the Motion as amended takes the place of the original Motion. This becomes the substantive Motion to which any further amendments are moved. The substantive Motion will proceed to be debated and voted upon in accordance with these procedure rules.

## 15.7 Alteration of Motion

15.7.1 A Member may alter their Motion of which he/she has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.

15.7.2 A Member may alter their Motion which he/she has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.

15.7.3 Only alterations which could be made as an amendment may be made.

## 15.8 Withdrawal of Motion

A Member may withdraw their Motion which he/she has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No Member may speak on the Motion after the mover has asked permission to withdraw it unless permission is refused.

## 15.9 **Right of Reply**

- 15.9.1 The mover of a Motion has a right to reply at the end of the debate on the Motion, immediately before it is put to the vote.
- 15.9.2 If an amendment is moved, the mover of the original Motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.
- 15.9.3 The mover of the amendment has no right of reply to the debate on his or her amendment.

## 15.10 **Motions Which May be Moved During Debate**

When a Motion is under debate, no other Motion may be moved except the following procedural Motions:-

- (a) to withdraw a Motion;
- (b) to amend a Motion;
- (c) to proceed to the next business;
- (d) that the question be now put;
- (e) to adjourn a debate;
- (f) to adjourn a meeting;
- (g) that the meeting continue beyond 2½ hours in duration;
- (h) to exclude the public and press in accordance with the Access to Information Rules; and
- (i) to not hear further a Member named under **Rule 21.4** or to exclude them from the meeting under **Rule 21.5**.

## 15.11 **Closure Motions**

A Member may move, without comment, the following Motions at the end of a speech of another Member:-

- (i) to proceed to the next business – if a Motion to proceed to the next business is seconded and the Chairman thinks the item has been sufficiently discussed, he or she will give the mover of the original Motion a right of reply and then put the procedural Motion to the vote.
- (ii) that the question be now put – if a Motion that the question be now put is seconded and the Chairman thinks the item has been sufficiently discussed, he/she will put the procedural Motion to the vote. If it is passed he/she will give the mover of the original

Motion a right of reply before putting his/her Motion to the vote.

- (iii) to adjourn a debate – if a Motion to adjourn the debate or to adjourn the meeting is seconded and the Chairman thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, he/she will put the procedural Motion to the vote without giving the mover of the original Motion the right of reply.

#### **15.12 Point of Order**

A Member may raise a point of order at any time. The Chairman will hear them immediately. A point of order may only relate to any alleged breach of these Council Rules of Procedure or the law. The Member must indicate the rule or law and the way in which he/she considers it has been broken. The ruling of the Chairman on the matter will be final.

#### **15.13 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 on the admissibility of a personal explanation will be final.

### **16 PREVIOUS DECISIONS AND MOTIONS**

#### **16.1 Motion to Rescind a Previous Decision**

A Motion or amendment to rescind a decision made at a meeting of the Committee within the past six months cannot be moved unless the Notice of Motion is signed by at least 10 Members.

#### **16.2 Motion Similar to One Previously Rejected**

A Motion or amendment in similar terms to one that has been rejected at a meeting of the Committee in the past six months cannot be moved unless the notice of Motion or amendment is signed by at least 10 Members. Once the Motion or amendment is dealt with, no one can propose a similar Motion or amendment for six months.

### **17 VOTING**

#### **17.1 Majority**

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those Members voting and present in the room at the



time the question was put.

#### **17.2 Chairman's Casting Vote**

If there are equal numbers of votes for and against, the Chairman will have a second or casting vote provided he or she has already exercised a substantive vote. There will be no restriction on how the Chairman chooses to exercise a casting vote.

#### **17.3 Method of Voting**

Voting will be by show of hands or by electronic voting (if available). The Chairman may also take the consent of the meeting by an indication of consensus.

In extenuating circumstances, the Chairman may use another appropriate form of voting after consultation with the Monitoring Officer.

#### **17.4 Recorded Vote**

If one-fifth (rounded up) of the Members present at the meeting and entitled to vote stand to demand it, the names for and against the Motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

#### **17.5 Right to Require Individual Vote to be Recorded**

Where any Member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the Motion or abstained from voting.

## **18. MINUTES**

### **18.1 Signing the Minutes**

The Chairman will sign the Minutes of the proceedings at the next suitable meeting. The Chairman will move that the Minutes of the previous meeting be signed as a correct record. The only part of the Minutes that can be discussed is their accuracy.

### **18.2 No Requirement to Sign Minutes of Previous Meeting at Extraordinary Meeting**

There is no requirement to sign the minutes of a previous meeting at Extraordinary Council. The minutes will be signed at the next suitable meeting for the purposes of paragraph 41(1) and (2), Schedule 12 of the Local Government Act 1972.

### **18.3 Form of Minutes**

Minutes will contain all Motions and amendments in the exact form and order the Chairman put them.

## **19. RECORD OF ATTENDANCE**

All Members present during the whole or part of a meeting will be recorded by the Committee Administrator.

## **20. EXCLUSION OF PUBLIC AND PRESS**

Members of the public and press may only be excluded either in accordance with the Access to Information Rules in Part 4 of this Constitution or **Rule 22 (Disturbance by Public)**.

## **21. MEMBERS' CONDUCT**

### **21.1 Chairman Standing**

When the Chairman stands during a debate, any Member speaking at the time must stop. The meeting must be silent.

### **21.2 Withdrawal from Meetings**

If a Member has a Disclosable Pecuniary Interest in an item of business they must withdraw from the meeting room (including from the public gallery) during the whole of consideration of that item of business, except where they are permitted to remain as a result of the grant of a dispensation.

If a Member has an Other Registrable Interest or Non-Registrable Interest in an item of business they must consider withdrawing from the meeting room during

the whole of consideration of that item of business, except where they are permitted to remain as a result of the grant of a dispensation. Members must have regard to the code of conduct guidance on these categories of interests and may take advice from the Monitoring Officer.

#### **21.4 Member Not to be Heard Further**

If a Member persistently disregards the ruling of the Chairman by behaving improperly or offensively or deliberately obstructing business, the Chairman may move that the Member not be heard further. If seconded, the Motion will be voted on without discussion.

#### **21.5 Member to Leave the Meeting**

If the Member continues to behave improperly after such a Motion is carried, the Chairman may move that either the Member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the Motion will be voted on without discussion.

#### **21.6 General Disturbance**

If there is a general disturbance making orderly business impossible, the Chairman may adjourn the meeting for as long as he/she thinks fit.

### **22. DISTURBANCE BY PUBLIC**

#### **22.1 Removal of Member of the Public**

If a Member of the public interrupts proceedings, the Chairman will warn the person concerned. If they continue to interrupt, the Chairman will order their removal from the meeting room.

#### **22.2 Clearance of Part of Meeting Room**

If there is a general disturbance in any part of the meeting room open to the public, the Chairman may call for that part to be cleared.

### **23. SUSPENSION AND AMENDMENT OF COMMITTEE PROCEDURE RULES**

#### **23.1 Suspension**

All of these Rules of Procedure except this Rule and **Rules 17.5 and 18.2** may be suspended by Motion on notice or without notice if at least one half of the whole number of Members of the Committee are present. Suspension can only be for the duration of the meeting.

#### **23.2 Amendment**

Any Motion to add to, vary or revoke these Committee Rules of Procedure will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Committee.

# **Access to Information Procedure Rules**

## **ACCESS TO INFORMATION PROCEDURE RULES**

### **1. Scope**

Unless otherwise stated these rules apply to all meetings of the Full Council, its Committees and Sub-Committees (together called meetings). They do not apply to working groups, which have no delegated authority.

### **2. Additional Rights to Information**

These rules do not overrule any more specific rights to information contained elsewhere in this Constitution or the law.

### **3. Rights to Attend Meetings**

Members of the public may attend all meetings, subject only to the exceptions in these rules (see rule 10).

### **4. Notice of Meetings**

The Council will give at least five clear working days' notice of any meeting by posting details of the meeting at the Council Offices and on the Council's website.

### **5. Access to Agenda and Reports Before the Meeting**

The Council will make copies of the agenda and reports open to the public available for inspection at the designated offices and the Council's website at least five clear working days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda (where reports are prepared after the summons has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to Councillors).

### **6. Supply of Copies**

The Council will supply copies of:-

- (a) any agenda and reports that are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) paper copies of the documents supplied to Councillors, save for any exempt papers, can be supplied to residents on payment of a charge for postage and any other costs as set out in the Council's Fees and Charges. There will be no costs if the papers are sent in an electronic format.

### **7. Access to Minutes etc After the Meeting**

The Council will make available copies of the following for six years after a meeting after which they will be available electronically:-

- (a) the minutes of the meetings of Council, Committees and Sub-Committees and the records of decisions taken, together with reasons, excluding any part of the minutes of proceedings that were not open to the public or which disclose exempt or confidential information;
- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

All agendas, reports and minutes that are open to the public are available on the Council's website at [www.rochford.gov.uk](http://www.rochford.gov.uk).

## **8. Background Papers**

### **8.1 List of Background Papers**

The officer responsible will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:-

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report

but does not include published works or those which disclose exempt or confidential information (as defined in Rule 10).

### **8.2 Public Inspection of Background Papers**

The Council will make available, on request, for public inspection for six years after the date of a meeting a copy of each of the documents on the list of background papers.

## **9. Summary of Public's Rights**

A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and available to the public at the Council Offices, and on the Council's website.

## **10. Exclusion of Access by the Public to Meetings**

### **10.1 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.

#### 10.2 Meaning of Confidential Information

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

#### 10.3 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 and the public interest in maintaining the exemption would outweigh the public interest in disclosing it.

Where a 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.

#### 10.4 The Public Interest

The public interest test is that used by the Freedom of Information Act which provides that 'in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'

#### 10.5 Meaning of Exempt Information

Exempt information means information falling within the following 10 categories (subject to any condition).

Information falling within paragraphs 1 – 7 (which is not prevented from being exempt information by conditions) 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:-

<b>CATEGORY</b>	<b>CONDITION</b>
1 Information relating to an individual.	
2 Information which is likely to reveal the identity of an individual.	



CATEGORY	CONDITION
<p>3 Information relating to the financial or business affairs of any person (including the authority holding that information).</p>	<p>“Financial or business affairs” includes contemplated as well as past or current activities.</p> <p>Information is not exempt information under this paragraph if it is required to be registered under the Companies Acts (as defined in section 2 of the Companies Act 2006); the Friendly Societies Act(s) 1974 &amp; 1992; the Industrial and Provident Societies Acts 1965 to 1978; the Co-Operative and Community Benefit Societies Act 2014; the Building Societies Act 1986; or the Charities Act 2011.</p>
<p>4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</p>	<p>“Employee” means a person employed under a contract of service.</p> <p>“Labour relations matter” means matters which may be the subject of a trade dispute within the meaning of current legislation or any dispute about such matters.</p>
<p>5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>	
<p>6 Information that reveals that the authority proposes:—</p> <p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make an order or direction under any enactment.</p>	
<p>7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of a crime.</p>	

Information falling within any of paragraphs 1 - 7 is not exempt by virtue of that paragraph if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

In respect of the Standards Sub-Committee exempt information also means information falling within the following 3 categories:-

CATEGORY	CONDITION
8 Information which is subject to any obligation of confidentiality.	
9 Information which relates in any way to matters concerning national security.	
10 The deliberations of the Standards Committee or a Sub-Committee of the Standards Committee established under the provisions of Part III of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 64(2) or 71(2) of the Local Government Act 2000.	

## 11. Exclusion of Access by the Public to Reports

If the Monitoring Officer thinks fit, the Council may exclude access by the public to reports which, in their opinion, relate to items during which, in accordance with Rule 10, 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.

All exempt reports will be listed on a central record with a review date to ensure that any information to which an exemption has been applied is able to be made public as soon as that exemption is no longer applicable. The Monitoring Officer shall be responsible for undertaking such reviews and for determining whether or not the exemption still applies, after considering the public interest test.

An annual report shall be presented to the Full Council containing the details of reports and documents where the exemption has been lifted.

## 12. Scrutiny & Performance Committee's Access to Documents

### 12.1 Rights to Copies

Subject to Rule 12.2 below, a Member of the Scrutiny & Performance Committee is entitled to copies of any document which contains material relating to any business transacted at a meeting of a decision-making body of the Council.

### 12.2 Limit on Rights

A member of an Scrutiny & Performance Committee will not be entitled to:-

- (a) any document that is in draft form;

(b) 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 any review contained in any programme of work of such a committee or sub-committee of such a committee; or

(c) any document or part of a document containing the advice of a political adviser or assistant

(a)

### **13. Additional Rights of Access for Members**

#### **13.1 Material Relating to Business**

All Members will be entitled to inspect any document that contains material relating to any business to be transacted or previously transacted at a public or private meeting unless:-

(a) it contains exempt information falling within paragraphs 1, 2, 4, 5 or 7 of the categories of exempt information; or

(b) it contains exempt information falling within paragraph 3 of the categories of exempt information and that information relates to any terms proposed or to be proposed by or to the Authority in the course of negotiations for a contract; or

(c) it contains the advice of a political adviser.

#### **13.2 Nature of Rights**

These rights of a Member are additional to any other right they may have.

### **14. Freedom of Information Act 2000**

The Council will publish documents mentioned in its Publication Scheme approved by the Information Commissioner. Copies of the scheme are available on the Council's website.

# **Budget and Policy Framework Procedure Rules**



# **BUDGET AND POLICY FRAMEWORK PROCEDURE RULES**

## **1. The Framework for Decisions**

In these Procedure Rules 'Budget' and 'Policy Framework' have the meanings given to them in Article 4 of the Constitution.

For the avoidance of doubt, any of the functions or responsibilities of the Chief Finance Officer in these Procedure Rules may be discharged by such officers who may be nominated by them from time to time to exercise those duties on their behalf.

The Council will be responsible for the adoption of its Budget and Policy Framework as set out in Article 4. Once a Budget or a Policy Framework (or any constituent part of this) is in place, it will be the responsibility of Committees of the Council to implement it to the extent that this involves the discharging of any functions delegated to a Committee in Part 3 of this Constitution.

The arrangements for the management of the Council's Budget are set out in the Financial Procedure Rules (The Financial Regulations) which appear later in this part of the Constitution.

In addition, the following provisions apply:-

## **2. Process for Preparing the Budget and Developing the Policy Framework**

### **Budget**

The process by which the budget shall be developed is:-

- (a) The Strategy, Finance and Policy Committee will publish a timetable for making proposals to the Council for the adoption of the Revenue Budget and Capital Programme and its arrangements for any consultation after publication of those proposals. The consultation period will be not less than 6 weeks. During this consultation period each Policy Committee will submit its budget proposals to the Strategy, Finance and Policy Committee.
- (b) At the end of the consultation period, the Strategy, Finance and Policy Committee will draw up firm proposals for submission to the Council, taking account of responses to the consultation.
- (c) The proposals drawn up by the Strategy, Finance and Policy Committee for the adoption of the Revenue Budget and Capital Programme must then be referred by the S.151 Officer, at the earliest opportunity, to the Council for decision.

- (d) In reaching a decision on the Strategy, Finance and Policy Committee's proposals, the Council may approve them, amend them, or substitute and approve its own proposals in their place.
- (e) In approving the Revenue Budget and Capital Programme, the Council will also specify the degree of in-year changes which may be made by a Committee of the Council under the rules relating to virement within the Revenue Budget and Capital Programme, as set out in the Financial Regulations (see Part 5 of the Constitution below).

Any other changes to the Revenue Budget or Capital Programme are reserved to the Council.

### **Policy Framework**

The process by which the Policy Framework shall be developed is:-

- (a) The Policy Committees will from time to time develop new policies which fall within their area of responsibility as set out in Part 3 of this Constitution. They will also periodically review the existing policies of the Council.
- (b) The Committees will undertake such consultation in respect of these policies as they deem necessary.
- (c) The Committee will then draw up, having regard to the results of any consultation, proposals for new policies or amendments to existing policies for referral to the Council as soon as possible.
- (d) In reaching a decision on the Committee's proposals, the Council may approve them, amend them, or substitute and approve its own proposals in their place

### **3. Decisions Outside the Budget or Policy Framework**

Subject to the rules relating to urgency (see 4 below) and virement (see 5 below), a decision which is contrary to the Policy Framework, or contrary to or not wholly in accordance with the Budget approved by the Full Council may only be taken by the Full Council.

If any Committee or any officers, or joint arrangements which discharge Council functions have any doubt whether a proposed decision is in accordance with the approved Budget, they shall take advice from the Monitoring Officer and the S.151 Officer.

If the advice of either of those officers is that a decision would be contrary to the Policy Framework, or contrary to or not wholly in accordance with the Budget, then, again subject to the rules on virement, the decision may only be taken by the Council, unless it is a matter of urgency

(see 4 below).

#### **4. Urgent Decisions Outside the Budget or Policy Framework**

A decision which is contrary to the Policy Framework, or contrary to or not wholly in accordance with the approved Budget but which is a matter of urgency may be taken other than by the Council only if:

- i. if it is not practical to convene a quorate meeting of the Full Council; and
- ii. if the Chairman of the Scrutiny & Performance Committee agrees that the decision is a matter of urgency.

The reasons why it is not practical to convene a quorate meeting of Full Council and the Chairman of the Scrutiny & Performance Committee's consent to the decision being taken as a matter of urgency must be noted on the record of the decision. In the absence of the Chairman of the Scrutiny & Performance Committee the consent of the Chairman of the Council, and in the absence of both, the Vice-Chairman will be sufficient.

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.

#### **5. Virement**

The rules relating to virement within the Revenue Budget and Capital Programme are set out in the Financial Regulations.

#### **6. In-Year Changes to the Budget and Policy Framework**

The responsibility for agreeing the Budget and Policy Framework lies with the Council, and decisions by any Committee, Sub-Committee or any officer or joint arrangements discharging Council functions must be in line with it. No changes to any policy and strategy which makes up the policy framework may be made by those bodies or individuals except those changes:-

- (a) which will result in the closure or discontinuance of a service or part of service to meet a budgetary constraint;
- (b) necessary to ensure compliance with the law, ministerial direction or Government guidance;
- (c) in relation to the policy framework in respect of a policy which would normally be agreed by the Council following consultation, but where the existing policy document is silent on the matter under consideration.



# Financial Regulations

## Financial Regulations

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In the following Regulations all amounts quoted shall be net of Value Added Tax.

## **1. FINANCIAL ADMINISTRATION**

- 1.1 The Director of Resources is the Chief Finance Officer in accordance with Article 12 of this Constitution.
- 1.2 The Chief Finance Officer is responsible for the proper administration of the Council's financial affairs for the purposes of Section 151 of the Local Government Act 1972. In the absence of the Chief Finance Officer, the Chief Finance Officer will nominate a deputy.
- 1.3 As the Council's financial and economic adviser, the Chief Finance Officer shall report to the Council with respect to the level of financial resources proposed to be utilised in each financial year and shall keep it informed with respect to the Council's finances and financial performance.
- 1.4 The Corporate Leadership Team shall be responsible for the accountability and control of staff, and the security, custody and control of all other resources including plant, buildings, materials, cash and stores in accordance with the Scheme of Delegations.
- 1.5 The Chief Executive shall be responsible for ensuring that the staff comply with these Financial Regulations and the Corporate Leadership Team shall inform the Chief Finance Officer of any matter within their responsibility which is liable materially to affect the finances of the Council before any provisional or other commitment is incurred or before reporting thereon to the Council.
- 1.6 The Financial Regulations will apply to all financial activities carried out by the Council.
- 1.7 Where a member of the Corporate Leadership Team proposes:-
  - (i) a new policy, or
  - (ii) a variation of existing policy, or
  - (iii) a substantial variation in the means or time-scale of implementing existing policywhich affects or may affect the Council finances, they shall submit a report to the Council.
- 1.8 In these Regulations the term Council shall include any Committee reporting to the Council duly authorised to exercise such functions and the term CLT will mean any individual member of the Corporate Leadership Team.

1.9 In these regulations, where there is reference to members of the Leadership Team, the responsibility may have been delegated.

## **2. ACCOUNTING ARRANGEMENTS**

2.1 The Chief Finance Officer shall:-

- (i) make satisfactory accounting arrangements for all financial transactions of the Council in consultation, where necessary, with the CLT;
- (ii) make safe and efficient arrangements for the receipt and payment of the Council's money;
- (iii) review such arrangements periodically.

## **3. FINANCIAL PLANNING AND CONTROL**

### **Capital Programmes**

- 3.1 The programme shall be agreed by the Full Council annually as part of the budget setting process.
- 3.2 Items in an approved programme, unless reserved to Full Council, may be proceeded without the further approval of the Full Council.
- 3.3 Following the approval of capital projects by the Full Council tenders may be invited and accepted, (subject to compliance with Contract Procedure Rules), without further reference to the Full Council.
- 3.4 The substitution of a new capital project for one already included in an approved capital programme shall only be approved by the Full Council following the submission of a report by the responsible senior officer(s) and the Chief Finance Officer.
- 3.5 Expenditure on capital projects not included in a capital programme shall not be incurred without the specific approval of the Full Council, following the submission of a report by the responsible senior officer(s) and the Chief Finance Officer on the costs, funding and subsequent revenue costs.
- 3.6 The Chief Finance Officer shall advise as to, and in appropriate cases shall determine, the method of financing capital expenditure on approved capital projects, subject to statutory and financial constraints.

### **Annual Revenue Budget and Budgetary Control**

- 3.7 Budget proposals will be prepared in accordance with the Budget and Policy Framework Procedure Rules and submitted to the Full Council for consideration and approval.

- 3.8 As soon as practicable after the end of each financial year, the Chief Finance Officer shall submit to the Full Council the Council's final accounts together with such supporting data as the Chief Finance Officer and the Chief Executive consider necessary and such further information as the Council may require.

### **Supplementary Budgets**

- 3.9 No officer or Committee of the Council shall incur expenditure which cannot be met from the amount provided in the revenue budget under a head of budget (including any virement) unless a supplementary budget has been approved.
- 3.10 Supplementary budgets may be used where additional financial commitments cannot be met from virements and arise from the following:-
- Unavoidable legal requirements arising from current service plans, including the need to publish statutory notices.
  - External legal costs arising from actions brought by or against the Council or incurred in respect of public enquiries.
  - Other inescapable costs or income reductions that could not have been foreseen and arise from current service plans.
- 3.11 Requests for supplementary budgets shall be submitted to the Chief Finance Officer and:-
- The Chief Finance Officer shall have the authority to grant approval for sums up to £10,000.
  - The Chief Finance Officer shall have authority to grant approval, following consultation with the Leader of the Council and the relevant Committee Chairman, for sums up to £25,000.
  - Any supplementary budgets over £25,000 in value will require the approval of the Full Council.
- 3.12 Any decisions on Supplementary Budgets will be reported to the Full Council with the quarterly budget monitoring reports.

### **Virement**

- 3.13 Virement' is the financing of an increase in expenditure or a reduction in income in one head of the approved revenue budget from another head in the revenue budget.

- 3.14 The Chief Finance Officer, in consultation of Chairman of the relevant Committee, may approve aggregate virements of up to £10,000.
- 3.15 Virement up to £25,000 is a matter for the Chief Executive and Chief Finance Officer in consultation with the Leader of the Council and the relevant Committee Chairman .
- 3.16 Virements above £25,000 must be referred to the Full Council for approval.
- 3.17 The Chief Finance Officer may approve virements between capital projects up to £25,000 of the capital programme budget. Virements above £25,000 must be referred to the Full Council for approval.
- 3.18 Any decisions on virements will be reported to the Full Council with the quarterly budget monitoring reports.
- 3.19 All proposals for virement shall be put in writing.
- 3.20 Nothing in these rules shall prevent the Chief Executive when dealing with an emergency planning situation from incurring expenditure which is essential to meet any immediate needs created by a sudden emergency or which is referable to S138 of the Local Government Act 1972 or the Civil Contingencies Act 2004, subject to such action being reported to the Full Council as soon as appropriate.

#### **Maintenance of Reserves**

- 3.21 It is the responsibility of the Chief Finance Officer to advise the Council on prudent levels of reserves for the Authority, including those earmarked for specific services.

#### **Carrying Forward Revenue Provisions**

- 3.22 The Chief Finance Officer may authorise the carrying forward of any unspent budget into the next financial year if satisfied that it has not been possible to incur the estimated expenditure during the year. The Chief Finance Officer shall report the budgets carried forward to the Council as soon as is practicable after the end of each financial year.

### **4. ORDERS FOR WORKS AND GOODS**

- 4.1 Official orders shall be issued for all work, goods or services to be supplied to the Council except for supplies of public utility services, for

periodical payments such as subscriptions, rent or rates, or such other exceptions as the Chief Finance Officer may approve.

- 4.2 All orders shall be made using the procurement system prescribed by the Chief Finance Officer in accordance with approved procedures.
- 4.3 Orders shall indicate clearly the nature and quantity of the works, goods or services required and any contract, estimate and authorisation.
- 4.4 All orders shall be authorised in accordance with the Scheme of Delegations, as set out in the Authorised Signatories Lists.
- 4.5 Before authorising an order, the authorised officer shall be satisfied, by means of competitive quotations or otherwise, that it will obtain the best value for the price to be paid, that the order complies with the Contract Procedure Rules and that there is sufficient budget to cover the costs.

## **5. PAYMENT OF ACCOUNTS**

- 5.1 There are two processes for authorising payments, depending on whether the on-line procurement system was used. In all cases, the following apply:
  - The Chief Finance Officer shall be responsible for the examination, verification and certification of the related invoices. The Chief Finance Officer shall make such checks, arithmetical and otherwise, as are deemed necessary and shall be given all information and explanations as are required.
  - The Chief Finance Officer shall be responsible for ensuring that internal controls and procedures are in place for the payment of accounts.
  - The Chief Finance Officer shall be responsible for ensuring that duplicate payments are not made.
  - All invoices for payment shall be certified by the Chief Finance Officer or other authorised officer.
  - Only invoices which the Chief Finance Officer is satisfied are in order shall be paid.
  - The Chief Finance Officer is responsible for providing advice and instruction on the most economical means of making payment, including by electronic transfer or procurement cards.

### Payment of Accounts where on-line procurement system used

- 5.2 Each Director shall be responsible for ensuring that all discounts have been recorded in the order.
- 5.3 Each Director shall be responsible for ensuring that the electronic order is updated when goods or services are received in line with the current

procedures.

#### Payment of Other Accounts

- 5.4 Each Director shall be responsible for the examination, verification and certification of the related invoices.
- 5.5 Each Director shall be responsible for ensuring that all discounts have been deducted.
- 5.6 Each Director shall be responsible for showing on each invoice, in a manner approved by the Chief Finance Officer, the relevant order number, the estimate head to be charged and the initials of the persons responsible for checking (a) the prices charged, (b) that goods have been received, and (c) that payment has not previously been authorised.
- 5.7 All invoices for payment shall be certified by a Director, or other officer authorised by the Director to the extent approved by the Chief Finance Officer in writing. The Chief Finance Officer shall maintain an up to date list of officers authorised to certify invoices for payment.
- 5.8 Each Director is responsible for ensuring that invoices are sent for payment within the prescribed deadlines.

### **6. TRAVELLING, SUBSISTENCE AND OTHER ALLOWANCES**

- 6.1 Payments to Members, including co-opted Members of the Council or its Committees who are entitled to claim allowances, will be made by the Chief Finance Officer upon receipt of the prescribed form duly completed by the Member.
- 6.2 All claims by employees for payment of car allowances, subsistence allowances, travelling and incidental expenses shall be submitted, duly certified, in a form approved by the Chief Finance Officer.
- 6.3 For employees, the certification by or on behalf of a Director shall be taken to mean that the certifying Officer is satisfied that the journeys were authorised, the expenses properly and necessarily incurred and that the allowances are properly payable by the Council.

### **7. CONTRACTS AND PAYMENTS**

- 7.1 Directors shall inform the Chief Finance Officer as soon as possible of all contracts, agreements, awards, or other instruments involving the payment or receipt of money by the Council.

- 7.2 Where contracts provide for payment to be made by instalments, the Chief Finance Officer shall arrange for the keeping of a contract register to show the state of account on each contract between the Council and the contractor, together with any other payments and any relating professional fees.
- 7.3 Payments to contractors on account of contracts shall be made only on a certificate issued by the Directors supervising the contract.
- 7.4 Subject to the provisions of the contract in each case, every extra or variation shall be authorised in writing by the appropriate Director.
- 7.5 Any variation or other increase in cost in excess of £10,000 shall be reported to the Chief Finance Officer and Chief Executive as soon as practicable.
- 7.6 The Director, in consultation with the Chief Finance Officer and Chief Executive, shall report to the Full Council as soon as possible on any capital project over £10,000 which is likely to exceed the approved cost by more than 10%.
- 7.7 Where the contract includes a retention, the final payment for the contract shall not be made until the Director has produced to the Chief Finance Officer a detailed statement of account and all relevant documents required and the Chief Finance Officer has approved the amount to be certified.
- 7.8 The Chief Finance Officer shall be entitled to make all such enquiries and receive such information and explanations required in order to be satisfied as to the accuracy of the final accounts to contracts.
- 7.9 Claims from contractors in respect of matters not clearly within the terms of any existing contract shall be referred to the Legal Team for consideration of the Council's legal liability and the action to be taken decided by the Corporate Leadership Team.
- 7.10 Where completion of a contract is delayed and the contract provides for liquidated damages to be payable for delayed completion, it shall be the duty of the Director concerned, after consulting with the Monitoring Officer and the Chief Finance Officer, to claim the liquidated damages unless it is otherwise agreed by the Monitoring Officer and the Chief Finance Officer.

## **8. SALARIES AND WAGES**

- 8.1 The payment of all salaries, wages, compensation and other emoluments to all employees or former employees of the Council shall be made by the Chief Finance Officer or under arrangements approved and controlled by him/her.



- 8.2 The relevant Director shall notify the Chief Finance Officer and in the prescribed form of all matters affecting such payments, and in particular:-
- (a) appointments, resignations, dismissals, suspensions, secondments, and transfers;
  - (b) absences from duty for sickness or other reasons, apart from normal annual leave;
  - (c) changes in remuneration, other than normal increments and pay awards and agreements of general application;
  - (d) information necessary to maintain records of service for superannuation, income tax, national insurance and the like.
- 8.3 All time records or other pay documents shall be in a form approved by the Chief Finance Officer and shall be certified by the Director or authorised Officer. The names of Officers authorised to sign such records shall be sent to the Chief Finance Officer together with specimen signatures by the Directors who shall advise the Chief Finance Officer of any changes.
- 8.4 If payments are to be made for additional duties the work must have been authorised in line with HR Policies and Procedures and have been completed before payment can be made. All instructions to make such a payment shall be in a form approved by the Chief Finance Officer and shall be certified by the Director or authorised officer.

## **9. INCOME**

- 9.1 The collection of all money due to the Council shall be under the supervision of the Chief Finance Officer.
- 9.2 Each Director shall furnish the Chief Finance Officer with such particulars in connection with work done, goods supplied or services rendered and all other amounts due as may be required by the Chief Finance Officer to record correctly all such income due to the Council and to ensure the prompt rendering of accounts.
- 9.3 Where a credit note is to be issued in order to cancel or reduce an invoice raised by the Council, the Credit Note must be approved by the Director or other officer authorised by the Director to the extent approved by the Chief Finance Officer in writing.
- 9.4 Directors shall notify the Chief Finance Officer promptly of all income due to the Council and of contracts, leases and other agreements and arrangements entered into by the Council and the Chief Finance Officer

shall have the right to inspect all documents or other evidence in this connection in the possession of any employee.

- 9.5 The arrangements for the control of all receipt forms, tickets and other such documents which acknowledge sums received shall be approved by the Chief Finance Officer.
- 9.6 All money received by an employee on behalf of the Council shall without delay be paid to the Chief Finance Officer or, as directed, to the Council's bank account. No deduction may be made from such money save to the extent that the Chief Finance Officer has specifically authorised in writing. Each employee who so banks money shall enter on the paying-in slip a reference to the cheque (such as the receipt number or the name of the debtor) or otherwise indicate the origin of the cheque). On the reverse of each cheque, the employee shall enter such information to identify the transaction as instructed by the Chief Finance Officer.
- 9.7 Cheques for sums exceeding £2,000 shall be paid in at the main Cash Office at the latest on the next working day.
- 9.8 Collecting Officers should immediately pay in all cheques (irrespective of their value) to the main Cash Office, particularly if they have any doubt as to the credibility or credit worthiness of the customer or client making the payment.
- 9.9 The Chief Finance Officer shall ensure that all monies received are collected by the next Security collection, for payment into the Council's bank account.
- 9.10 Personally drawn cheques (and third party cheques) shall not be cashed out of the money held on behalf of the Council.
- 9.11 Every transfer of the Council's cash from one member of staff to another shall be recorded by the signature of the receiving employee to confirm the fact of the transfer and the amount transferred.

#### **Writing off Outstanding Monies**

- 9.12 The Chief Finance Officer is authorised to write off amounts due or claimed by the Council up to £5,000 and, after consultation with the Leader of the Council and the relevant Committee Chairman, between £5,000 and £15,000. Amounts over £15,000 must be reported to the Full Council.
- 9.13 All proposals to write off monies shall be made in writing with reasons.

#### **10. STOCKS AND STORES**

- 10.1 Directors shall be responsible for the care and custody of the stocks and stores in their respective service divisions or units.
- 10.2 Stocks shall not be in excess of normal requirements except in special circumstances with the approval of the Chief Finance Officer.
- 10.3 Directors shall arrange for periodical test examinations of stocks by persons other than storekeepers and shall ensure that all stocks are checked in accordance with the programme approved by the Chief Finance Officer.
- 10.4 The Corporate Leadership Team shall give the Chief Finance Officer such information as is required in relation to stores for the accounting, costing and financial records. Surplus materials, stores or equipment shall be disposed of by competitive tender or public auction except with the approval of the Chief Finance Officer in the case of items not exceeding £1,000 in value or that of the Chief Executive in any other case.

## **11. INVENTORIES**

- 11.1 Inventories shall be maintained by the Corporate Leadership Team and therein shall be recorded a sufficient description of furniture, fittings and equipment, plant and machinery, for which they are responsible. The extent to which the property of the Council shall be so recorded and the form in which the inventories shall be kept is to be determined by the Chief Finance Officer.
- 11.2 The Corporate Leadership Team shall be responsible for maintaining an annual check of all items on the inventory, for taking action in relation to surpluses or deficiencies and noting the inventory accordingly.

- 11.3 The Council's property shall not be removed otherwise than in accordance with the ordinary course of the Council's business or used otherwise than for the Council's purposes except in accordance with specific directions issued by the Corporate Leadership Team

## **12. ESTATES**

- 12.1 The Director for Assets & Investments will maintain a record of all properties owned by the Council

## **13. SECURITY**

- 13.1 Each Director is responsible for maintaining proper security at all times for all buildings, stocks, stores, furniture, equipment, cash, etc under his/her control. The Chief Finance Officer shall be consulted in any case where security is thought to be defective or where it is considered that special security arrangements may be needed.
- 13.2 Maximum limits for cash holdings shall be agreed with the Chief Finance Officer.
- 13.3 Keys to safes and similar receptacles are to be carried on the person of those responsible at all times. The loss of any such keys must be reported to the Chief Finance Officer and relevant Director immediately.
- 13.4 Each Director shall within their department be responsible for maintaining proper security and privacy in respect of information held in any computer system or physical filing system.

## **14. INSURANCES**

- 14.1 The Chief Finance Officer shall be responsible for the maintenance of insurance cover wherever appropriate for the Council's activities, the negotiation of premiums and the keeping of such records as are necessary.
- 14.2 Each Director shall tell the Chief Finance Officer of the extent and nature of all new risks to be insured, and of any alterations affecting insurable risks including partnership or contractual arrangements and the Chief Finance Officer shall notify the Director immediately the insurance has been affected.
- 14.3 Each Director shall immediately notify the Chief Finance Officer and the Monitoring Officer in writing of any loss, liability or damage.
- 14.4 The Monitoring Officer, or an office authorised to act on their behalf, shall negotiate all claims in which legal issues are involved unless the Council's insurers are acting.

## **15. AUDIT**

- 15.1 A continuous internal audit shall be arranged to carry out an examination of accounting, financial and other operations of the Council. The internal audit shall be under the control of the Chief Finance Officer who shall ensure it meets the requirements of Section 151 of the Local Government Act 1972.
- 15.2 The Chief Executive, Monitoring Officer and Chief Finance Officer or their authorised representative shall have authority to:-
- (a) enter at all reasonable times on any Council premises or land;
  - (b) have access to all records, documents and correspondence relating to any financial and other transactions of the Council;
  - (c) require and receive such explanations as are necessary concerning any matter under examination and
  - (d) require any employees of the Council to produce cash, stores or any other Council property under their control.
- 15.3 Whenever any matter arises which involves, or is thought to involve, irregularities concerning cash, stores or other property of the Council or any suspected irregularity in the exercise of the functions of the Authority, the Corporate Leadership Team shall forthwith notify the Chief Executive, the Chief Finance Officer and the Monitoring Officer, who shall take such steps as are considered necessary by way of investigation, action and report.
- 15.4 The Chief Finance Officer shall report direct to the Council, or any Committee on any matter which the Chief Finance Officer considers necessary.

## **16. BANKING ARRANGEMENTS**

- 16.1 The Chief Finance Officer shall be responsible for the negotiation of banking terms on behalf of the Council.

## **17. TREASURY MANAGEMENT**

- 17.1 The Chartered Institute of Public Finance and Accountancy's (CIPFA) Treasury Management in the Public Services Code of Practice ('the Code') has been adopted and is deemed to be incorporated in these Financial Regulations.

The Council will create and maintain as the cornerstones for effective treasury management:-

- A treasury management policy statement (TMPS), stating the policies, objectives and approach to risk management of its treasury management activities

- Suitable treasury management practices (TMPS) setting out the manner in which the organisation will seek to achieve those policies and objectives and prescribing how it will manage and control those activities.
- 17.2 The content of the policy statement and TMPS will follow the recommendations contained in sections 6 and 7 of the Code, subject only to amendment where necessary to reflect the particular circumstances of this organisation. Such amendments will not result in the organisation materially deviating from the Code's key principles.
- 17.3 The Council will receive reports on its treasury management policies, practices and activities including, as a minimum, an annual strategy and plan in advance of the year, a mid-year review and an annual report after its close in the form prescribed in its TMPS.
- 17.4 The Council delegates responsibility for the implementation and regular monitoring of its treasury management policies and practices to the Executive and for the execution and administration of treasury management decisions to the Chief Finance Officer who will act in accordance with the organisation's policy statement and TMPS and, as a CIPFA member, CIPFA's Standard of Professional Practice on Treasury Management.
- 17.5 The Council nominates the Audit & Governance Committee to be responsible for ensuring effective scrutiny of the treasury management strategy and policies.
- 17.6 The following **Treasury Policy Statement** is adopted:-
- (a) The Council defines its treasury management activities as: "The management of the Authority's investments and cash flows, its banking, money market and capital market transactions; the effective control of the risks associated with those activities; and the pursuit of optimum performance consistent with those risks.
  - (b) The Council regards the successful identification, monitoring and control of risk to be the prime criteria by which the effectiveness of its treasury management activities will be measured. Accordingly the analysis and reporting of treasury management activities will focus on their risk implications for the Authority.
  - (c) This Council acknowledges that effective treasury management will provide support towards the achievement of its business and service objectives. It is therefore committed to the principles of achieving best value in treasury management, and to employing suitable performance measurement techniques within the context of effective risk management.

## **18. TRUSTS**

- 18.1 All Trust fund accounts shall wherever possible be in the name of the Council.
- 18.2 All employees acting as trustees by virtue of their official position shall deposit all securities, etc relating to the trust with the Monitoring Officer unless the trust instrument otherwise requires.

## **19. PARTNERSHIPS**

- 19.1 The Council has a comprehensive Partnership Guidance for new and existing partnerships which covers a range of issues that need to be considered, such as the governance arrangements, risk and performance management and assessment of the value of the partnership.
- 19.2 The Corporate Leadership Team is responsible for ensuring that the Council's Partnership Guidance is adhered to for any new or existing partnerships and that any potential financial commitments arising from partnerships are identified and notified to the Chief Finance Officer before any agreements are signed.

## **20. EXTERNAL FUNDING**

- 20.1 When applying for external funding, the Corporate Leadership Team is responsible for ensuring that:
- The key conditions of funding and the responsibilities of the Council are clearly understood
  - That funds are acquired only to meet the priorities of the Council
  - Any match-funding or ongoing revenue costs are given due consideration prior to entering into long term agreements.
  - The Chief Finance Officer is notified of any applications for external funding, the outcome of any applications and the amounts and dates that funds will be received.
  - All claims for funds are made by the due date
  - Any externally funded projects are progressed in accordance with agreed project timetable.
- 20.2 The Chief Finance Officer will record all external funding as notified.

## **21. WORK FOR THIRD PARTIES**

- 21.1 When providing services to other bodies, the Corporate Leadership Team is responsible for ensuring that:-
- Proposals are properly costed with assistance from the Chief Finance Officer and the service is not subsidised by the Council.

- The service is covered by a contract which is agreed with the Monitoring Officer.
- Insurance arrangements have been considered with the Chief Finance Officer
- The department has the appropriate expertise and capacity to deliver the service and that such contracts do not impact adversely upon existing service delivery.
- The Chief Finance Officer is provided with appropriate information for the Statement of Accounts and to set up invoicing arrangements.
- The Council is not put at risk from any bad debts.
- All contracts are properly documented.



# **Contract Procedure Rules**



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All costs stated in these Contract Procedure Rules are exclusive of VAT, staff costs and fees.

## DEFINITIONS

<b>Agent</b>	a person or organisation instructed to act on behalf of the Council or on behalf of another organisation. This shall also be taken to include consultants.
<b>Approved List</b>	A list drawn up in accordance with Rule 7.2.
<b>Award Criteria</b>	The criteria by which the successful Quotation or Tender is to be selected (see further Rules 10 and 11.2e).
<b>Award Procedure</b>	The procedure for awarding a Contract as specified in Rules 8, 10 and 15.
<b>Best Value</b>	The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council. This terminology has now in many instances been superseded by Value for Money.
<b>Bond</b>	An insurance policy: if the Contractor does not do what it has promised under a Contract with the Council, the Council can claim from the insurer the sum of money specified in the bond (often 10% of the Contract value). A bond is intended to protect the Council against a level of cost arising from the Contractor's failure.
<b>Bidder</b>	Any person who asks or is invited to submit a Quotation or Tender.
<b>Chief Finance Officer</b>	The officer Designated Chief Finance Officer (Section 151 Officer) by the Council.
<b>Code of Conduct</b>	The code regulating conduct of officers.
<b>Committee</b>	A Committee which has power to make decisions for the Council, for example a joint Committee with another local authority, but not the scrutiny Committee.
<b>Contract</b>	Means a Relevant Contract under these Contract Procedure Rules. Contract and Relevant Contract may be used interchangeably.
<b>Contracting Decision</b>	Any of the following decisions: <ul style="list-style-type: none"><li>• composition of Approved Lists;</li><li>• withdrawal of Invitation to Tender;</li></ul>

- whom to invite to submit a Quotation or Tender;
- Shortlisting;
- award of Contract;

any decision to terminate a Contract.

<b>Corporate Contract Council</b>	A Contract let by the Council to support the Council's aim of achieving Value for Money. means Rochford District Council
<b>Essex Procurement Hub</b>	The Council's central procurement partner charged with providing strategic direction and advice to secure Value for Money in the Council's procurement activities. The hub also has EU regulations legal expertise.
<b>EU Procedure</b>	The procedure required by the EU where the Total Value exceeds the EU Threshold.
<b>EU Threshold</b>	The Contract value at which the EU public procurement directives apply.
<b>Evaluation</b>	The process of selecting Bidders who are to be invited to quote or bid or proceed to final evaluation
<b>Financial Regulations and procedures</b>	The financial regulations and procedures outlining officer responsibilities for financial matters issued by the Chief Finance Officer in accordance with the Constitution.
<b>Framework Agreement</b>	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing Contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
<b>Head of Paid Service</b>	The Council's Chief Executive.
<b>High Profile</b>	A high-profile purchase is one that could have an impact on functions integral to Council service delivery should it fail or go wrong.
<b>High Risk</b>	A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.
<b>High Value</b>	A high-value purchase is where the value exceeds the EU Threshold values.
<b>Invitation to Tender</b>	Invitation to tender documents in the form required by these Contract Procedure Rules.

<b>Members</b>	Persons currently elected to serve on the Council
<b>Monitoring Officer</b>	The officer defined as such in the Constitution
<b>Nominated Suppliers and Sub-Contractors</b>	Those persons specified in a main Contract for the discharge of any part of that Contract.
<b>Non-commercial Considerations</b>	<ul style="list-style-type: none"> <li>a) The terms and conditions of employment by Contractors of their workers or the composition of the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').</li> <li>b) Whether the terms on which Contractors Contract with their sub-Contractors constitute, in the case of Contracts with individuals, Contracts for the provision by them as self-employed persons of their services only.</li> <li>c) Any involvement of the business activities or interests of Contractors with irrelevant fields of government policy.</li> <li>d) The conduct of Contractors or workers in industrial disputes between them or any involvement of the business activities of Contractors in industrial disputes between other persons ('industrial disputes').</li> <li>e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, Contractors.</li> <li>f) Any political, industrial or sectarian affiliations or interests of Contractors or their directors, partners or employees.</li> <li>g) Financial support or lack of financial support by Contractors for any institution to or from which the Council gives or withholds support.</li> </ul>

Use or non-use by Contractors of technical or professional services provided by the Council under the Building Act 1984 or the Building (Scotland) Act 1959. Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be Non-Commercial considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings. (Protection of Employment) Regulations 1981 (TUPE) may apply.

<b>Officer</b>	Means an officer of the Council authorised to enter into a Relevant Contract to which these Contract Procedure Rules apply.
<b>Parent Company Guarantee</b>	A Contract which binds the parent of a subsidiary company as follows:  if the subsidiary company fails to do what it has promised under a Contract with the Council, the Council can require the parent company to do so instead.
<b>Procurement Officer</b>	An officer of the Council within the procurement team.
<b>Procurement Strategy</b>	The document setting out the Council's approach to procurement and key priorities as issued from time to time.
<b>Purchasing Guidance</b>	The guidance documents, together with a number of standard documents and forms, which supports the implementation of these Contract Procedure Rules. The guidance is available on the Council's intranet.
<b>Quotation</b>	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
<b>Relevant Contract</b>	Contracts to which these Contract Procedure Rules apply including sales, grants, purchasing, procurement, Relevant Contracts, service level agreements, and Contracts with external parties, including other local authorities or public bodies. This is more fully defined under rule 4.
<b>Standing Orders</b>	Part of the Council's Constitution specifying rules for how business shall be conducted.
<b>Tender</b>	A Bidder's proposal submitted in response to an Invitation to Tender.
<b>Tender Record Log</b>	The log kept by the Director of Commercial Services to record details of Tenders (see Rule 13).
<b>Total Value</b>	The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:  (a) where the Contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period.



- (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months.
- (c) where the Contract is for an uncertain duration, by multiplying the monthly payment by 48.
- (d) for feasibility studies, the value of the scheme or Contracts which may be awarded as a result.

for Nominated Suppliers and Sub-Contractors, the total value shall be the value of that part of the main Contract to be fulfilled by the Nominated Supplier or Sub-Contractor.

**TUPE**  
**(Transfer of Undertakings**  
**(Protection of Employment)**  
**Regulations**  
**2006)**  
**(SI 2006 No.246)**

Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the Council is transferred from one organisation (e.g. private Contractor, local authority in-house team) to another (e.g. following a Contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.

**Value for Money**

Value for money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.

## **INTRODUCTION**

These Contract Procedure Rules (issued in accordance with section 135 of the 1972 Local Government Act) are intended to promote good purchasing practice and public accountability, deter corruption, ensure that the Council achieves Best Value in the way it spends money and act as guidance to officers and Members.

It is a disciplinary offence to fail to comply with Contract Procedure Rules when undertaking Procurement on behalf of the Council. Council employees and third-party service providers have a duty to report breaches of Contract Procedure Rules to an appropriate senior manager and the Monitoring Officer.

These rules apply to all Relevant Contracts.

These rules apply to officers and Members.

These rules do not apply to the acquisition or disposal of land or any interest in land (although services relating to land could come within the scope of these rules) or for the engagement of barristers. The scope of the rules is definitively set out under rule 4.

Where the Council is entering into a contract as an agent and/or in collaboration with another public body or organisation, these Contract Procedure Rules apply only in so far as they are consistent with the requirements of the body concerned. Where the Council is acting as principal the Contract Procedure Rules will take precedence.

For the purposes of these rules, where there is a requirement for communication to be in writing, this shall be deemed (unless stated otherwise) to include e-mail and fax transmissions as well as hard copy.

## **SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES**

### **1. BASIC PRINCIPLES**

All procedures must:-

- support the Council's corporate aims, policies, and strategic direction
- consider all necessary procurement, legal, financial and professional advice.
- ensure value for money and propriety in the spending of public money; be consistent with the highest standards of integrity
- comply with all legal requirements and these rules
- ensure that the Council is not exposed to unnecessary risk and likelihood of challenge arising from non-compliant procurement activity
- consider and incorporate necessary health and safety, inclusion and diversity, and safeguarding children and vulnerable adults' requirements.
- not be influenced by Non-Commercial considerations other than those permitted by law.
- comply with the Council's corporate Procurement Strategy.

### **2. OFFICER RESPONSIBILITIES**

#### **2.1 Officers**

2.1.1 Officers engaging in Relevant Contracts must comply with the Council's Contract Procedure Rules, the Finance Procedure Rules, Officer's Code of Conduct and with all UK and European Union binding legal requirements. Officers must ensure that any Agents and Contractual partners acting on their behalf also comply.

All officers should undertake Procurement in a manner which avoids any potential conflicts of interest.

2.1.2 Officers must:-

- ensure to obtain all appropriate authorisations, check that sufficient resources are available, and that appropriate budget provisions exist.
- have regard to the guidance in the Purchasing Guidance
- check whether a suitable Corporate Contract exists before seeking to let another Contract; where a suitable Corporate Contract exists, this must be used unless there is an auditable reason not to keep the records required by Rule 6.

- take all necessary legal, financial and professional advice.
- comply with the Council's policies on anti-bribery, corruption and whistleblowing as published from time to time.

2.1.3 When any employee either of the Council or of a service provider may be affected by any transfer arrangement, officers must ensure that TUPE issues are considered and obtain legal advice before proceeding with inviting Tenders or Quotations.

## 2.2 **Directors**

2.2.1 Directors must:-

- ensure that their staff comply with Rule 2.1 to keep registers of Contracts completed by signature (rather than by the Council's seal) (see Rule 16.3) which may be inspected; and will support the annual budget review.
- arrange for original Contracts where the Contract value exceeds £25,000 or are completed by the Council's seal to be passed to the Monitoring Officer or the Council's procurement team, as appropriate, for safekeeping. All other original Contracts are to be kept safe by the appropriate Director subject to Data Protection requirements.
- ensure exemptions are recorded under Rule 3.5.

## 3. **EXEMPTIONS, COLLABORATIVE AND E-PROCUREMENT ARRANGEMENTS**

3.1 An exemption under this rule allows for the procedure under Rule 8 to be dispensed with and can be replaced with direct negotiation with one or more suppliers.

3.2 Before seeking an exemption the officer must take any necessary procurement, legal, financial and professional advice prior to submitting the exemption for authorisation to the Head of Paid Service with the agreement of the Chief Finance Officer.

3.3 The Council has the power to dispense with any provision within these Contract Procedure Rules. No exemption can be used if the Contract value exceeds £25,000.

3.4 Exemptions from the procedure under Rule 8 may be approved by the Head of Paid Service, in consultation with the Council's Section 151 Officer where:-

- (a) it is necessary to forgo the Rule 8 procedure due to an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council services. Any such exemption must only be for the minimum required to make the

emergency situation safe or to ensure continued Council operations until a compliant procedure can be carried out.

- (b) the work to be carried out or goods to be supplied comprise repairs, or parts for existing plant equipment, or vehicles, or updating computer software, or are required to be compatible with existing plant, equipment, vehicles or software.
- (c) the Contract is to extend an existing Contract and is the most economical means of obtaining what is required by the Council.
- (d) a consultant is proposed to be re-engaged to carry out further work on a project which they have worked on before and engaging new consultants would be inappropriate or lead to extra costs.

3.5 All exemptions, and the reasons for them, must be recorded. Exemptions shall be signed by the relevant Director and shall be reported to the Leader of the Council as soon as practicable. Records of all recorded decisions shall be held by the Council's 151 Officer and the Council's procurement team.

3.6 In order to secure Value for Money, the Council may enter into collaborative procurement arrangements. The officer must consult the relevant Director and take any necessary procurement, legal, financial and professional advice where the purchase is to be made using collaborative procurement arrangements with another local Council, government department, statutory undertaker or public service purchasing consortium.

3.7.1 All purchases made via a local Council purchasing consortium are deemed to comply with these Contract Procedure Rules and no exemption is required. However, purchases above the EU Threshold must be let under the EU Procedure, unless the consortium has satisfied this requirement already by letting their Contract in accordance with the EU Procedures on behalf of the Council and other consortium members.

3.7.2 Any Contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the Contract Procedure Rules of the leading organisation, will be deemed to comply with these Contract Procedure Rules and no exemption is required. However, any relevant procurement, legal, financial and professional advice must be sought.

3.8 The use of e-procurement technology does not negate the requirement to comply with all elements of these Contract procurement rules, particularly those relating to competition and Value for Money.

## **4. RELEVANT CONTRACTS**

4.1 All Relevant Contracts must comply with these Contract Procedure Rules. A Relevant Contract is any arrangement made by, or on behalf of, the Council for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:-

- (a) The supply or disposal of goods;
- (b) The hire, rental or lease of goods or equipment;
- (c) The delivery of services, including (but not limited to) those related to:-
  - The recruitment of agency staff i.e. those members of staff without a direct employment Contract with the Council
  - Land and property transactions
  - Financial and consultancy services

4.2 Relevant Contracts do not include:

- (a) Contracts of employment which make an individual a direct employee of the Council
- (b) Agreements regarding the acquisition, disposal, or transfer of land
- (c) The engagement of barristers
- (d) The recruitment of non-agency Council staff i.e. those with a direct employment Contract with the Council

### **4.3 CONTRACT VALUE CALCULATION**

Contract value means the estimated aggregate or recurring value payable in pounds sterling exclusive of Value Added Tax over the entire contract period including any extensions of the contract.

Where the contract term is without fixed length the estimated value of the contract should be calculated by monthly value of spend multiplied by 48 in accordance with Regulation 8 of the EU Regulations.

Contracts must not be artificially underestimated or disaggregated into two or more separate contracts where the effect is to avoid the application of Contract Procedure Rules or English law. Please refer to the Code of Practice for further information.

Where a Framework Agreement is planned the contract value must be calculated to include the total value of all the individual contract arrangements envisaged under the Framework Agreement.

#### 4.4 EXTENSIONS AND VARIATIONS

Contracts may only be extended or varied if all of the following conditions have been met

- the extension or variation is in accordance with the terms and conditions of the existing contract;
- the contract has not been extended before the extension or variation has an approved budget allocation;

For advice regarding acceptance thresholds for contract extensions and variations please contact the Procurement Team.

### **SECTION 2: COMMON REQUIREMENTS**

#### **5. STEPS PRIOR TO PURCHASE**

5.1 The officer must appraise the purchase, in a manner proportionate with its complexity and value and taking into account any relevant guidance and advice, by:-

- Taking into account the requirements from any relevant Best Value review appraising the need for the expenditure and its priority defining the objectives of the purchase.
- Assessing the risks associated with the purchase and how to manage them considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local Council, government department, statutory undertaker or public service purchasing consortium.
- Consulting users as appropriate about the proposed procurement method, Contract standards and performance and user satisfaction monitoring.
- Drafting the terms and conditions that are to apply to the proposed Contract setting out these matters in writing if the Total Value of the purchase exceeds £50,000

5.2 And by confirming that:-

- There is Council or delegated approval for the expenditure and the purchase accords with the approved policy framework and scheme of delegation as set out in the Constitution

#### **6. RECORDS (ACQUISITIONS AND DISPOSALS)**

6.1 Where the Total Value is greater than £500 but less than £50,000, the following records must be kept:-

- Invitations to quote and Quotations;
- A record:-
  - of any exemptions and the reasons for them (if Total Value is less than £25,000);
  - of the reason if the lowest price is not accepted (if Total Value is less than £25,000).
- Written records of communications with the successful Contractor or an electronic record if a written record of the transaction would normally not be produced.

**6.2 Where the Total Value exceeds £50,000 the officer must record:-**

- The method for obtaining bids (see Rule 8.1);
- Any Contracting Decision and the reasons for it;
- The Award Criteria in descending order of importance;
- Tender documents sent to and received from Bidders;
- Any pre-tender market research;
- Clarification and post-tender negotiation (to include minutes of meetings);
- The Contract documents;
- Post-Contract evaluation and monitoring;
- Communications with Bidders and with the successful Contractor throughout the period of the Contract.

6.3 Records required by this rule must be kept for six years after the end of the Contract. However, written documents which relate to unsuccessful Bidders may be electronically scanned or stored by some other suitable method after 12 months from award of Contract, provided there is no dispute about the award.

**7. ADVERTISING AND APPROVED LISTS**

7.1 Officers are responsible for ensuring that all Bidders for a Relevant Contract are suitably assessed. The assessment process shall establish that the potential Bidders have sound:-

Economic and financial standing;

Technical ability and capacity to fulfil the requirements of the Council.

7.2 This may be achieved by selecting organisations from

- a. Framework agreements maintained on behalf of Essex Procurement Hub, Central Government or any other public body
- b. A shortlist of Contractors assessed from expressions of interest in a particular Contract submitted in response to a public advertisement (for any Contract below £25,000).
- c. Advertised on Contracts Finder (for any Contract over £25,000)



- 7.3 Where the value of the proposed Contract is less than £25,000 appropriate enquires will be made, based on the degree of risk to which the Council will be exposed.

### **SECTION 3: CONDUCTING PURCHASE AND DISPOSAL**

#### **8. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS**

The officer must calculate the Total Value.

The following procedures apply where there are no other procedures which take precedence. Other procedures may include agency agreements with government. If in doubt, officers must seek the advice from the Council's procurement or legal services departments.

##### **8.1 Purchasing – Competition Requirements**

- 8.1.1 Where the Total Value for a purchase is within the values in the first column below, the Award Procedure in the second column must be followed. Evaluation shall be done by the persons specified in the third column.

<b>Total Value</b>	<b>Award Procedure</b>	<b>Evaluation Panel</b>
Up to £10,000	Quotations in writing should be obtained for purchases and it is recommended that more than one written quotation is obtained if reasonably practicable. However, if the value of the purchase is estimated as not likely to exceed £500, then at least one oral quotation will suffice. Officers must be able to demonstrate both Best Value and probity in the process. Existing Contractual arrangements must be used if they are in place.	Officer
£10,001 to £24,999	The Receipt of three written Quotations (this requirement may be waived with the written consent of the relevant Director in consultation with the Chief Finance Officer).	Officer

£25,000 to £50,000	Quotations sought by advertisement on Contracts Finder	Officer, Leader of the Council and relevant Committee Chairman and the Procurement Co-Ordinator / Procurement Consultant
£50,001 to EU Threshold	Invitation to Tender by advertisement on Contracts Finder	Officer, Leader of Council and relevant Committee Chairman and the Procurement Co-Ordinator / Procurement Consultant and Director
Above EU Threshold	EU Procedure or, where this does not apply, Invitation to Tender by advertisement on Contracts Finder	Consult the Essex Procurement Hub – see Rule 8.1.4

8.1.2 Where it can be demonstrated that there are sufficient suitably qualified Bidders to meet the competition requirement, all suitably qualified Bidders must be invited.

8.1.3 An officer must not enter into separate Contracts nor select a method of calculating the Total Value in order to minimise the application of these Contract Procedure Rules.

8.1.4 Where the EU Procedure is required, the officer shall consult the Essex Procurement Hub to determine the method of conducting the purchase.

## 8.2 **Assets for Disposal**

8.2.1 Assets for disposal must be sent to public auction except where better Value for Money is likely to be obtained by inviting Quotations and Tenders. These may be invited by advertising on the Council's internet site. In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets must be formally agreed with the relevant member of the Corporate Leadership Team.

## 8.3 **Providing Services to External Purchasers**

8.3.1 The relevant member of the Corporate Leadership Team, as well as the relevant Financial Regulations, procedures and legislation, must be consulted

where Contracts to work for organisations other than the Council are contemplated.

#### **8.4 Collaborative and Partnership Arrangements**

8.4.1 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these Contract Procedure Rules.

8.4.2 If in doubt, Officers must seek advice of the Essex Procurement Hub.

### **9. PRE-TENDER MARKET RESEARCH AND CONSULTATION**

9.1 The officer responsible for the purchase:-

- May consult potential suppliers prior to the issue of the Invitation to Tender in general terms about the nature, level and standard of the supply, Contract packaging and other relevant matters, provided this does not prejudice any other potential Bidder. Prior to any such consultation, officers should seek advice from the Monitoring Officer and/or the Essex Procurement Hub.
- May seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in them, unless this may prejudice the equal treatment of all potential Bidders or distort competition, and should seek advice from the Monitoring Officer, and/or the Essex Procurement Hub.

### **10. STANDARDS AND AWARD CRITERIA**

10.1 The officer must ascertain what are the relevant British, European or international standards which apply to the subject matter of the Contract. The officer must include those standards which are necessary properly to describe the required quality. The Director must be consulted if it is proposed to use standards other than European standards.

10.2 The officer must define Award Criteria that are appropriate to the purchase and designed to secure an outcome giving Value for Money for the Council. The basic criteria shall be:-

- 'Lowest price' where payment is to be made by the Council (this will only be applicable to Contracts under £25,000);
- 'Highest price' if payment is to be received; or
- 'Most economically advantageous', where considerations other than price also apply (applicable to all Contracts over £25,000).

If the last criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations.

These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters.

10.3 Award Criteria must not include:-

- Non-commercial Considerations (except where such consideration will be integral to the Contract)
- Matters which discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement.

**11. INVITATIONS TO TENDER / QUOTATIONS**

11.1 The Invitation to Tender or Quotation shall state that no Tender or Quotation will be considered unless it is received by the date and time stipulated in the Invitation to Tender. No Tender or Quotation delivered in contravention of this clause shall be considered except in exceptional extenuating circumstances and with adequate notification to the Council's procurement team.

11.2 All Invitations to Tender shall include the following:-

- A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.
- A requirement for tenderers to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
- A requirement for tenderers to complete fully and sign all Tender documents including a form of Tender and certificates relating to canvassing and non-collusion.
- Notification that Tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense.
- A description of the Award Procedure and, unless defined in a prior advertisement, a definition of the Award Criteria in objective terms and if possible, in descending order of importance.
- A stipulation that any Tenders submitted by fax or other electronic means shall not be considered with the exception of the Council's electronic tender portal.

- 11.3 All Invitations to Tender or Quotations must specify the goods, service or works that are required, together with the terms and conditions of Contract that will apply (see Rule 16).
- 11.4 The Invitation to Tender or Quotation must state that the Council is not bound to accept any Quotation or Tender.
- 11.5 All Bidders invited to Tender or Quotation must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

## **12. SHORTLISTING**

- 12.1 Where Approved Lists are used, Evaluation may be carried out by the officer in accordance with the Evaluation criteria drawn up when the Approved List was compiled (see Rule 7.2.2). However, where the EU Procedure applies, Approved Lists may not be used.

## **13. SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS**

- 13.1 Bidders must be given an adequate period in which to prepare and submit a proper Quotation or Tender, consistent with the urgency and complexity of the Contract requirement. All Tender documents will be published on Contracts Finder for a minimum of 35 days. The EU Procedure lays down specific time periods (see guidance published on the Procurement section of the Intranet).
- 13.2 All Tenders must be returned to the Council's Procurement Team where they will be stored securely.
- 13.3 Tenders received by fax or other electronic means (e.g. email) must be rejected, unless they have been sought in accordance with an electronic tendering system approved by the Monitoring Officer.
- 13.4 The officer must not disclose the names of Bidders to any staff involved in the receipt, custody or opening of Tenders.
- 13.5 The Monitoring Officer or the Council's procurement team (as applicable) shall be responsible for the safekeeping of Tenders until the appointed time of opening. Each Tender must be: Suitably recorded so as to subsequently verify the date and precise time it was received; adequately protected immediately on receipt to guard against amendment of its contents; and recorded immediately on receipt in the Tender Record Log.

### **13.6 Submission and receipt of Paper Tenders**

The Monitoring Officer or the Council's procurement team (as applicable) must ensure that all Tenders are opened at the same time

when the period for their submission has ended. Tenders must be opened in the presence of two nominated officers representing the relevant Director, neither of whom can be the officer. Where the Total Value is more than the EU Threshold, one must be a Director.

There is no legal requirement for Members to be present at tender openings. However, where the total value is more than £50,000 a maximum of 2 Members can (should they wish to) observe. A list of Councillors available to attend tender openings will be collated. The relevant Portfolio Holder for the service and one other Councillor (by rota) will be made aware of the opening arrangements, by email, should they be sufficiently independent and wish to observe the opening process.

A record shall be maintained of all persons invited and present at each tender opening and declaration of interest form signed by the Councillors in attendance demonstrating that they are an independent party. The independent Councillor(s) and nominated officer shall initial each tender opened and shall sign and date a list of all tenders opened.

No person shall disclose the value, number or any other detail of the tenders received to any tenderer or anyone not involved with the tender evaluation procedure.

#### Submission of Electronic Tenders

With the implementation of the Council's E-Procurement System all tenders for the Procurement of supplies services and works will be submitted securely through the Council's electronic tender portal and will be opened through the e-procurement portal no earlier than one hour after the time specified in the invitation for the submission of tender.

- 13.7 Upon opening, a summary of the main terms of each Tender (i.e. significant issues that are unique to each Tender submission and were not stated in the Tender invitation documents such as Tender sum, construction period, etc.) must be recorded in the Tender Record Log. The summary must be initialled on behalf of the Director.

#### **14. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION**

- 14.1 Providing clarification of an Invitation to Tender to potential or actual Bidders or seeking clarification of a Tender, whether in writing or by way of a meeting, is permitted. However, discussions with tenderers after submission of a Tender and before the award of a Contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an EU Procedure where this

might distort competition, especially with regard to price, officers should consult the Council's procurement and legal teams for confirmation on when and what is permitted.

- 14.2 If post-tender negotiations are necessary after a single-stage Tender or after the second stage of a two-stage Tender, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best Tender and after all unsuccessful Bidders have been informed. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the Tender documents. Officers appointed by the relevant Director to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.
- 14.3 Post-tender negotiation must only be conducted in accordance with the guidance issued by the Monitoring Officer who must be consulted wherever it is proposed to enter into post-tender negotiation.
- 14.4 Where post-tender negotiation results in a fundamental change (e.g. a change which introduces terms or conditions which, if they had been part of the initial award procedure, would have allowed for the admission of bidders other than those initially admitted or allowed; a change which extends the scope of the specification (or Contract terms) to encompass services not initially covered; or a change in the economic balance of a Contract in favour of the Contractor in a manner not provided for under the specification/Contract terms) to the specification (or Contract terms) the Contract must not be awarded but re-tendered. Advice on what constitutes a fundamental change should be sought from the Council's legal and procurement teams.

## **15. EVALUATION, AWARD OF CONTRACT, AND DE-BRIEFING BIDDERS**

- 15.1 Apart from the debriefing required or permitted by these Contract Procedure Rules, the confidentiality of Quotations, Tenders and the identity of Bidders must be preserved at all times and information about one Bidder's response must not be given to another Bidder.
- 15.2 Contracts must be evaluated and awarded in accordance with the specified Award Criteria.
- 15.3 The arithmetic in compliant Tenders must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their Tender. Alternatively, if the rates in the Tender, rather than the overall price, were stated within the Tender invitation as being dominant, an amended Tender price may be requested to accord with the rates given by the tenderer.

15.4 The officer or a Procurement Officer should notify in writing all those Bidders who submitted a Tender or Quotation about the reasons they were unsuccessful. No information, other than the following, should be given without taking the advice of the Council's legal and procurement teams.

- Pricing score / Total price (not the breakdown of individual priced elements)
- Their individual quality score (as an average from the evaluation panel)
- What was good about their submission and areas for improvement
- Only compare themselves and the winner, not any other Bidders

15.5 If a Bidder requests in writing further reasons for a Contracting Decision, the officer must give the reasons in writing within 15 days of the request. If requested, the officer may also give the debriefing information at Rule 15.4 above to Bidders who were deselected in a pre-tender Shortlisting process.

## **SECTION 4: CONTRACT AND OTHER FORMALITIES**

### **16. CONTRACT DOCUMENTS**

#### **16.1 Relevant Contracts**

16.1.1 All Relevant Contracts that exceed £5,000 shall be in writing in a form agreed by the Monitoring Officer.

16.1.2 All Relevant Contracts, irrespective of value, shall clearly specify:-

- what is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done);
- the provisions for payment (i.e. the price to be paid and when);
- the time, or times, within which the Contract is to be performed;
- the provisions for the Council to terminate the Contract
- ownership of Intellectual Property created by the contract.

16.1.3 The Council's order form (electronic order system) or standard terms and conditions issued by a relevant professional body must be used wherever possible.

16.1.4 In addition, every Relevant Contract of purchase over £50,000 must also state clearly as a minimum:-

- that the Contractor may not assign or sub-Contract without prior written consent;
- any insurance requirements;



- health and safety requirements;
- ombudsman requirements;
- data protection requirements, if relevant;
- that charter standards are to be met if relevant;
- Equality Act requirements;
- Freedom of Information Act requirements;
- Whistleblowing requirements;
- where Agents are used to let Contracts, that Agents must comply with the Council's Contract Procedure Rules;
- a right of access to relevant documentation and records of the Contractor for monitoring and audit purposes if relevant.

16.1.5 The formal advice of the Monitoring Officer must be sought for the following Contracts:-

- where the Total Value exceeds EU Threshold;
- those involving leasing arrangements;
- where it is proposed to use a supplier's own terms;
- those involving the purchase of application software with a Total Value of more than £50,000;
- those that are complex in any other way.

16.1.6 The following clause must be inserted in every written Council Contract:-

"The Council may terminate this Contract with immediate effect and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things.

- offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council Contract (even if the Contractor does not know what has been done); or
- commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972
- commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or
- commit any fraud in connection with this or any other Council Contract whether alone or in conjunction with Council Members, Contractors or employees.

Any clause limiting the Contractor's liability shall not apply to this clause"

## 16.2 Contract Formalities

16.2.1 Agreements (Contracts and Orders) shall be completed as follows:-

Total Value	Method of Completion	By
Up to £5,000	Electronic order	Authorised buyer (see Rule 16.2.3)
£5,001 to £50,000	Electronic order	Authorised Buyer approved by the relevant Director (see Rule 16.2.3)
Above £50,001	Signature on written Contract	Monitoring Officer (see Rule 16.2.3)

16.2.2 All Contracts must be concluded in writing or by email before the supply of goods, provision of services or construction work begins; except in exceptional circumstance, and then only with the written consent of the relevant Director and a Procurement Officer.

16.2.3 The officer responsible for securing signature of the Contract must ensure that the person signing for the other Contracting party has authority to bind it.

16.2.4 All Contract documents must be placed in the central repository in accordance with Financial Regulations and Rule 2.2.1.

## 16.3 Sealing

16.3.1 Where Contracts are completed by each side adding their formal seal, such Contracts shall be signed in accordance with the Council's Standing Orders (Monitoring Officer).

16.3.2 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal.

16.3.3 A Contract must be sealed where:-

- the Council may wish to enforce the Contract more than six years after its end;
- the price paid or received under the Contract is a nominal price and does not reflect the value of the goods or services.

## 17. BONDS AND PARENT COMPANY GUARANTEES

17.1 Bonds and Parent company guarantees are used as a means of insuring the Council against the risk of a contractor failing to fulfil contractual obligations and is prudent in contract management;

particularly as an organisation's financial viability can be prejudiced through no fault of its own through the default/failure of other parties.

- 17.2 The officer must consult the Chief Finance Officer about whether a Parent Company Guarantee is necessary when a Bidder is a subsidiary of a parent company and:-
- the Total Value exceeds £250,000; or
  - award is based on evaluation of the parent company; or
  - there is some concern about the stability of the Bidder.
- 17.3 Contractors who wish to be considered for larger projects must have a performance bond facility in place.
- 17.4 Contractor's will be asked to price for a performance bond in every tender that is over **£50,000** regardless of the financial risk rating. If a Contractor has more than one contract where the cumulative value is **£50,000** or more and the project/s are at an early stage on site a bond must be taken out for the new contract under consideration.
- 17.5 The requirement for a bond must be stated in the tender documents. This must be shown as a separate line in the tender breakdown and the Contractor must be able to evidence the performance bond before award of contract. Contractors may take a commercial decision to absorb the price of the bond, in the same way that they decide on their profit margins for each job. It is therefore perfectly acceptable to enter a nil cost for the bond as long as the Contractor makes sure the bond is provided in a timely manner before the contract is awarded.
- 17.6 Following consideration of the economic uncertainty, evaluation results and complexity / risk associated to the contract the Chief Finance Officer will determine whether a Bond is needed.

17.7 Please note, where a performance bond is requested, this is a non-negotiable part of the contract award process. The Council does not expect to experience time delays before the contract is awarded. Therefore, the Contractor must make sure they are able to provide a bond during the tender pricing period so that they are ready to produce it if the award is made in their favour.

## **18. PREVENTION OF CORRUPTION**

18.1 The officer must comply with the Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any Contract. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 18.2 below.

18.2 The following clause **must** be put in every written Council Contract:-

“The Council may terminate this Contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do any of the following things:-

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council Contract (even if the Contractor does not know what has been done), or
- (b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972, or
- (c) commit any fraud in connection with this or any other Council Contract whether alone or in conjunction with Council Members, Contractors or employees. Any clause limiting the Contractor’s liability shall not apply to this clause.”

## **19. DECLARATION OF INTERESTS**

19.1 If it comes to the knowledge of a Member or an employee of the Council that a Contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Monitoring Officer. The Monitoring Officer shall report such declarations to the appropriate Committee.

19.2 Such written notice is required irrespective of whether the pecuniary interest is direct or indirect. An indirect pecuniary interest is distinct from a direct pecuniary interest in as much as it is not a Contract to which the Member or employee is directly a party.

- 19.3 A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the less) is not a pecuniary interest for the purposes of this standing order.
- 19.4 The Monitoring Officer shall maintain a record of all declarations of interests notified by Members and officers.
- 19.5 The Monitoring Officer shall ensure that the attention of all Members is drawn to the Councillor Code of Conduct.

## **SECTION 5: CONTRACT MANAGEMENT**

### **20. MANAGING CONTRACTS**

- 20.1 Members of the Corporate Leadership Team in sponsoring departments are to name Contract managers for all new Contracts. All Contracts must have a named Council Contract manager for the entirety of the Contract.
- 20.2 Contract Managers must follow the procedures set out in the Council's Purchasing Guidance to ensure continuous improvement and Value for Money is achieved. Members of the Corporate Leadership Team must ensure that those responsible for managing contracts ensure:-
- contract performance and key performance indicators are met;
  - compliance with specification and contract terms; and
  - cost management including reconciliation of payments against work done, supplies or services delivered and, where payments are made in stages, keeping a contract register showing the state of account on each contract in accordance with Financial Regulations.

### **21. RISK ASSESSMENT AND CONTINGENCY PLANNING**

- 21.1 A business case must be prepared for all procurements with a potential value over the EU Threshold. Provision for resources for the management of the Contract, for its entirety, must be identified in the business case.
- 21.2 For all Contracts with a value of over £50,000, Contract managers must:-
- maintain a risk register during the Contract period;
  - undertake appropriate risk assessments and for identified risks;
  - ensure contingency measures are in place.

### **22. CONTRACT MONITORING, EVALUATION AND REVIEW**

- 22.1 All Contracts which have a value higher than the EU Threshold limits, or which are High Risk, are to be subject to monthly formal review with the Contractor. The review may be conducted quarterly if permitted by the Director, Assets & Commercial.

- 22.2 For all Contracts with a value higher than the EU Threshold limits, or which are High Risk, an annual report must be submitted to the relevant Committee.
- 22.3 The Council's approved project management methodology must be applied to all Contracts deemed to be High Risk, High Value, or High Profile.
- 22.4 During the life of the Contract, the officer must monitor in respect of:-
- contract performance and key performance indicators are met;
  - compliance with specification and Contract terms;
  - cost management including reconciliation of payments against work done, supplies or services delivered and, where payments are made in stages, keeping a contract register showing the state of account on each contract in accordance with Financial Regulations;
  - user satisfaction and risk management.
- 22.5 Where the Total Value of the Contract exceeds £250,000, the officer must make a written report to the Full Council evaluating the extent to which the purchasing need and the Contract objectives (as determined in accordance with Rule 5.2) were met by the Contract. This should be done normally when the Contract is completed. Where the Contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent Contract.

# **Officer Employment Procedure Rules**

## **OFFICER EMPLOYMENT PROCEDURE RULES**

### **1 Recruitment and Appointment**

- (a) Declarations
  - (i) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor, officer of the Council or the partner of such persons.
  - (ii) No candidate so related to a Councillor or an officer will be appointed without the authority of the relevant Chief Officer or an officer nominated by them.
- (b) Seeking support for appointment
  - (i) Subject to paragraph (iii), 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.
  - (ii) Subject to paragraph (iii), no Councillor will seek support for any person for any appointment with the Council.
  - (iii) Nothing in paragraphs (i) and (ii) above will preclude a Councillor from giving a written reference for a candidate for submission with an application for appointment.

### **2 Recruitment of Head of Paid Service, Monitoring Officer, S.151 Officer and all other Chief Officers**

Where the Council proposes to appoint a Chief Officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:-

- (a) draw up a statement specifying:-
  - (i) the duties of the officer concerned; and
  - (ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) 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; and
- (c) make arrangements for a copy of the statement mentioned in paragraph (1) to be sent to any person on request.



### **3 Appointment of Head of Paid Service**

The Full Council will approve the appointment of the Head of Paid Service following the recommendation of such an appointment by the Chief Officer Appointments Sub-Committee.

### **4 Appointment of Chief Officers**

The appointment of Chief Officers to tier 1 and tier 2 of the management structure will be reserved to the Full Council.

The Chief Officer Appointments Sub-Committee will appoint to tier 3 of the management structure.

Designation of any officers as Monitoring Officer and the s.151 Officer will be made by Full Council on the recommendation of the Head of Paid Service.

Full Council will be required to approve the appointment of any Chief Officer to a salary which is outside of the agreed scale for the post.

### **5 Other Appointments**

- (a) **Officer below Chief Officer.** Appointment of Officers below Chief Officer (other than assistants to political groups) is the responsibility of the Head of Paid Service or their nominee, and may not be made by Councillors.
- (b) **Assistants to Political Groups.** Appointment of an assistant to a political group shall be made in accordance with s.9 of the Local Government and Housing Act 1989.

### **6 Disciplinary Action**

- (a) **Suspension.** The Head of Paid Service, Monitoring Officer and s.151 Officer may be suspended whilst an investigation takes place into any alleged misconduct by a resolution of the Council at an extraordinary or ordinary meeting. The suspension will be on full pay and last no longer than two months. The Monitoring Officer and s.151 Officer will not be suspended during the period during which they are undertaking a formal investigation under their statutory powers.
- (b) **Independent person.** No other disciplinary action may be taken in respect of any of those Officers except in accordance with a recommendation in a report made by a designated independent person. A designated independent person is a person so appointed by the Council in accordance with s.28 (7) of the Localism Act 2011.

- (c) **Councillors** will not be involved in the disciplinary action against any Officer below Director level except where such involvement is necessary for any investigation or inquiry into alleged misconduct 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 disciplinary action.

## **7 Procedure for Disciplinary Action Against s.151 Officer, Head of Paid Service and Monitoring Officer**

- 7.1 This procedure applies to the appointment of the Chief Officers Disciplinary and Appeals Sub-Committee (the Panel) to advise the full Council in relation to the dismissal of the Head of Paid Service, the Monitoring Officer or the s.151 Officer ('relevant officers') and has been incorporated into these Rules as required by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
- 7.2 The Council must invite independent persons appointed under Section 28(7) of the Localism Act 2011 ("the 2011 Act") to be considered for appointment to the Panel, with a view to appointing at least two independent persons to the Panel.
- 7.3 In paragraph 2, independent person means any independent person who has been appointed by the Council or, where there are fewer than two independent persons, such independent persons as have been appointed by another authority or authorities as the Council considers appropriate.
- 7.4 The Independent Panel shall consist of the Council's independent persons appointed under section 28(7) of the 2011 Act provided that at least two such independent persons are willing to sit on the Panel. If they are not then, subject to paragraph 5, the Council must appoint to the Panel independent persons who have accepted an invitation issued under paragraph 2, in the following order of priority:
- (a) an independent person who has been appointed by the Council and who is a local government elector in the Council's area;
  - (b) any other independent person who has been appointed by the Council;
  - (c) an independent person who has been appointed by another authority or authorities.
- 7.5 The Council may appoint more than two independent persons.
- 7.6 The Council must appoint the Panel at least 20 working days before the full Council meets to consider whether or not to approve a proposal to dismiss a relevant officer.
- 7.7 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 an independent person under the 2011 Act.

**The decision to dismiss the Head of Paid Service, the s.151 Officer or the Monitoring Officer is reserved to the Full Council.**

# **Code of Conduct Complaints Process and Standards Sub- Committee Procedure Rules**

# Complaints Procedure

## 1 Context

- 1.1 These “arrangements” set out how you may make a complaint that an elected or co-opted Member of this Council (*or of a Parish/Town Council within its area*) has failed to comply with the Councillors’ Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the Councillors’ Code of Conduct.
- 1.2 Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the authority (*or of a Parish/Town Council within the authority’s area*), or of a Committee or Sub-Committee of the authority, has failed to comply with the Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Such “arrangements” must provide for the Council to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision that the Code of Conduct has been breached, and whose views may be sought by the Council at any other stage in the process, or by a Member (*or a Member or co-opted Member of a Parish/Town Council*) against whom an allegation has been made.

## 2 The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Councillors, which is available for inspection on the Council’s website and on request from Reception at the Council Offices. Each Parish/Town Council is also required to adopt a Code of Conduct, which is similarly available from that Council.

## 3 Making a Complaint

- 3.1 The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the Register of Members’ Interests and who is responsible for administering the Code of Conduct complaints process.
- 3.2 In order to ensure that we have all the information that we need to be able to process your complaint, please complete and submit the complaint form, which is available on the Council’s website. Any person unable to use the electronic form may submit the complaint in writing by sending it to the Monitoring Officer by email or post or by requesting a hard-copy form.
- 3.3 Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. The Monitoring Officer does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

3.4 The Monitoring Officer will acknowledge receipt of your complaint within five working days of receiving it, and will keep you informed of the progress of your complaint.

3.5 The Complaints Procedure Flowchart is attached at Appendix 1 for your assistance.

#### **4. Will your complaint be investigated?**

4.1 The Monitoring Officer will review every complaint received and may consult with one of the Independent Persons before taking a decision as to whether it:-

4.1.1 Merits no further action

4.1.2 Merits early informal conciliation

4.1.3 Should be referred to the Standards Committee to consider whether the complaint needs further investigation.

In reaching a decision in respect of how to progress the complaint the Monitoring Officer will take into account the following factors where appropriate:-

- Was the Member acting in their official capacity?
- Was the Member in office at the time of the alleged misconduct?
- Is the complaint of a very minor or trivial nature?
- Is the complaint vexatious or malicious?
- Are there historical matters?
- Is there a potential breach of the Code?
- Assessment of public interest?
- Is additional information required prior to making a decision?

4.2 This decision will normally be taken within 28 working days of receipt of your complaint. Your complaint will be considered in accordance with the assessment criteria attached at Appendix 2.

4.3 Where the Monitoring Officer has taken a decision, they will inform you of their decision and the reasons for that decision. Where the Monitoring Officer requires additional information in order to come to a decision, they may come back to you for such information, and may request information from the Member against whom your complaint is directed. *(Where your complaint relates to a Parish/Town Councillor, the Monitoring Officer may also inform the Parish/Town Council of your complaint and seek the views of the Parish/Town Council before deciding whether the complaint merits formal investigation.)*

#### **4.4 Informal Resolution.**

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that their

conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the Member or the authority make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.

#### **4.5 Criminal Offences.**

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police or other regulatory agencies.

### **5. How is the investigation conducted?**

- 5.1 The Council has adopted a procedure for the investigation of misconduct complaints, which is attached at Appendix 3 to these procedures.
- 5.2 If the Monitoring Officer decides that a complaint merits further investigation, they may appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer or Monitoring Officer will decide whether they need to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen, and who needs to be interviewed.
- 5.3 The Investigating Officer or Monitoring Officer will normally write to the Member against whom you have complained, provide them with a copy of your complaint and ask the Member to provide their explanation of events. The Investigating Officer or Monitoring Officer will identify what documents they need to see and who they need to interview.
- 5.4 In exceptional cases, where it is appropriate to keep your identity confidential or where disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently.
- 5.5 At the end of their investigation, the Investigating Officer or Monitoring Officer will produce a draft report (“the Investigation Report”) and will send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.
- 5.6 Having received and taken account of any comments that you may make on the draft Investigation Report, where an Investigating Officer has been appointed the Investigating Officer will send their final report to the Monitoring Officer.

**6. What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**

6.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and, if they are satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the Member concerned (*and to the Parish/Town Council, where your complaint relates to a Parish/Town Councillor*), notifying you that they are satisfied that no further action is required, and give you both a copy of the Investigation Final Report.

6.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider their report.

**7. What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

7.1 If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before the Standards Sub-Committee or, in consultation with the Independent Person, seek an informal resolution.

**Informal Resolution**

7.1.1 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, they will consult with the Independent Person and with you as complainant and seek to agree what you may consider to be a fair resolution, which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee (*and the Parish/Town Council*) for information, but will take no further action.

**Hearing**

7.1.2 If the Monitoring Officer considers that informal resolution is not appropriate, or the Member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigation Report to the Sub-Committee, which may conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.



The Council has agreed a procedure for hearing complaints, which is attached at Appendix 4.

At the hearing, the Investigating Officer or the Monitoring Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Sub-Committee. The Member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Sub-Committee as to why they consider that they did not fail to comply with the Code of Conduct.

The Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Sub-Committee concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Sub-Committee will then consider what action, if any, the Sub-Committee should take as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the Member an opportunity to make representations and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

## **8. What action can the Standards Sub-Committee take where a Member has failed to comply with the Code of Conduct?**

- 8.1 The Council has delegated to the Sub-Committee such of its powers to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly the Sub-Committee may:-
- 8.1.1 Publish its findings in respect of the Member's conduct;
  - 8.1.2 Report its findings to Council (*or to the Parish/Town Council*) for information;
  - 8.1.3 Recommend to Council (*or to the Parish/Town Council*) that they be issued with a formal censure;
  - 8.1.4 Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
  - 8.1.5 Instruct the Monitoring Officer (*or recommend that the Parish/Town Council*) to arrange training for the Member;

- 8.1.6 Recommend to the relevant Committee that the Member be removed (*or recommend to the Parish/Town Council that the Member be removed*) from all outside appointments to which they have been appointed or nominated by the authority (*or by the Parish/Town Council*);
  - 8.1.7 Withdraw (*or recommend to the Parish/Town Council that it withdraws*) facilities provided to the Member by the Council, such as a computer, website and/or email and internet access; or
  - 8.1.8 Exclude (*or recommend that the Parish/Town Council excludes*) the Member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 8.2 The Sub-Committee has no power to suspend or disqualify the Member or to withdraw Members' basic or special responsibility allowances.

## **9. What happens at the end of the hearing?**

- 9.1 At the end of the hearing, the Chairman will state the decision of the Standards Sub-Committee as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Sub-Committee has resolved to take.
- 9.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Sub-Committee, and send a copy to you, to the Member, to the Parish/Town Council Clerk if the complaint relates to a Parish/Town Council.

## **10. What is the Standards Sub-Committee?**

- 10.1 It is a Sub-Committee comprising three Councillors who are members of the Audit and Governance Committee.
- 10.2 The Independent Person is invited to attend all Sub-Committee meetings and his/her views are sought and taken into consideration before the Sub-Committee takes any decision on whether a Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.
- 10.3 A Member is not permitted to sit on Standards Sub-Committee if the complaint relates to a Disclosable Pecuniary Interest or relevant Other Registerable Interest or Non-Registerable Interest held by that Member.

## **11. Who is the Independent Person?**

11.1 The Independent Person is a person who has applied for the post following advertisement of a vacancy, and is appointed by a positive vote from a majority of all Members of the Council.

11.2 A person cannot be “independent” if they:-

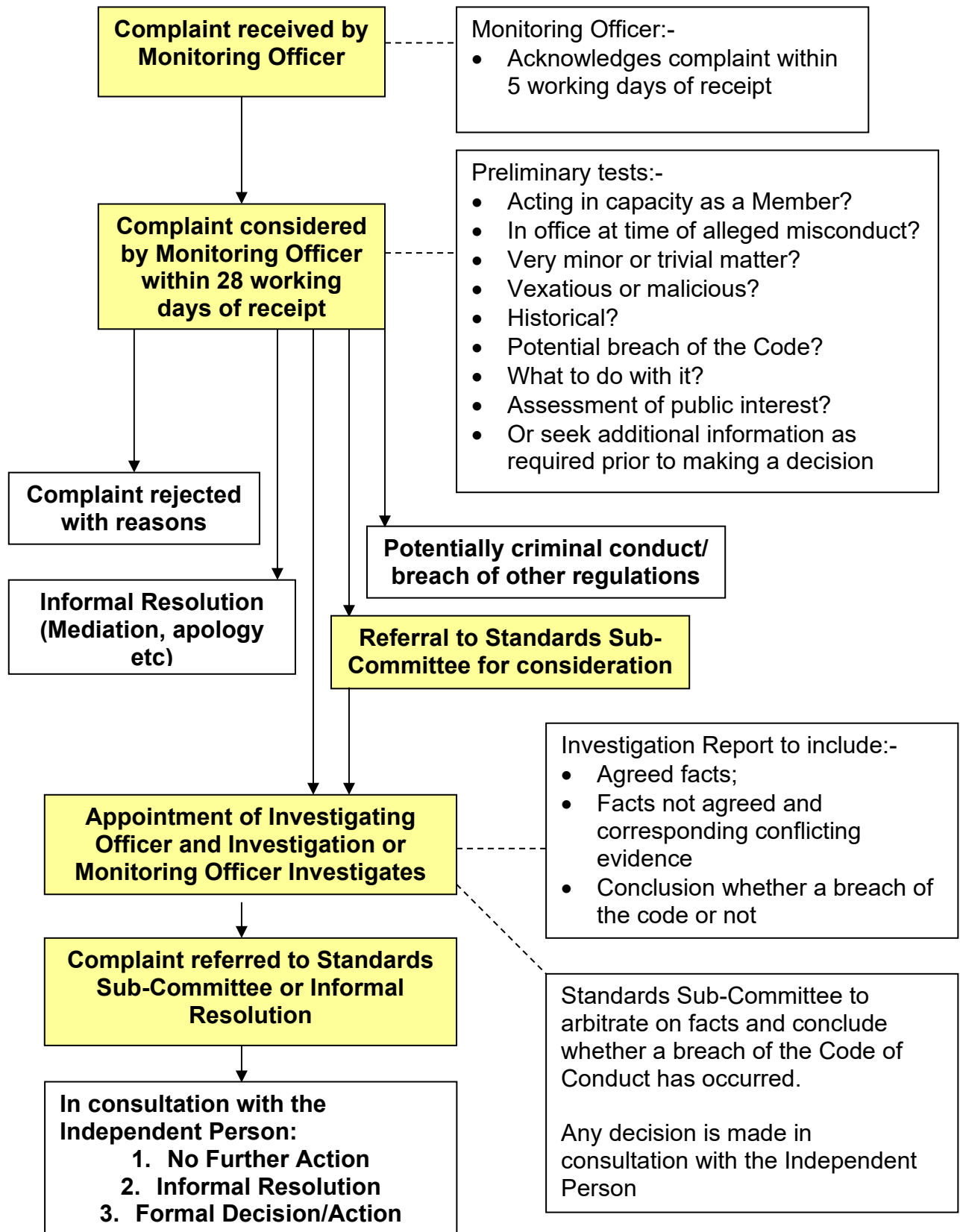
11.2.1 are, or have been within the past five years, a Member, co-opted Member or officer of the authority, subject to the transitional provisions applicable to existing Independent Members;

11.2.2 are or have been within the past five years, a Member, co-opted Member or officer of a Parish/Town Council within the authority’s area.

## **12. Appeals**

12.1 There is no right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer or of the Sub-Committee.

## Appendix 1 Complaints Procedure Flowchart



## **Appendix 2**

### **Standards Complaints Assessment Criteria**

#### **Complaints that would not normally be referred for investigation:-**

- (1) The complaint is not considered sufficiently serious to warrant investigation; or
- (2) The complaint appears to be simply motivated by malice or is “tit-for-tat”; or
- (3) The complaint appears to be politically motivated; or
- (4) It appears that there can be no breach of the Code of Conduct; for example, that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision; or
- (5) It is about someone who is no longer a Councillor; or
- (6) There is insufficient information available for a referral; or
- (7) The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances; for example, an allegation of bullying, harassment etc; or
- (8) The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or
- (9) The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Standards Sub-Committee; or
- (10) It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct.
- (11) Where the Member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

#### **Complaints that may be referred to the Standards Committee:-**

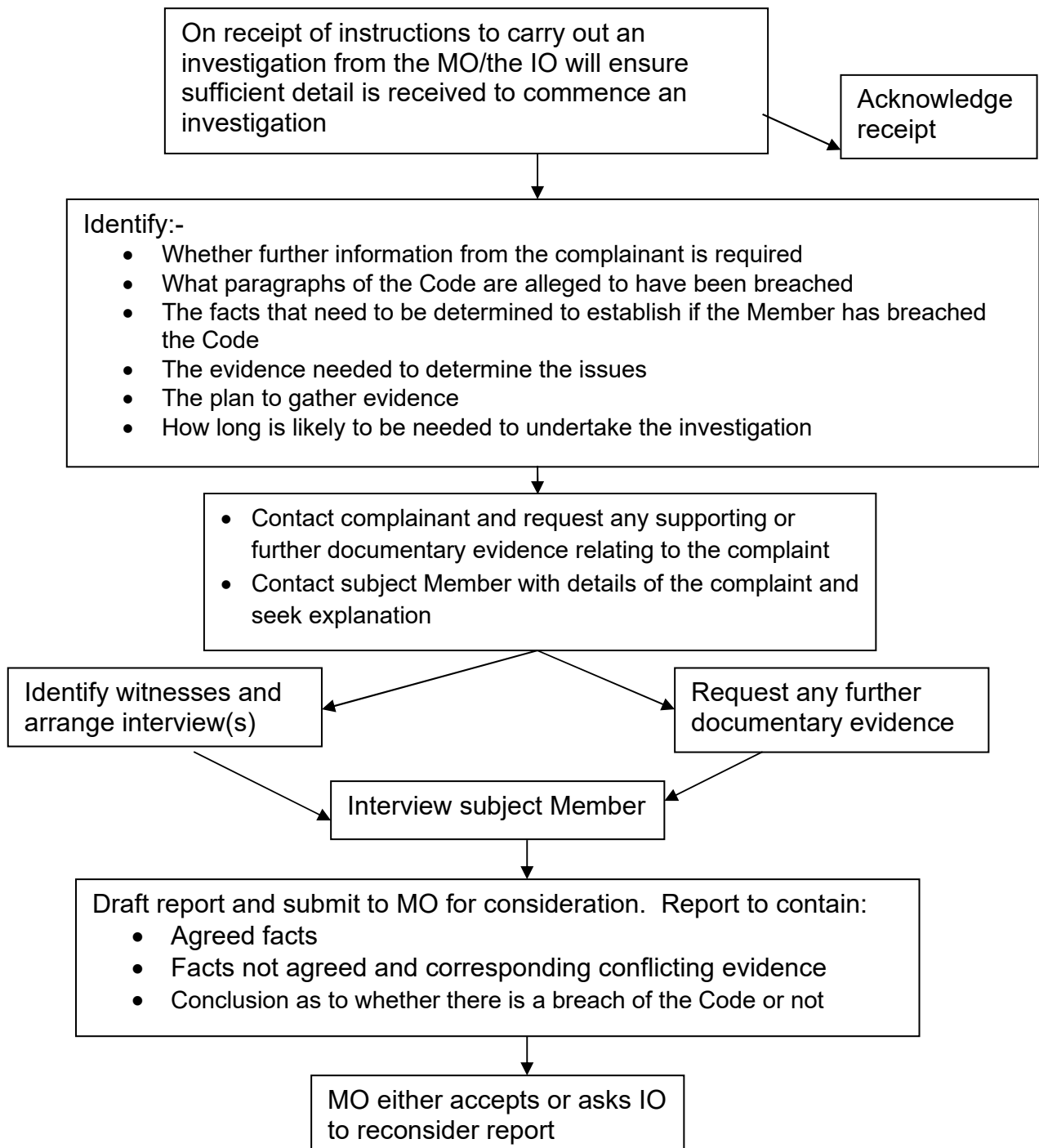
- (1) The complaint is serious enough, if proven, to justify the range of actions available to the Standards Sub-Committee; or
- (2) There are individual acts of minor misconduct that appear to be part of a continuing pattern of behaviour that is unreasonably disrupting the business.

## Appendix 3

### Investigation Procedure

The investigating officer will maintain a written record of what was considered at the start of the investigation, the plan to carry out the investigation, the paragraphs of the Code that may have been breached, the facts needing to be determined and how long it will take to conclude the investigation.

A written Investigation Report will need to be prepared by the investigating officer (IO) for consideration by the Council's Monitoring Officer (MO).



## Appendix 4 Standards Sub-Committee Hearing Procedure Rules

Item No	Procedure
<b>1</b>	<p><b><u>Quorum</u></b></p> <p>1.1. Three Members must be present throughout the hearing to form a quorum.</p> <p>1.2. The Sub-Committee shall nominate a Member as Chairman for the meeting.</p>
<b>2</b>	<p><b><u>Opening</u></b></p> <p>2.1 The Chairman explains the procedure for the hearing.</p> <p>2.2 The Chairman asks all present to introduce themselves.</p> <p>2.3 The Member against whom the complaint has been made (or their representative) will be asked whether they wish to briefly outline their position.</p>
<b>3</b>	<p><b><u>The Complaint</u></b></p> <p>3.1 The Monitoring Officer will be invited to present their report including any documentary evidence or other material (and to call witnesses as required). This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.</p> <p>3.2 Members of the Sub-Committee may question the Monitoring Officer upon the content of their report and/or any witnesses called by the Monitoring Officer.</p>
<b>4</b>	<p><b><u>The Member's case</u></b></p> <p>4.1 The Member against whom the complaint has been made (or their representative) may present their case (and call any witnesses as required).</p> <p>4.2 Members of the Sub-Committee may question the Member and/or any witnesses.</p>
<b>5</b>	<p><b><u>Summing Up</u></b></p> <p>5.1 The Monitoring Officer may sum up the Complaint.</p> <p>5.2 The Member (or their representative) may sum up their case.</p>
<b>6</b>	<p><b><u>Decision</u></b></p>

	<p>6.1 Members of the Sub-Committee will deliberate in private to consider the complaint, in consultation with the Independent Person, prior to reaching a decision.</p> <p>6.2 Upon the Sub-Committee's return the Chairman will announce the Sub-Committee's decision in the following terms:-</p> <ul style="list-style-type: none"> <li>(a) The Sub-Committee has decided that the Member has failed to follow the Code of Conduct or</li> <li>(b) The Sub-Committee has decided that the Member has not failed to follow the Code of Conduct.</li> <li>(c) The Sub-Committee will give reasons for its decision.</li> </ul> <p>6.3 If the Sub-Committee has decided that the Member has failed to follow the Code of Conduct the Sub-Committee will consider any representations from the Monitoring Officer and/or the Member as to:-</p> <ul style="list-style-type: none"> <li>(a) Whether any action should be taken and</li> <li>(b) What form any action should take.</li> </ul> <p>6.4 The Sub-Committee will then deliberate in private to consider what action if any should be taken, in consultation with the Independent Person.</p> <p>6.5 On the Sub-Committee's return the Chairman will announce the Sub-Committee's decision (or, in relation to a Parish/Town Councillor, its recommendation to the Parish/Town Council).</p> <p>6.6 The Sub-Committee will consider whether it should make any recommendations to the Council or, in relation to a Parish/Town Councillor, to the Parish/Town Council with a view to promoting high standards of conduct among Members.</p> <p>6.7 The Chairman will confirm that a full written decision will be issued within 7 working days following the hearing and that the Sub-Committee's findings will be published.</p>
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## **Local Government Association**

### **Model Councillor Code of Conduct 2020**

#### **Joint statement**

The role of councillor across all tiers of local government is a vital part of our country's system of democracy. It is important that as councillors we can be held accountable and all adopt the behaviors and responsibilities associated with the role. Our conduct as an individual councillor affects the reputation of all councillors. We want the role of councillor to be one that people aspire to. We also want individuals from a range of backgrounds and circumstances to be putting themselves forward to become councillors.

As councillors, we represent local residents, work to develop better services and deliver local change. The public have high expectations of us and entrust us to represent our local area, taking decisions fairly, openly, and transparently. We have both an individual and collective responsibility to meet these expectations by maintaining high standards and demonstrating good conduct, and by challenging behaviour which falls below expectations.

Importantly, we should be able to undertake our role as a councillor without being intimidated, abused, bullied, or threatened by anyone, including the general public.

This Code has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.

## **Introduction**

The Local Government Association (LGA) has developed this Model Councillor Code of Conduct, in association with key partners and after extensive consultation with the sector, as part of its work on supporting all tiers of local government to continue to aspire to high standards of leadership and performance. It is a template for councils to adopt in whole and/or with local amendments.

All councils are required to have a local Councillor Code of Conduct.

The LGA will undertake an annual review of this Code to ensure it continues to be fit-for-purpose, incorporating advances in technology, social media and changes in legislation. The LGA can also offer support, training and mediation to councils and councillors on the application of the Code and the National Association of Local Councils (NALC) and the county associations of local councils can offer advice and support to town and parish councils.

## **Definitions**

For the purposes of this Code of Conduct, a “councillor” means a member or co-opted member of a local authority or a directly elected mayor. 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

- a) is a member of any committee or sub-committee of the authority, or;
- b) 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”.

For the purposes of this Code of Conduct, “local authority” includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

## **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 LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

## **General principles of councillor conduct**

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the [Seven Principles of Public Life](#), also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

## **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
- in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

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.

## **Standards of councillor conduct**

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

### **General Conduct**

#### **1. Respect**

##### **As a councillor:**

**1.1 I treat other councillors and members of the public with respect.**

**1.2 I 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 the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider 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.

#### **2. Bullying, harassment and discrimination**

##### **As a councillor:**

**2.1 I do not bully any person.**

**2.2 I do not harass any person.**

**2.3 I promote equalities and do not discriminate unlawfully against any person.**

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as 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.

Unlawful 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.

The Equality Act 2010 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.

### **3. Impartiality of officers of the council**

**As a councillor:**

#### **3.1 I do 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 (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can 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, you 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.

### **4. Confidentiality and access to information**

**As a councillor:**

#### **4.1 I do not disclose information:**

- a. given to me in confidence by anyone**
- b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless**
  - i. I have received the consent of a person authorised to give it;**
  - ii. I am required by law to do so;**
  - 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:**
    - 1. reasonable and in the public interest; and**
    - 2. made in good faith and in compliance with the reasonable requirements of the local authority; and**
    - 3. I have consulted the Monitoring Officer prior to its release.**

#### **4.2 I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.**

#### **4.3 I do not prevent anyone from getting information that they are entitled to by law.**

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

## **5. Disrepute**

**As a councillor:**

### **5.1 I do not bring my 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 you or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

## **6. Use of position**

**As a councillor:**

### **6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.**

Your position as a member of the local authority provides you with certain opportunities, responsibilities, and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

## **7. Use of local authority resources and facilities**

**As a councillor:**

### **7.1 I do not misuse council resources.**

### **7.2 I will, when using the resources of the local authority or authorising their use by others:**

- a. act in accordance with the local authority's requirements; and**
- b. 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 I have been elected or appointed.**

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport

- access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

## **8. Complying with the Code of Conduct**

### **As a Councillor:**

**8.1 I undertake Code of Conduct training provided by my local authority.**

**8.2 I cooperate with any Code of Conduct investigation and/or determination.**

**8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.**

**8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.**

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you 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 your Monitoring Officer.

### **Protecting your reputation and the reputation of the local authority**

## **9. Interests**

### **As a councillor:**

**9.1 I register and disclose my interests.**

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 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.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in **Table 1**, is a criminal offence under the Localism Act 2011.

**Appendix B sets** out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

## **10. Gifts and hospitality**

### **As a councillor:**

- 10.1 I do 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 on my part 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.**
  
- 10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**
  
- 10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, 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. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.



## **Appendices**

### **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 Registering interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in “The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012”. You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable 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 Table 1 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.

1. 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.
2. A ‘sensitive interest’ is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a ‘sensitive interest’ you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

### Non participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate 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, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
5. [Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet 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 ]

### Disclosure of Other Registerable Interests

6. 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 **Table 2**), 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.

## Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being 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. 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.
8. Where a matter arises at a meeting which **affects** –
  - a. your own financial interest or well-being;
  - b. a financial interest or well-being of a relative or close associate; or
  - c. a financial interest or wellbeing of a body included under Other Registerable Interests as set out in **Table 2**

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

9. Where a matter (referred to in paragraph 8 above) **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.

10. [Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Cabinet 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]

### Table 1: Disclosable Pecuniary Interests

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#).

<b>Subject</b>	<b>Description</b>
<b>Employment, office, trade, profession or vocation</b>	Any employment, office, trade, profession or vocation carried on for profit or gain.
<b>Sponsorship</b>	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 him/her in carrying out his/her duties as a councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
<b>Contracts</b>	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the

	<p>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 his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.</p>
<b>Licenses</b>	<p>Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer</p>
<b>Corporate tenancies</b>	<p>Any tenancy where (to the councillor’s knowledge)—</p> <p>(a) the landlord is the council; and</p> <p>(b) the tenant is a body that the councillor, or his/her 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.</p>
<b>Securities</b>	<p>Any beneficial interest in securities* of a body where—</p> <p>(a) that body (to the councillor’s knowledge) has a place of business or land in the area of the council; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(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 his/her spouse or civil partner or the person with whom the councillor is living as if they were</p>

	spouses/civil partners have a beneficial interest exceeds one hundredth of the total issued share capital of that class.
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\* '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.

## **Table 2: 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

## Appendix C – the Committee on Standards in Public Life

The LGA has undertaken this review whilst the Government continues to consider the recommendations made by the Committee on Standards in Public Life in their report on [Local Government Ethical Standards](#). If the Government chooses to implement any of the recommendations, this could require a change to this Code.

The recommendations cover:

- Recommendations for changes to the Localism Act 2011 to clarify in law when the Code of Conduct applies
- The introduction of sanctions
- An appeals process through the Local Government Ombudsman
- Changes to the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
- Updates to the Local Government Transparency Code
- Changes to the role and responsibilities of the Independent Person
- That the criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished

The Local Government Ethical Standards report also includes Best Practice recommendations. These are:

**Best practice 1:** Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

**Best practice 2:** Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation and prohibiting trivial or malicious allegations by councillors.

**Best practice 3:** Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

**Best practice 4:** An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

**Best practice 5:** Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

**Best practice 6:** Councils should publish a clear and straightforward public interest test against which allegations are filtered.

**Best practice 7:** Local authorities should have access to at least two Independent Persons.

**Best practice 8:** An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to

review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

**Best practice 9:** Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

**Best practice 10:** A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

**Best practice 11:** Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council, rather than the clerk in all but exceptional circumstances.

**Best practice 12:** Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

**Best practice 13:** A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

**Best practice 14:** Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place.

**Best practice 15:** Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

***The LGA has committed to reviewing the Code on an annual basis to ensure it is still fit for purpose.***



# PLANNING PROTOCOL

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## **A. INTRODUCTION**

### **1. The Aim of this Protocol**

The aim of this protocol is to ensure that in the planning process all decisions are unbiased, impartial, and well founded. It should be read in conjunction with the Local Government Association's [Probity in Planning Guidance](#).

Failure to abide by this Protocol may put:-

- the Council at risk of proceedings in respect of the legality or maladministration of the related decision;
- you at risk of a complaint to the Monitoring Officer; and
- you at risk of being named in a report made to the Council, or if the failure is also likely to be a breach of the interest provisions of the Localism Act 2011(as amended), a complaint being made to the police to consider criminal proceedings.

### **2. Your Role as a Member of the Development Committee**

Members of the Development Committee play an integral role in the democratic determination of planning matters. The primary role of the Committee Members is to make planning decisions in respect of applications that are submitted to the Development Committee because they cannot be determined under delegation by Planning Officers.

In considering applications, Members should ensure that they have read all applications and supplementary information thoroughly and must make balanced and non-biased decisions based on material planning considerations. This will include taking into account:

- the application of national and local planning policies
- reference to legislation, case law and rules of procedure
- rights of appeal; and
- an expectation that local planning authority will act transparently, reasonably and fairly.

Members will often be presented with complex and controversial applications that may attract a good deal of public attention. It is essential that Members are equipped with the skills and knowledge to make decisions by balancing a range of competing interests and making an informed judgment against the local and national policy framework in the wider public interest.

Members must have regard to the professional advice and guidance provided by planning and legal officers during the consideration of any application. However, Members do not have to agree with the planning decision recommended by officers provided that justifiable material planning grounds can be identified to support a decision to the contrary.

### 3. The Role of Ward Members

Ward Members play an essential role in representing the views of residents in respect of planning matters. Ward Members should ensure that they represent the views of the whole community equally, not just those views which have been more overtly expressed or which align with the personal views of the Ward Member.

Ward Members will receive notification of planning applications on a weekly basis. Members may seek referral of applications within their ward to the Development Committee, subject to conditions set out in part L of this protocol.

Ward Members may also be involved in pre-application discussions or consultation regarding applications within their ward. Members must exercise caution when participating in these discussions, ensuring that they do not give any assurance to the application or their agent of a particular planning outcome and that they do not render themselves predetermined. It is always advisable to be accompanied by planning officers when meeting with applicants, agents or developers.

#### Speaking as Ward Member at Development Committee as a Non-Committee Member

Ward Members may make speak to applications in their Ward at the Development Committee, ensuring that they represent the views of the whole community. Ward Members speaking in this capacity will have a maximum of 5 minutes to make representations to the Committee. Committee members may ask questions of clarity on points made by the Ward Member.

The Committee Chairman may, at their discretion, invite the Ward Member to respond to questions from Committee Members during the consideration of the application where it is deemed that the Ward Member's local knowledge may assist with understanding. The Ward Member must respond factually and impartially, and not use this as an opportunity to make further representations to the Committee.

#### Speaking as Ward Member at Development Committee as a Committee Member

If a Committee Member wishes to speak to the application as a Ward Member, they must 'walk the floor' for the duration of the consideration of the application and move to the public speakers area of the meeting room. They will then be able to exercise the speaking rights of a Ward Member as described above. In this circumstance the Committee Member will not be able to debate or vote on the application.

If a Committee Member does not wish to act as the Ward Member, for example if another Ward Member is representing the views of the community, they may participate in the meeting as a normal member of the Committee. This is subject to the Member being able to satisfy themselves that they are able to consider the application without bias and in the wider public interest, not just with regards to the views of the residents of their Ward.

#### 4. When the Protocol Applies

This Protocol applies to Members at all times when involving themselves in the planning process (this includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public, and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

#### B. Relationship to the Code of Conduct

The Code of Conduct for Councillors applies to Members at all times when acting in their capacity as an elected Councillor, including participating in Committee meetings. This Protocol seeks to supplement the provisions of the Code of Conduct, however the Code of Conduct takes precedence over any of the provisions herein.

**Do** comply with all of the rules in the Code of Conduct for Councillors.

**Do** refer any concerns about breaches of the Code of Conduct to the Monitoring Officer.

**Do** behave courteously at all times during Committee meetings and treat other Members, Officers, applicants and their representatives and other public speakers with respect.

#### C. Declarations of Interest

Members are legally required to ensure that relevant interests are recorded in their register of interests and declared at any meeting where a matter relating to that interest is under discussion.

Members should familiarise themselves with the three categories of interest outlined in the Code of Conduct:

- Disclosable Pecuniary Interests
- Other Registrable Interest
- Non-Registrable Interests

and ensure that they are aware of the guidance and the circumstances in which these interests apply.

**Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.

**Do** notify the Monitoring Officer of the details as soon as you become aware that you have a disclosable pecuniary interest or other registrable interest.

**Do** seek advice from the Monitor Officer about any possible interests and whether you should participate in the consideration of an application.

**Don't** participate, or give the appearance of trying to participate, in the making of any decision on an application where you have a disclosable pecuniary interest or a relevant other registrable interest or non-registrable interest. You must leave the meeting room for the entirety of the debate.

**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 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.

#### **D. Bias and Predetermination**

It is essential that Members attend with an open mind, prepared to consider all evidence and arguments presented to them. A Member who has a biased view or a predetermined position cannot vote or participate in the relevant matter.

The test is would a member of the public with the knowledge and relevant facts conclude that there is a possibility of bias that could prejudice your judgment? A perception of bias can be sufficient to render a planning decision vulnerable to legal challenge.

It is important to recognise that predetermination is different to predisposition. This means that a Member may continue to participate in a planning application where they have a pre-existing opinion or attitude about the matter under discussion, but remain open to listening to all the arguments and changing their mind in light of the information presented at the meeting. A Member may make a statement to that effect at the meeting.

**Do** be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011 (as amended).

**Do** be aware that you are likely to be biased and predetermined 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 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).

**Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a Member of the Parish Council, for example, or both a District and County Councillor), provided that the proposal

does not substantially affect the wellbeing or financial standing of the consultee body, and you make it clear to the consultee body that:

- your views are expressed on the limited information before you only;
- you must reserve judgment and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information;
- you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
- your membership or role is a Non-Pecuniary Interest

**Do** explain to the consultee body that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.

**Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member where you have represented your views or those of local electors and have a personal interest in the matter, but do not have a disclosable or other pecuniary interest. Where you do:-

- advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item;
- remove yourself from the Member seating area for the duration of that item.

## **E. Contact with Applicants, Developers and Objectors**

There are occasions where you may be invited to meet with applicants and developers as Ward Member or as a local resident. This could be part of the pre-application process or a general meeting or public exhibition to explain the features of a future development. Members are able to participate in such meetings but should proceed with caution.

Equally you may be approach to meet with objectors so that they can explain their concerns, the same caution should be exercised in this situation.

**Do** refer those who approach you for planning, procedural or technical advice to officers.

**Do** contact the Director for Place where you think a formal meeting with applicants, developers or groups of objectors might be helpful. You should never seek to arrange that meeting yourself. If a meeting is organised, officers will ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.

**Do** otherwise:-

- follow the rules on lobbying as set out in part F below;
- consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- report to the Director for Place any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

**Do** attend a public meeting or exhibition to gather information about planning proposals.

**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 Development Committee.

**Do** be aware that a presentation is a form of lobbying – you can express views, but must not give an indication of how you or other Members might vote.

**Don't** attend a private planning presentation not open to the general public unless an officer is present and the presentation is open to all Members.

## **F. Lobbying of Councillors**

Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward member or to a member of the planning committee.

Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, and so care and common sense must be exercised by all parties involved.

**Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality (and therefore your ability to participate in the Committee's decision making) if you express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.

**Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

**Do** promptly refer to the Director for Place any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.

**Do** copy or pass on any lobbying correspondence you receive to the relevant Planning Officer at the earliest opportunity.

**Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including offers of gifts or hospitality), who will in turn advise the appropriate officers to investigate.

**Do** note that, unless you have a Disclosable Pecuniary Interest or other relevant interest, you will not have fettered your discretion or breached this Protocol through:

- listening or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
- attending a meeting with the developer or applicant organised by the Director for Place that is conducted in accordance with the rules set out in the Code of Conduct and this Protocol;
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

## **G. Lobbying by Councillors**

If any councillor, whether or not a committee member, actively lobbies in respect of an application or speaks on behalf of a lobby group at the decision making committee, they should withdraw from the meeting once any public or ward member speaking opportunities have been completed. This is to counter any suggestion that members of the committee may have been influenced by their continuing presence.

**Do** feel free to join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, Ramblers Association or a local civic society, but where that organisation has made representations on a particular proposal make it clear to that organisation and the Committee that you have reserved judgment and the independence to make up your own mind on each separate proposal.

**Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals unless it is your intention to openly campaign on the matter. You should have no involvement in the decision-taking process in the matter and you should remove yourself from the Committee for the duration of that item



**Don't** lobby fellow Councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

**Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

## H. Site Visits

Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters. This should be made clear to any members of the public who are there.

Once a councillor becomes aware of a proposal they may be tempted to visit the site alone. In such a situation, a councillor is only entitled to view the site from public vantage points and they have no individual rights to enter private property. Whilst a councillor might be invited to enter the site by the owner, it is not good practice to do so on their own, as this can lead to the perception that the councillor is no longer impartial.

Site visits will be conducted in accordance with the procedures adopted by the Council.

**Do** request an early site visit by contacting the relevant team leader if you think one is required.

**Do** try to attend site visits organised by the Council where possible.

**Don't** request a site visit unless you feel it is strictly necessary because:-

- particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
- there are significant policy or precedent implications and specific site factors need to be carefully addressed.

**Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee.

**Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.

**Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.

**Don't** hear representations from any other party, with the exception of the Ward Member(s) whose address must focus only on site factors and site issues. Where

you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.

**Don't** express opinions or views to anyone.

**Don't** enter a site not open to the public which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias.

## I. Public Speaking at Meetings

It is likely that you will be asked by residents about how they can speak at a planning meeting. You may also be asked to provide support to someone who wishes to speak at a meeting. It is advisable to direct residents to the Planning Team or Member Services who can provide this assistance.

**Do** ensure that you comply with the Council's procedures in respect of public speaking.

**Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias

## J. Officers

Positive professional relationships between Officers and Members are integral to a strong and effective planning function. At all times Members must abide by the Code of Conduct and the Member and Officer Protocol.

**Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged 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.

**Do** give officers the opportunity to report verbally on all applications reported to the Development Committee for determination.

**Don't** put pressure on officers to put forward a particular recommendation (this does not prevent you from asking questions or submitting views to the Assistant Director, Place & Environment, which may be incorporated into any Committee report).

#### **K. Member Referral of an Application to Committee**

On receipt of the weekly list, Members may identify an application that they feel merits determination by the Development Committee rather than under officer delegation.

Members must email the Corporate Services Team and include the application number, address and the planning reasons for referral. If an application is referred close to the deadline it may be prudent for a Member to telephone the Corporate Services Team to ensure that the referral has been received prior to the deadline.

#### **L. Training**

Members of the Development Committee must attend the required training before making planning decisions. This training will be provided at regular intervals for new and experienced Members and kept up to date in accordance with the Member training standards.

Additionally, specialist training on specific planning considerations will be provided from time to time and as required.

**Do** endeavour to attend any other specialised training sessions provided.

**Don't** participate in a vote at meetings dealing with planning matters if you have not attended the required planning training offered by the Council.

#### **M. Applications in which Members or Officers are directly concerned**

It is vital to ensure that development proposals or representations submitted by Members or Officers or by their close family are handled in a way that does not give any grounds for accusations of favouritism or suspicions of impropriety.

Where a Member or Officer (or a close family member or such persons) submits an application which shall include permitted development notifications and other planning related consents then, if objections are received from statutory consultees or other persons notified of the application, the application will be reported to the Development Committee for a decision.

If no objections are received then the application may, subject to the file being reviewed by the Director for Place, be determined in accordance with the Scheme of Delegation.

The relevant time for determining whether the application needs to be reported to the Development Committee is the date of registration of the application.

The same requirement for the application to be reported to the Development Committee applies to former Members or Officers for a period of one year from the date on which their term of office or employment ceases.

The fact that the application is from a Member or Officer (or their close family) or former Member or Officer will be highlighted in the committee report.

A Member or Officer who has an interest in an application either by reason of it being (i) their application (ii) an application by a close family member or (iii) an application on which they have made representations shall take no part in the processing or deciding of the application.

#### **N. Applications by the Council or applications affecting Council-owned land**

Planning legislation allows the Council to submit and determine proposals for development that it proposes to carry out itself. It is also entirely proper for development proposals to be put forward for land owned by the Council, whether or not the Council is the applicant.

Proposals submitted by the Council or involving Council owned land shall be considered in the same way as those by private developers.

Any such applications shall be reported to the Development Committee for determination. The Officer's report should clearly identify the Council's interest in the application.

Decisions on applications in which the Council is the applicant or landowner must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council. It is important that the Council is seen to be treating all such applications in the same way as any other application as well as actually doing so.

Officers who are involved in the preparation of development proposals shall not advise on, or take any part in the consideration of, planning applications in respect of such proposals.

## PROTOCOL FOR OUTSIDE BODIES

### MEMBERS' AND OFFICERS' RESPONSIBILITIES & LIABILITIES

Members and officers acting on outside bodies may attract personal liability depending on the legal nature of the body and the role fulfilled by the Member or officer. The Council may only delegate its functions to Committees or employees of the Council. This means that Members can only represent the Council on outside bodies as observers or facilitators assisting in the exchange of information. Members cannot make decisions binding the Council unless it is with the authority of the Council in order to implement a decision that the Council has made. Members may serve on outside bodies in their personal capacity, provided that there is no conflict of interest with their duties as a Member.

The following is intended to provide some useful guidelines. It is a Member/officer's responsibility to ensure that they are aware of their liabilities and any insurance arrangements where they participate on outside bodies. Where uncertainty exists, seek guidance from the Monitoring Officer or independent legal advice.

#### **1 The Council may only indemnify Members and Officers in Certain Circumstances as Prescribed by the Local Authorities (Indemnity for Members & Officers) Order 2004.**

The Council will provide an indemnity in relation to any action or failure to act by any Member or officer which:-

- (a) is authorised by the Council and/or;
- (b) forms part of, or arises from, any powers conferred or duties placed upon that Member or officer at the request, or with the approval of, the Authority, including acting as the Council's representative on an outside body;
- (c) arises in respect of the cost of defending any claim for an allegation of defamation by a Member or officer acting in an official capacity (but not in respect of any punitive or exemplary damages or arising from malicious or injurious falsehood);
- (d) is in respect of any investigation, hearing or other proceedings for an alleged failure to comply with the Code of Conduct for Members but, if the Member is found to have breached the Code of Conduct, and where an appeal is unsuccessful, then that Member shall reimburse the Authority or the Insurer for their costs incurred in relation to those proceedings.

The indemnity includes an act or omission subsequently found to be beyond the powers of the Member or officer in question, but only to the extent that the Member or officer reasonably and genuinely believed that the act or omission was within his/her powers at the time he/she acted.

The indemnity does not apply to the defence of any criminal proceedings brought against a Member or officer unless specifically approved by the Council and then

only on similar basis to that relating to proceedings for breaches of the code with regard to reimbursement.

**2 A Member's Role on an Outside Body may Occasionally Give Rise to a Conflict of Interest.**

If a Member is a director or on the management committee of an outside body, it is likely that their prime duty is to the outside body. Where the Member has been appointed by the Authority as its representative this will not necessarily exclude the Member from participating in Council decision making, even when the outside body is directly affected. Members must have regard to the definitions of interests as set out in the Code of Conduct and must remove themselves from any decision-making in which they have a relevant interest.

In some instances a Member may also find that they are unable to properly carry out their functions as a Member of Council and a Member of the outside body. In such a case the Member may consider resigning from one or other body. Members are advised to seek advice from the Monitoring Officer before taking such action.

**3 There are General Duties that Apply to Members and Officers Whether They Act in the Role of Company Director or Trustee or Member of an Unincorporated Body.**

The Member or officer is under a duty to exercise independent judgment in the interest of the organisation in which they are involved. If the Member or officer is involved in the outside body in a representative capacity, this must be declared to the outside body. A mandate from the Council to vote in one way or another would put the Member or officer in breach of the duty to the organisation.

Members and officers must also ensure that avoidable loss is not incurred in managing the organisation. They must make sure that they have regard to all appropriate reports and papers. They are expected to seek professional advice where appropriate.

The Member/officer must act in accordance with the rules, Constitution and framework set by the outside body.

At all times Members and officers must behave ethically, taking an informed role in the outside body's affairs.

Members must represent the Council and not to any political party of which they are a member.

**4 Before Accepting a Role in a Decision-Making Capacity in Any Outside Organisation Consider the Following:-**

How onerous are the responsibilities likely to be? Do you have the time and capacity to take them on?

Is there likely to be any significant conflict of interest between your role in the outside organisation and your Council role? If so, consider refusing the appointment.

Assess the risk of things going wrong, which might give rise to personal liability. Things to consider include the nature and function of the body and the amount of money with which it deals. Always be aware of the added risks where an organisation employs staff.

In each case the issue of insurance should be considered. Find out if the external body has insurance and if so whether it would cover the key risks of the organisation as well as yourself. Find out if your liability is limited or unlimited.

If not, would the organisation consider taking out insurance. If no insurance exists, and indemnity does not apply, this must be weighed in the decision to accept the appointment. Make sure that you are aware of your major responsibilities and liabilities. A guideline on the respective duties and liabilities in relation to companies, trusts and unincorporated associations, is available from Member Services.

## **5 Reporting on Outside Bodies**

Members appointed to Outside Bodies must make regular reports to the Audit and Standards Committee on the activities of the Outside Bodies to which they are appointed.

## **6 Review of Appointments to Outside Bodies**

An annual review of the appointments to Outside Bodies will be undertaken by the Audit & Standards Committee.

## **OFFICERS' CODE OF CONDUCT**

### **1 Introduction**

- 1.1 This Code of Conduct applies to all employees of the Council. It explains in practical terms the standards of behaviour required under the law, under Conditions of Service, and under Council policy and Procedure Rules.

### **2 Status of the Code**

- 2.1 The Code sets out the minimum standards that apply and lays down guidelines that will help improve standards and protect employees from misunderstanding or criticism. The Code will be regularly reviewed and updated.
- 2.2 Inevitably some of the issues covered by the Code will affect senior, managerial and professional employees more than others. The Code covers all employees under a contract of employment within local government.
- 2.3 This Code supplements, and does not replace, any code or recognised standards of conduct promulgated by any professional body of which an employee is a member.

### **3 Standards**

- 3.1 Local government employees are expected to give the highest possible standard of service to the public, and where it is part of their duties, to provide advice to Councillors and fellow employees with impartiality.
- 3.2 Employees will be expected as part of the drive for a quality service to bring to the attention of the appropriate level of management any deficiency in the provision of service.
- 3.3 Employees must be aware of the Council's Whistleblowing Procedure and report any impropriety, breach of procedure, unlawfulness or maladministration through the appropriate channels and if necessary to one of the named officers in the Council's Whistleblowing Procedure including the Monitoring Officer. The Council's Whistleblowing Policy is kept up to date by Human Resources. Members should refer to the Monitoring Officer for advice on whistleblowing, if necessary.

### **4 Disclosure of Information**

- 4.1 The Council has adopted the principles of open government and seeks to involve the public in the decision making process. The law requires that certain types of information must be available to Members, auditors, Government departments, service users and the public. In certain circumstances, employees may have a legal or professional duty to disclose information to a third party, (for example, in the course of legal proceedings).



- 4.2 The Council will inform employees of the type of information that must be made available, and to whom; the type of information that has voluntarily been made open, and to whom; and the type of information that the Authority does not wish to be disclosed without specific permission.
- 4.3 Employees should be aware of which information within the Council is open and which is not, and act accordingly. Any officer having custody of documents to which right of access applies commits an offence by obstructing that right.
- 4.4 Employees should not use any information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to others who might use it in such a way.
- 4.5 Any particular information received by an employee from a Councillor which is personal to that Councillor and does not belong to the Council should not be divulged by the employee without the prior approval of that Councillor, except where such disclosure is required or sanctioned by the law.

## **5 Political Neutrality**

- 5.1 Employees serve the Council as a whole. It follows they must serve all Councillors and not just those of the controlling group, and must ensure that the individual rights of all Councillors are respected.
- 5.2 Some employees are required to advise political groups. They must do so in ways that do not compromise their political neutrality.
- 5.3 Employees, whether or not politically restricted, must follow every lawful expressed policy of the Council and must not allow their own personal or political opinions to interfere with their work.
- 5.4 Political assistants appointed on fixed term contracts in accordance with the Local Government and Housing Act 1989 are exempt from the standards set in paragraph 5.1.
- 5.5 Where a Local Authority employee holds a politically restricted post such restrictions are deemed to be incorporated in their contract of employment.

## **6 Relationships**

### Councillors

- 6.1 All employees are there to carry out the Council's work. They are responsible to the Council through its senior managers.
- 6.2 The role of some employees is to give advice to Councillors and senior managers. Mutual respect between employees and Councillors is essential to good local Government. Close personal familiarity between employees and individual Councillors can damage the relationship and prove embarrassing to

other employees and Councillors and should therefore be avoided.

### The Local Community

- 6.3 Employees should always remember their responsibilities to the community they serve and ensure courteous, respectful, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the Council.

### Contractors

- 6.4 All relationships of a business or private nature with external contractors, or potential contractors, should be made known to the appropriate Assistant Director. Orders and contracts must be awarded on merit, by fair competition in accordance with Contract Procedure Rules and no special favour should be shown to any businesses and no part of the local community should be discriminated against.
- 6.5 An employee must not seek or receive any gift or personal inducement in connection with the procurement of works, goods or services.
- 6.6 Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors should declare that relationship to the appropriate Director.

## **7 Appointments and Other Employment Matters**

- 7.1 Employees involved in appointments should ensure that these are made on the basis of merit. It is unlawful for an employee to make an appointment that is based on anything other than the ability of the candidate to undertake the duties of the post.
- 7.2 In order to avoid any possible accusation of bias, employees should not be involved in an appointment where they are related to an applicant, or have a close personal relationship outside work with him or her. Candidates for any appointment with the Council must disclose on their application whether they are related to any member of the Council or to a holder of any senior office.
- 7.3 Employees should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner, close personal friend etc.

## **8 Outside Commitments**

- 8.1 Employees graded above Scale 6 have conditions of service that require them to obtain written consent to take any outside employment. All employees should be clear about their contractual obligations and should not take outside employment which conflicts with the Council's interests, or in any way weaken public confidence in the conduct of the Council's business.

- 8.2 Employees of all grades should not undertake outside work if their official duties overlap in some way with their proposed work, if it causes a conflict of interest, or if it makes use of material to which the employee has access by virtue of his or her position (for example, an architect or planner who draws up plans within the District for an applicant for planning consent.) It is irrelevant whether or not the work is paid.
- 8.3 Employees' off-duty hours are their personal concern but they should not subordinate their duty to private interests to put themselves in a position where duty and private interests conflict; this is not limited to other paid employment and may include issues relating to personal standards of conduct.
- 8.4 The Council will not preclude employees from undertaking additional employment, but any such employment must not, in the view of the Council, conflict with or react detrimentally to the Council's interests, or in any way weaken public confidence in the conduct of the Council's business. If in doubt seek the view of the Monitoring Officer.
- 8.5 No outside work of any sort should be undertaken in the office, and use of Council facilities for outside work is forbidden. All the resources of the Council including equipment, stationery, etc, are to be used to further the Council's business and are not for personal use.

## **9 Information Technology and Data Security**

- 9.1 Employees must ensure that they follow the Council's security procedures in relation to the use and storage of computers and the proper management of computer held information. Particular care should be taken to observe established procedures when using passwords and when logging on and off, especially when working with confidential records or sensitive material.

## **10 Personal Interests**

- 10.1 Employees must declare to their Director any financial interests that could conflict with the Council's interests.
- 10.2 Employees must declare to their Director (in writing), any non-financial interests that they consider could bring about conflict with the Council's interests. This may include membership of outside bodies in a personal capacity. In such cases employees should be mindful not to place themselves in a situation where their involvement or working contribution could compromise their continuing professional duty to the interests of the Council.
- 10.3 On a voluntary basis, employees are encouraged to make declarations of interests by pro forma, based on the same principles as those required of Members, in a register kept for the purpose by HR.
- 10.4 When serving on outside bodies as a Council appointee, employees will be expected to represent and promote the Council's interests and policies as the

circumstances dictate.

## **11 Equality Issues**

- 11.1 Employees should ensure that all policies agreed by Council relating to equality issues are complied with in addition to the requirements of the law. All members of the local community, customers, job applicants and other employees have a right to be treated with fairness and equity.

## **12 Separation of Roles During Tendering**

- 12.1 The tendering process must be seen to be open and above board. Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the Authority.
- 12.2 Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors, and sub-contractors.
- 12.3 Employees who are privy to confidential information on tenders or costs relating to either internal or external contractors should not disclose that information to any unauthorised party or organisation.

## **13 Corruption**

- 13.1 Corruption may include receiving any payment, gift (other than a gift of a nominal value (£25)) hospitality, or any other benefit from any person or organisation who a member of staff deals with in their work, irrespective of what it is in respect of, including tips, and payment for additional 'private work'. It is also irrelevant whether any benefits are directly to an officer or to the officer's family or friends.
- 13.2 Any case of suspected corruption will be fully investigated and any proven cases will be treated as gross misconduct and criminal prosecutions undertaken.

## **14 Use of Financial Resources**

- 14.1 Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner.
- 14.2 They should strive to ensure value for money to the local community and to avoid legal challenge to the Council.

## **15 Hospitality, Gifts and Sponsorship**

- 15.1 Employees must decline gifts other than nominal items such as calendars, diaries, etc.
- 15.2 Employees should treat with caution all offers of hospitality wherever any suggestion can arise of improper influence. Particular care is required where a

person or body having or seeking business with, or a decision from the Council, offers hospitality, particularly where the offer is to an individual employee. It should only be accepted where it is on a scale appropriate to the circumstances, reasonably incidental to the occasion and where it is apparent no cause could reasonably arise for adverse criticism about accepting it.

- 15.3 Where an outside organisation wishes to sponsor or is seeking to sponsor a local Government activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
- 15.4 Where the Council wishes to sponsor an event or service neither an employee nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to an appropriate manager of any such interest. Similarly, where the Council through sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

## **16 Standard of Dress and Appearance**

- 16.1 There is a general expectation that dress will be appropriate to the nature of the duties and responsibilities undertaken by the individual.
- 16.2 The Council values and welcomes the ethnic diversity of its workforce and will take account of ethnic and religious dress requirements with sensitivity.

# **MEMBER AND OFFICER PROTOCOL**

## INTRODUCTION

The Council is responsible for providing a variety of services to the public. At the heart of this delivery is the relationship between Members and Officers. It is key that this relationship is strong and collaborative and both roles recognise and complement each other.

Effective relationships between Members and Officers help to create a pleasant working environment which increases efficiency and productivity. This in turn ensure that we have the best chance of delivering the Council's strategic priorities and delivering real benefits for our communities.

The purpose of this protocol is to assist Members and Officers to perform effectively by giving guidance on their respective roles and expectations and on their relationship with each other.

The protocol must be read and operated in the context of any relevant legislation and national and local Codes of Conduct and any procedure for confidential reporting

## PRINCIPLES OF THE MEMBER AND OFFICER PROTOCOL

The relationship between Members and Officers is an essential ingredient that goes into the successful working of the Council. This relationship is based upon the following principles:

RESPECT	We will: <ul style="list-style-type: none"><li>• Ensure that we understand each other's roles and respect necessary boundaries</li><li>• Give feedback in a constructive and respectful way</li><li>• Treat each other fairly and equally</li><li>• Understand that sometimes things go wrong and work together to continually develop and improve</li><li>• Respect that officers' professional opinions and political will may sometimes conflict, and strive to find a mutually acceptable solution</li></ul>
TRUST & HONESTY	We will: <ul style="list-style-type: none"><li>• Be open and honest about challenges and frustrations</li><li>• Trust each other that we are always acting in the best interests of the Councils</li><li>• Ensure that private and sensitive matters are treated confidentially</li><li>• Create safe spaces to have challenging conversations</li></ul>
COMMUNICATION	We will: <ul style="list-style-type: none"><li>• Communicate regularly and openly</li><li>• Take a 'no surprises' approach – ensuring that as far as possible no Councillor or Officer is put on the spot</li></ul>

RECOGNITION	<p>We will:</p> <ul style="list-style-type: none"> <li>• Recognise and value each other's skills and experiences</li> <li>• Have pride in our district, in the Council and what we are doing</li> <li>• Celebrate successes, give each other feedback and show appreciation</li> </ul>
CREATIVITY	<p>We will:</p> <ul style="list-style-type: none"> <li>• Have ambition for our places and our communities</li> <li>• Continually seek opportunities to innovate and explore creative solutions to issues</li> <li>• Maintain a sense of humour and an optimistic approach</li> </ul>

## ROLES OF MEMBERS AND OFFICERS

The respective roles of Members and Officers can be summarised as follows:

Members and Officers are servants of the public and they are indispensable to one another but their responsibilities are distinct.

Members are elected and during their term they are responsible to both the Council and the electorate.

Officers are responsible to the Council. Their job is to give advice to Members and to the Council, and to carry out the Council's work within the delegated powers and under the direction and control of the Council and various committees.

**Members** have four main areas of responsibility:

- a) determining the policy of the Council and giving it political leadership;
- b) monitoring and reviewing the performance of the Council in implementing that policy and delivering services;
- c) representing the Council externally; and
- d) acting as advocates on behalf of their constituents.

It is not the role of Members to involve themselves in the day to day management of the Council's services. This includes the day to day operational decisions that are made from Officers.

The role of **Officers** is to give advice and information to Members upon which they may determine policy issues and to implement the policies determined by the Council, and to provide advice to Members as to how this might properly be done.

In giving such advice to Members, and in preparing and presenting reports, it is the responsibility of the Officer to express their own professional views and recommendations. Whilst an Officer may report the views of individual Members on an issue, if the Member



wishes to express a contrary view they should not seek to pressure the Officer to make a recommendation contrary to the Officer's professional view.

Statutory Officers (Head of Paid Service, S.151 Officer and Monitoring Officer) have responsibilities in law over and above their obligations to the Council and to individual Members. Members must respect these obligations and must not obstruct Officers in the discharge of these responsibilities.

#### **WHAT DO MEMBERS AND OFFICERS NEED FROM EACH OTHER?**

**In order for Members to carry out their roles, they need from Officers:**

- Sufficient, detailed and accurate information on which to make informed decisions.
- Access to appropriate Officers to obtain timely information on matters they are involved in.
- To be kept informed on matters they are involved in or affect their Wards.
- To be consulted on matters that are relevant to their Wards.
- Key points of contacts within all service areas to facilitate Member and Officer relationships.
- Clarity on matters for which Members are responsible and matters for which Officers are responsible.

**In order for Officers to carry out their roles, they need from Members:**

- Sufficient, detailed and accurate information on which to make enquiries or take action.
- Access to Members to obtain timely information on matters they are involved in.
- To be kept informed on Members' involvement in matters including those that affect their Wards.
- Timely responses to consultations on matters that are relevant to Members' wards.
- Clarity on matters for which Officers are responsible and matters for which Members are responsible.

Underpinning all of this is the principle of 'no surprises'. Neither Officers nor Members should be put in the position where information or questions are presented in a public forum without prior warning or where they are unprepared to respond to matters due to a lack of timely and comprehensive briefing.

This principle will operate within the context of the 'need to know' provisions.

#### **CONTACT ARRANGEMENTS**

Effective contact methods are key to ensuring positive working between Members and Officers.

Members are able to contact Officers in the following ways:

- The Councillor Portal

- Telephone
- Email
- In person or virtual meetings

Officers will provide an initial acknowledgement to written Councillor queries within 24 hours and a substantive response within 5 working days for non-urgent matters. Urgent matters will be dealt with as appropriate to the situation.

Officers will ensure that email out of office messages include forwarding details and that phone calls are diverted whenever they are away from work to ensure that Members have an alternative point of contact for their queries.

Members should avoid 'dropping in' to visit Officers unannounced and refrain from sending persistent or unreasonable volumes of email correspondence. If a Member has any concerns about a lack of response from an Officer, this should be escalated to the Officer's Line Manager in the first instance.

Confidentiality will be observed when dealing with Member correspondence, which will include refraining from copying other Members or Officers into emails without that Members' permission. Officers will share correspondence with the relevant designated Officers wherever that correspondence contains information which is unlawful, presents a safeguarding issue or breaches the code of conduct.

#### **CLOSE RELATIONSHIPS BETWEEN MEMBERS AND OFFICERS**

Relationships between Members and Officers should be professional and courteous. It is essential to avoid over familiarity and to maintain appropriate levels of formality.

Where there is a close family or personal relationship between a Member and Officer, it should be declared by both parties to the Chief Executive who will treat such disclosures as confidential. The Member should also advise their Group Leader.

It is not possible to define exactly the range of relationships that would be considered close or personal. Examples however would include a family or sexual relationship and regular social mixing such as holidays or evening meals together

An Officer must not seek to influence a Member to do something that may be advantageous to the member of staff personally or professionally or injurious to another Officer. Any approaches of this nature should be reported to the Chief Executive.

#### **POLITICAL GROUPS**

Officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual member of the Councils.

Any political group may request the Chief Executive to attend a meeting of the group, consisting of members of the Councils only, to advise on any particular matter relating to the Council.

The Chief Executive may arrange for the attendance of a representative in their stead, or may decline to attend or to provide a representative where they are of the opinion that the particular issue is of such a political nature that it would be inappropriate to attend.

Officer advice to political groups will be limited to a statement of material facts and identification of options and the merits and demerits of such options for the authority. Advice will not deal with any political implications of the matter or any option, and Officers will not make any recommendation to a political group.

Officers will respect the confidentiality of any matter which they hear in the course of attending a political group meeting.

#### **WHAT TO DO IF THINGS GO WRONG**

Sometimes relationships between Members and Officers do break down, often as a result of misunderstanding or miscommunication. It is always preferable, in the first instance, to attempt to resolve any issues informally – with the support of the Officer’s Line Manager and relevant Group Leader as necessary.

If the matter is very serious, or cannot be resolved informally Officers should report any concerns about Member behaviour to the Monitoring Officer who may decide that the formal code of conduct complaints process is appropriate.

Members should report any concerns about Officer behaviour to that Officer’s Line Manager or to the Chief Executive if a senior officer is involved or if the matter is very serious.

It is important that the resolution to any formal complaint between a Member and Officer seeks to preserve a positive working relationship for the future.