



# **MIDDLESBROUGH BOROUGH COUNCIL**

## **CONSTITUTION**

**Made under the Local Government Act 2000<sup>1</sup>**

**September 2023**

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<sup>1</sup> [Local Government Act 2000, section 9P](#)

|                  |                                       |    |
|------------------|---------------------------------------|----|
| <b>Section 1</b> | <b>Introduction</b>                   | 6  |
| <b>Section 2</b> | <b>Interpreting the Constitution</b>  | 9  |
| <b>Section 3</b> | <b>Citizens and the Council</b>       | 15 |
| <b>Section 4</b> | <b>Full Council</b>                   | 17 |
|                  | Council Procedure Rules               | 19 |
| <b>Section 5</b> | <b>Councillors</b>                    | 44 |
| <b>Section 6</b> | <b>The Mayor and the Executive</b>    | 46 |
|                  | Executive Procedure Rules             | 49 |
| <b>Section 7</b> | <b>Overview and Scrutiny</b>          | 60 |
|                  | Overview and Scrutiny Procedure Rules | 63 |
|                  | Call-in Procedure                     | 68 |
| <b>Section 8</b> | <b>Standards</b>                      | 73 |
|                  | Standards Hearing Procedure Rules     | 74 |
| <b>Section 9</b> | <b>Responsibility for Functions</b>   | 82 |
|                  | Corporate Affairs Committee           | 83 |
|                  | Audit Committee                       | 84 |
|                  | Licensing Committee                   | 87 |
|                  | Planning and Development Committee    | 91 |

|                   |   |     |
|-------------------|---|-----|
| <b>Section 10</b> | <b>Joint Arrangements</b>                                       | 93  |
|                   | Joint Health and Wellbeing Board                                | 93  |
|                   | Teesside Pension Fund Committee                                 | 94  |
| <b>Section 11</b> | <b>Officers</b>   | 95  |
|                   | Officer Employment Procedure Rules                              | 98  |
|                   | Management Structure  | 102 |
| <b>Section 12</b> | <b>Finance, Contracts and Legal Matters</b>                     | 103 |
| <b>Section 13</b> | <b>Decision-Making</b>  | 104 |
| <b>Section 14</b> | <b>Financial and Contract Procedure Rules (Standing Orders)</b> | 108 |
| <b>Section 15</b> | <b>Scheme of Delegations</b>                                    | 109 |
| <b>Section 16</b> | <b>Access to Information Procedure Rules</b>                    | 110 |
| <b>Section 17</b> | <b>Budget and Policy Framework Procedure Rules</b>              | 124 |
| <b>Section 18</b> | <b>Financial Procedure Rules</b>                                | 127 |
| <b>Section 19</b> | <b>Contract Procedure Rules</b>                                 | 178 |
| <b>Section 20</b> | <b>Council Companies</b>  | 230 |
| <b>Section 21</b> | <b>Schemes of Delegation</b>                                    | 233 |
|                   | Officer Scheme of Delegation                                    |     |

|                   |  |     |
|-------------------|--|-----|
|                   | Executive Scheme of Delegation                             |     |
| <b>Section 22</b> | <b>Members' Scheme of Allowances</b>                       | 234 |
| <b>Section 23</b> | <b>Teesside Pension Fund Committee</b>                     | 242 |
| <b>Section 24</b> | <b>Codes and Protocols</b>                                 | 249 |
|                   | Member Code of Conduct                                     | 251 |
|                   | Officer Code of Conduct                                    | 265 |
|                   | Protocol for Member / Officer Relations                    | 276 |
|                   | Protocol for Members and Officers on Gifts and Hospitality | 290 |
|                   | Filming of Council Meetings                                | 296 |
| <b>APPENDIX 1</b> | <b>Code of Corporate Governance</b>                        | 299 |
| <b>APPENDIX 2</b> | <b>The Role of Councillors</b>                             | 306 |
|                   | Role Profile: Member                                       | 307 |
|                   | Role Profile: The Mayor                                    | 309 |
|                   | Role Profile: The Deputy Mayor                             | 311 |
|                   | Role Profile: Executive Members                            | 312 |
|                   | Role Profile: The Chair of the Council                     | 313 |
|                   | Role Profile: Group Leader                                 | 314 |
|                   | Role Profile: Chair of the Overview and Scrutiny Board     | 315 |

|                   |   |     |
|-------------------|---|-----|
|                   | Role Profile: Scrutiny Panel Chairs                       | 316 |
| <b>APPENDIX 3</b> | <b>Monitoring Officer Protocol</b>                        | 318 |
| <b>APPENDIX 4</b> | <b>Statutory Officer Protocols</b>                        | 328 |
|                   | Head of Paid Service                                      | 328 |
|                   | Chief Finance Officer                                     | 330 |
|                   | Monitoring Officer  | 334 |
|                   | Joint Statutory and Constitutional Responsibilities       | 337 |
|                   | Complaints Manager  | 338 |
|                   | Nominated Local Authority CHANNEL Chair                   | 340 |
|                   | Nominated Local Authority PREVENT Lead                    | 341 |
| <b>APPENDIX 5</b> | <b>Proper Officer Functions</b>                           | 344 |
| <b>APPENDIX 6</b> | <b>Councillor Calls for Action Procedure and Guidance</b> | 349 |

## **1 INTRODUCTION**

This section explains how the Council operates. It summarises the main provisions of the Constitution. If you would like to see the detailed provisions in relation to a particular Council function, you should refer to the relevant section of the Constitution.

Capitalised words used in this section 1 (and throughout the Constitution) are defined in section 2.2.

### **1.1 What is the Constitution?**

1.1.1 The Constitution sets out how the Council operates, how decisions are made, and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law, while others are a matter for the Council to determine.

1.1.2 The Constitution contains 24 sections which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are set out in separate rules and protocols at the end of this document.

### **1.2 How does the Council operate?**

1.2.1 The Council is composed of a Mayor and 46 Councillors. The Mayor is directly elected by the electors of the Borough, normally for four years. The Mayoral election is held on the same day that Councillors are elected to represent each of the Wards within the Borough.

1.2.2 The Mayor and the Councillors are known as "Members" of the Council. Members agree to follow a Code of Conduct to ensure high standards in the way they undertake their duties. The Council's Standards Committee advises Members on the Code of Conduct and ensures that they receive training on its requirements. Members are required to adhere to the Code of Conduct when fulfilling their duties.

1.2.3 Members decide the Council's overall policies and set the Budget each year. They also appoint various Committees to undertake certain delegated functions.

1.2.4 The Mayor appoints a Deputy Mayor and an Executive, which comprises up to nine elected Members.

1.2.5 Council meetings are normally open to the public.

### **1.3 How are decisions made?**

1.3.1 The Executive is responsible for most of the Council's day-to-day decisions. The Mayor is responsible for the Council's main executive decision-making powers and the overall delivery of Council services.

1.3.2 The Executive is held to account by the Council's scrutiny process. The Executive should make decisions in line with the Council's overall policies and any departure from this needs to be approved by the Council.

1.3.3 So far as possible, major decisions are published in the Executive's Forward Work Programme. Where Council Officers attend an Executive meeting to discuss a major decision, the meeting will be open to the public unless confidential matters are being discussed.

1.3.4 The Council's Budget and Policy Framework is set by the Council. The Mayor and Executive may make proposals to Council in relation to the Budget and other plans and strategies for adoption by Council.

#### **1.4 What happens if the Council doesn't agree with the Executive's proposals?**

The Council has the option to suggest amendments to any Budget, plan or strategy submitted by the Executive. The Executive can then consider the Council's input before re-submitting its proposal. The Executive's proposal will be accepted unless the Council votes for further amendments by a 2/3 majority.

#### **1.5 How are Council decisions scrutinised?**

1.5.1 The Council is held to account by the Overview and Scrutiny Board. The Board's reports and recommendations advise the Council and the Executive on matters relating to policy, service delivery and the Budget.

1.5.2 The Board can "call-in" a decision made by the Executive before it is implemented. The Board can then consider whether the decision is appropriate and make recommendations to the Executive.

1.5.3 The Executive may also consult the Board on forthcoming decisions and policy development.

#### **1.6 What is the role of Officers?**

Officers give advice, implement decisions, and manage the day-to-day delivery of the Council's services. Some Officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A protocol governs the relationships between Officers, Councillors and the Mayor.

#### **1.7 What are the rights of citizens in relation to the Council?**

1.7.1 Members of the public may:

- (a) vote at local elections if they are eligible and registered;
- (b) contact the Mayor or their local Councillor about any matter of concern to them;
- (c) obtain a copy of this Constitution;
- (d) attend meetings of the Council and its Committees except where, for example, personal or confidential matters are being discussed;
- (e) petition to request a referendum on the form of Executive the Council should adopt;

- (f) find out, from the Executive's Forward Work Programme, the Key Decisions that are to be discussed by the Executive, or decided by the Executive or Officers, and when;
- (g) attend meetings of the Executive where Key Decisions are being discussed or decided, except where, for example, personal or confidential matters are being discussed;
- (h) see reports and background papers, and any record of decisions made by the Council, its Committees and the Executive, except where they relate to personal or confidential information;
- (i) complain to the Council about Council services, or any action or inaction which concerns them, for the matter to be investigated under the Council's complaints processes;
- (j) complain to the Local Government and Social Care Ombudsman if they think the Council has not followed its procedures properly. They should only do this after using the Council's own complaints processes;
- (k) complain to the Council's Monitoring Officer if they have evidence that a Councillor has not followed the Council's Code of Conduct; and
- (l) inspect the Council's accounts and make their views on those accounts known to the Council's external auditor.

1.7.2 The rights listed above do not include additional rights members of the public might have in relation to specific Services, for example, as a parent of a school pupil or as a Council tenant.

1.7.3 The Council welcomes participation by its citizens in its work. For further information on your rights as a citizen, please contact either Democratic Services at The Town Hall, Middlesbrough, TS1 9FX or by email to [councilquestions@middlesbrough.gov.uk](mailto:councilquestions@middlesbrough.gov.uk) and refer to the Summary of Rights for Public Rights of Access to Council Information.

1.7.4 Section 3 of the Constitution sets out citizens' rights in more detail.



## 2 INTERPRETING THE CONSTITUTION

This section explains what the Constitution is for and how it is to be interpreted. It also sets out the rules for how the Constitution is to be monitored and reviewed, how it can be amended, how certain parts of it can be suspended, and how it is published.

### 2.1 What is the purpose of the Constitution?

- 2.1.1 The Constitution sets out the rules and procedures under which the Council operates.
- 2.1.2 It helps members of the public and other stakeholders understand how the Council makes its decisions. It also acts as a guide for the Mayor, Councillors and Officers in performing their roles.

### 2.2 Meanings of key terms used in the Constitution

Where capitalised terms are used in this Constitution, they will have the meanings set out below:

|                  |   |
|------------------|---|
| “Annual Meeting” | the annual meeting of the Council that takes place in March, April or May (or otherwise within 21 days of the retirement of outgoing Councillors following an election) and makes decisions in relation to the running of the Council for the Municipal Year;   |
| “Borough”        | the borough of Middlesbrough;   |
| “Budget”         | the overall annual revenue budget and periodic capital budget approved by Full Council.<br><br>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.<br><br>The Budget is the first year of the MTFS; |
| “Byelaws”        | local laws made by the Council under an enabling power contained in a public general act or a local act requiring something to be done – or not done – in a specified area <sup>2</sup> ;   |
| “Chair”          | the person who is elected as chair of the Council in accordance with the Council Procedure Rules;   |
| “Chief Officers” | an Officer who is a member of the Council’s Leadership Management Team;   |

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<sup>2</sup> [The Byelaws \(Alternative Procedure\) \(England\) Regulations 2016](#)

|                       |   |
|-----------------------|---|
| “Committee”           | <p>any committee of the Council, including where relevant any sub-committee</p> <p>For the avoidance of doubt, reference to an “Executive Committee” shall mean a committee or sub-committee (as appropriate) of the Executive;</p>   |
| “Co-Opted Member”     | <p>a person who is not a Councillor but who sits on any Committee;</p>  |
| “Council”             | <p>Middlesbrough Borough Council;</p>   |
| “Councillor”          | <p>a person elected to the Council to represent an area (called a Ward) within the Borough.</p> <p>For the avoidance of doubt, the Mayor is not a Councillor;</p>   |
| “Council Rules”       | <p>Procedure</p> <p>the procedural rules for running the Council as set out in section 4;</p>   |
| “Council Tax”         | <p>a tax levied on households by local authorities in Britain, based on the estimated value of a property set out in value-based bandings;</p>  |
| “Executive”           | <p>a group of Members selected by the Mayor to exercise Executive Functions;</p>  |
| “Executive Decision”  | <p>any decision made by the Executive to exercise or refrain from exercising an Executive Function, including any decision made by a person or Member Body to whom Executive Decision-making powers have been delegated;</p>  |
| “Executive Function”  | <p>(a) any function of the Council that is not exercisable by Full Council or any Member Body of the Council, as defined in the Local Government Act 2000, subsidiary legislation and associated guidance; and</p> <p>(b) contractual matters, the acquisition and disposal of land and financial support to organisations and individuals.</p> <p>For the avoidance of doubt, regulatory functions (including planning, licensing and building control) are not Executive Functions;</p> |
| “Executive Member”    | <p>a Councillor who is appointed as a member of the Executive;</p>  |
| “Executive Portfolio” | <p>the particular area for which an Executive Member is responsible, as designated by the Mayor from time to time;</p>  |

|                                       |   |
|---------------------------------------|---|
| “Financial Limits Annex”              | as defined in the Financial Regulations;  |
| “Forward Work Programme”              | a notice setting out the matters which the Mayor believes will be subject to a Key Decision during the period covered by that forward work programme (Key Decisions are set out in more detail in section 6); |
| “Full Council”                        | the body where all Councillors and the Mayor act to exercise the functions of the Council;  |
| “Group”                               | a group of two or more Councillors, usually but not necessarily from the same political party, who have identified themselves as a group;   |
| “Group Leader”                        | the leader of any Group within the Council;   |
| “Head of Paid Service”                | the Officer appointed by law to carry out certain functions. The Head of Paid Service will usually have other duties and a different job title (see section 11.1 for further details);                        |
| “Head of Service”                     | the head of a Service area within the Council;  |
| “Housing Land Transfer”               | the approval or adoption of applications to the Secretary of State for approval of a programme of disposal of property or land in certain circumstances <sup>3</sup> ;  |
| “Joint Arrangements”                  | an arrangement entered into by the Council with another local authority or other public or private sector body;   |
| “Key Decision”                        | as defined in section 13.10;  |
| “Leadership Management Team” or “LMT” | the senior management body for Officers, which includes those Officers designated by the Head of Paid Service as members of LMT from time to time;  |
| “Local Choice Functions”              | functions where the Council has the authority to decide whether they are Executive Functions or reserved to Full Council <sup>4</sup> ;   |
| “Mayor”                               | the person elected to act as leader of the Council;   |
| “Member”                              | a Councillor, or a person chosen by the Council to serve on a Member Body (called a “Co-Opted Member”);   |
| “Member Body”                         | any of the following: <ul style="list-style-type: none"><li>• Full Council;</li><li>• the Executive;</li></ul>  |

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<sup>3</sup> Disposal of 500 or more properties to a person under the [Leasehold Reform, Housing and Urban Development Act 1993](#) or disposal of land used for residential purposes where approval is required under sections 32 or 43 of the [Housing Act 1985](#)

<sup>4</sup> [The Local Authorities \(Functions and Responsibilities\) \(England\) Regulations 2000](#)

- Overview and Scrutiny Board;
- Standards Committee;
- Corporate Affairs Committee
- Audit Committee; and
- Any other Committee of the Council.

For the avoidance of doubt, any reference to a Committee shall include its sub-committees;

|  |  |
|--|--|
| “Monitoring Officer”                       | the Officer appointed to carry out certain statutory reporting functions to the council where it appears to them the authority has done, or is about to do, anything which would contravene the law or which would constitute maladministration <sup>5</sup> ; |
| “Medium-Term Financial Strategy” or “MTFS” | the strategic financial framework, which sets out the financial position and financial sustainability of the Council over the medium term, and which supports the Council’s policy and decision-making;  |
| “Non-Executive Functions”                  | any function which may only be exercised by Full Council (whether decided by the Council or as a matter of law) or which is delegated to a Member Body other than the Executive;   |
| “Officer”                                  | a member of the Council’s staff;   |
| “Parish Council”                           | a council representing a local community. The Parish Councils in the Borough are Stainton and Thornton, and Nunthorpe;   |
| “Policy Framework”                         | a framework comprising of the plans and strategies listed in section 4.3.1;  |
| “Chief Finance Officer”                    | the Officer appointed to carry out certain statutory functions in relation to the Council’s financial administration <sup>6</sup> ;  |
| “Service”                                  | any of the services provided by the Council;   |
| “Ward”                                     | an administrative division of the Borough served by one or more Councillors.   |

References to “working days” in this Constitution include any day that is not a Saturday, Sunday, or a bank holiday in the United Kingdom.

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<sup>5</sup> [Local Government and Housing Act 1989, section 5](#)

<sup>6</sup> [Local Government Act 1972, section 151](#)

## **2.3 Who decides how the Constitution is to be interpreted?**

- 2.3.1 We have tried to make the Constitution as clear and as easy to understand as possible. Inevitably, people will have different views about what certain passages mean.
- 2.3.2 The Chair of the Council will decide how this Constitution, and in particular the Council Procedure Rules, shall be applied in any Council meeting. The Monitoring Officer (or their deputy, as appropriate) will provide the Chair with advice on any relevant legal issues.
- 2.3.3 The Monitoring Officer (or their deputy, as appropriate) will determine any question of legal interpretation in relation to the Constitution.

## **2.4 How and when is the Constitution monitored and reviewed?**

- 2.4.1 It is the Monitoring Officer's responsibility to monitor and review the Constitution. The Monitoring Officer will make recommendations for amendments to the Constitution as and when required, and in accordance with the requirements of section 2.5.
- 2.4.2 In making recommendations to amend the Constitution, the Monitoring Officer may consider:
- (a) the effectiveness of the Council's decision-making processes and its operation;
  - (b) issues raised by the Mayor, Councillors, Officers, the public and other relevant stakeholders;
  - (c) best practice across the public sector, and/or
  - (d) any other relevant information.

## **2.5 When can the Constitution be changed and by whom?**

Any change to the Constitution must be approved by Full Council after consideration of a proposal by the Monitoring Officer, unless:

- (a) it is, in the reasonable opinion of the Monitoring Officer, a minor change or is required to remove an inconsistency, ambiguity or typographical error;
- (b) it is required to put into effect any decision of the Council or its Committees; or
- (c) it is required to comply with a legislative provision,

in which case, the change may be made by the Monitoring Officer, who will report the change at the next Full Council meeting. The change will take effect on the date decided by the Monitoring Officer or, where appropriate, the date set out in the relevant legislation.

## **2.6 When is the approval of the Mayor required to change the Constitution?**

Any resolution of Full Council to approve a change to any Executive matter within the Constitution requires the written consent of the Mayor. This does not apply if the change only relates to the operation of the Overview and Scrutiny Board.

## **2.7 What is the process for changing from a Mayoral form of Executive?**

Before changing the Constitution to implement a different form of Member governance, the Council must take reasonable steps to consult with local electors and other interested persons in the Borough when drawing up proposals and must hold a binding referendum. The change will not take effect until the end of the Mayor's term of office.

## **2.8 When can the Constitution be suspended?**

2.8.1 The core provisions of the Constitution may not be suspended. This includes the provisions set out in sections 1 to 15 of the Constitution, with the exception of the rules relating to Council and Committee procedures contained therein.

2.8.2 Any of the Council Procedure Rules may be suspended by a motion if at least one half of all Members is present at a meeting and a vote is passed. Suspension can only be for the duration of the meeting. The Chair may use their casting vote to prevent the suspension of a Council Rule of Procedure.

## **2.9 Where is the Constitution published?**

2.9.1 The Monitoring Officer will ensure that copies of this Constitution are available on the Council's website and in hard copy on request (for a reasonable fee).

2.9.2 The Monitoring Officer will provide a link to a copy of this Constitution to each newly elected Councillor upon receiving that Councillor's declaration of acceptance of office.

2.9.3 The Monitoring Officer will ensure that the published version of the Constitution is updated when any substantive change is made to it.

### **3 CITIZENS AND THE COUNCIL**

This section sets out the rights of citizens in relation to the Council. Citizens' rights to information are explained in more detail in the Access to Information Procedure Rules in section 16 of this Constitution.

#### **3.1 Who has a right to vote and sign petitions?**

Citizens on the electoral roll for the Borough have the right to vote and sign a petition to request a referendum to change the structure of Member governance.

#### **3.2 To what information can citizens have access?**

Citizens have the right to:

- (a) attend meetings of the Council and its Committees except where confidential or exempt information is likely to be disclosed;
- (b) attend meetings of the Executive when Key Decisions are being considered except where confidential or exempt information is likely to be disclosed;
- (c) find out from the Forward Work Programme what Key Decisions are planned to be taken by the Executive and when they are planned to be taken;
- (d) see reports and background papers (except where they relate to confidential or exempt information) and any records of decisions made by the Council, its Committees and the Executive;
- (e) inspect the Council's accounts and make their views on them known to the external auditor.

#### **3.3 How can citizens participate in Council functions?**

Citizens have the right to participate:

- (a) in the time allotted for questions from the public at Council meetings as specified in the Council Procedure Rules in section 4.
- (b) by speaking and asking questions of the Executive and Committees with the prior consent of the relevant Committee chair;
- (c) by contributing to investigations made by the Overview and Scrutiny Board by invitation.

#### **3.4 How can a citizen make a complaint?**

Citizens have the right to complain to:

- (a) the Council under its [Corporate Complaints Policy](#);

- (b) the [Local Government and Social Care Ombudsman](#) after using the Council's own [complaints scheme](#); and
- (c) the Monitoring Officer about a breach of the [Members' Code of Conduct](#).

### **3.5 What are citizens' responsibilities in relation to the Council?**

The Council invites citizens to engage positively with the democratic process and to participate in municipal life in the ways set out in this Constitution. The Council expects citizens to treat the Mayor, Councillors and Officers with respect and to respect its policies, processes and rules.



## **4 FULL COUNCIL**

This section explains how Full Council operates and describes its functions.

### **4.1 What is Full Council?**

Full Council is a formal meeting of all Councillors and the Mayor. Full Council is required by law to take certain important decisions, including setting the Budget and Council Tax, and approving several key plans and strategies (which together form the Policy Framework). It is responsible for all the functions that are not Executive Functions. It carries out some of those functions itself, and others are delegated to Committees or named Officers.

### **4.2 What functions does Full Council have?**

The following functions are reserved to Full Council:

- (a) save as otherwise set out in section 2, adopting, amending and changing this Constitution;
- (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) subject to the urgency procedure contained in the Access to Information Procedure Rules in section 16, making decisions about any matter in the discharge of an Executive Function which is covered by the Policy Framework or the Budget where the decision maker is minded to make it in a manner which would be contrary to the Policy Framework or contrary to/or not wholly in accordance with the Budget;
- (d) agreeing and/or amending the terms of reference of a Committee, other than an Executive Committee;
- (e) appointing representatives to outside bodies unless the appointment is an Executive Function or has been delegated by the Council;
- (f) adopting an allowances scheme under section 22;
- (g) changing the name of the Borough, conferring the title of honorary alderman of Middlesbrough, or granting Freedom of the Borough;
- (h) confirming the appointment of the Head of Paid Service<sup>7</sup>;
- (i) dismissing the Head of Paid Service, Monitoring Officer, or Chief Finance Officer;
- (j) making, amending, revoking, re-enacting, or adopting Byelaws and promoting or opposing the making of local legislation or personal bills<sup>8</sup> (being bills related to the personal affairs of an individual);

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<sup>7</sup> [The Local Authorities \(Standing Orders\) \(England\) Regulations 2001, Schedule 1, paragraph 4](#)

<sup>8</sup> [Local Government Act 1972, section 239](#)

- (k) all Local Choice Functions<sup>9</sup> set out in the Scheme of Delegation in section 21 which the Council decides should be undertaken by itself rather than the Executive; and
- (l) all other matters which by law must be reserved to the Council.

#### **4.3 Further information about Council Functions**

##### **4.3.1 The Policy Framework**

4.3.2 The Policy Framework is made up of the following plans and strategies:

- (a) Mayor's Vision;
- (b) Medium-Term Financial Plan;
- (c) Capital Strategy and Council's Budget Strategy, which are contained within:
  - (i) Council Tax Base;
  - (ii) Revenue Budget;
  - (iii) Council Tax; and
  - (iv) Prudential Indicators;
- (d) Licensing Authority Policy Statement;
- (e) Statement of Principles Gambling;
- (f) Local Development Plan / Local Plan;
- (g) Local Transport Plan; and
- (h) Pay Policy Statement.

#### **4.4 Who chairs Full Council?**

4.4.1 A Chair and Vice-Chair are appointed by Full Council each year at the Annual Meeting (see section 4.12.2(b)). The Vice-Chair will chair Council meetings in the Chair's absence.

4.4.2 If neither the Chair nor the Vice-Chair is present at the meeting, the Monitoring Officer (or their representative) will open the meeting and ask for nominations for the position of Chair. The Chair for the duration of the meeting, or until the Chair or Vice-Chair joins the meeting, will be elected by a majority vote.

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<sup>9</sup> [Local Authorities \(Functions and Responsibilities\) \(England\) Regulations 2000](#)

#### **4.5 Who can be the Chair?**

- 4.5.1 The Chair and the Vice-Chair are chosen from among the Councillors.
- 4.5.2 Neither the Mayor nor an Executive Member may be the Chair or the Vice-Chair.

#### **4.6 What is the Chair's role?**

The Chair's role includes:

- (a) upholding and promoting the purposes of the Constitution, and interpreting the Constitution in the absence of the Monitoring Officer or their deputy;
- (b) presiding over Council meetings so that its business is carried out efficiently and with regard to the rights of Councillors and the Mayor and the interests of the community;
- (c) ensuring that Council meetings are a forum for the debate of matters of concern to the local community and the place at which Councillors can hold the Executive to account;
- (d) promoting public involvement in the Council's activities; and
- (e) upholding the principles of the Constitution, the Members' Code of Conduct and the Protocol on Member / Officer Relations.

#### **4.7 What is the Chair's relationship with the Mayor?**

- 4.7.1 The respective roles of the Chair and the Mayor are as set out in this Constitution.
- 4.7.2 **First Citizen:** The Mayor is the First Citizen of the town and will promote the town as a whole and act as a focal point for the community. They will also take precedence with regard to any civic duties, but these may be delegated to the Chair/Vice-Chair of the Council<sup>10</sup>.
- 4.7.3 **Promotion of the Council:** Together with the Mayor, the Chair will promote the Council and act as a focal point for the community.

### **COUNCIL PROCEDURE RULES**

#### **4.8 What are the rules of procedure and debate for Full Council?**

The Council Procedure Rules contained in this section 4 will apply to meetings of Full Council.

#### **4.9 Who decides how the Council Procedure Rules apply in Council meetings?**

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<sup>10</sup> [Local Government Act 1972, section 3](#)

The Chair of the Council, with advice from the Monitoring Officer, has the final say on the application of the Council Procedure Rules set out below. If circumstances arise that are not covered by the Council Procedure Rules, the Chair decides what happens. If anything arises outside a Council meeting that would require action from the Chair, they are authorised to take any action they consider appropriate.

#### **4.10 How do the Council Procedure Rules apply to Committees?**

4.10.1 The Council Procedure Rules apply to Committees as set out in section 4.58.

4.10.2 For the avoidance of doubt, the procedure rules relating to Executive meetings are set out in section 6.

### **TYPES OF MEETING AND HOW THEY ARE CONDUCTED**

#### **4.11 What types of Council meetings are there?**

There are three types of Council meeting:

- (a) the Annual Meeting;
- (b) ordinary meetings; and
- (c) extraordinary meetings.

#### **4.12 How is the Annual Meeting of the Council conducted?**

##### **4.12.1 Timing of the Annual Meeting**

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.

##### **4.12.2 Business to be conducted at the Annual Meeting**

The Annual Meeting will:

- (a) elect a person to preside at the meeting if the Chair and Vice Chair are not present;
- (b) elect the Chair and the Vice Chair of the Council, unless either has been elected pro tem;
- (c) approve the minutes of the last meeting;
- (d) receive any announcements from the Chair, the Mayor and/or the Head of Paid Service;
- (e) receive any declarations of interests from Councillors;

- (f) be informed by the Mayor of the number of Members to be appointed to the Executive;
- (g) appoint at least one Overview and Scrutiny Committee, a Standards Committee and such other Committees as the Council considers appropriate to deal with matters which are neither reserved to the Council nor are Executive Functions (as set out in the Scheme of Delegations);
- (h) at an Annual Meeting after an election, or where there has been a change in the composition of the Executive or the person holding the office of Deputy Mayor, be informed by the Mayor of the Councillors who will form the Executive, including the Deputy Mayor;
- (i) receive the Scheme of Delegations;
- (j) approve a programme of ordinary meetings of the Council for the year;
- (k) consider any business set out in the notice convening the meeting; and
- (l) receive the Mayor's annual address.

#### 4.12.3 Committee and political balance arrangements

At the Annual Meeting, the Council meeting will:

- (a) decide which Committees to establish for the Municipal Year;
- (b) decide the size and terms of reference for those Committees;
- (c) decide the allocation of seats on those Committees to political groups in accordance with the political balance rules<sup>11</sup>;
- (d) receive nominations of Councillors to serve on each Committee and/or any outside body;
- (e) appoint Councillors to Committees and/or any outside bodies (unless such appointments have been delegated or are reserved to the Executive); and
- (f) appoint Committee chairs and vice chairs in accordance with section 4.12.2(g).

### **4.13 How are ordinary meetings of the Council conducted?**

4.13.1 Ordinary meetings of the Council will take place in accordance with a programme decided at the Council's Annual Meeting.

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<sup>11</sup> [Local Government and Housing Act 1989, sections 15-17](#)

For the avoidance of doubt, the Council uses a formula to determine the political balance of total Committee seats so that total seats across all Committees are allocated proportionally to the size of each political group. The Mayor is not counted for the purposes of applying the political balance formula (although, subject to the provisions of this Constitution) they may sit on a non-Executive Committee as an added member).

4.13.2 The order of business at ordinary meetings will be as follows:

- (a) elect a person to preside if the Chair and Vice Chair are not present;
- (b) receive any apologies for absence;
- (c) receive any declarations of interest from Members;
- (d) approve the minutes of the last meeting;
- (e) receive any announcements from the Chair, the Mayor, the Executive and/or the Head of Paid Service;
- (f) receive any report from the Mayor and receive questions and answers on the report;
- (g) receive any report(s) from the Executive and receive questions and answers on the report;
- (h) receive any reports from Committees and receive questions and answers on those reports;
- (i) receive any reports about and receive questions and answers on the business of joint arrangements and external organisations;
- (j) consider any other business specified in the summons to the meeting, including consideration of proposals from the Executive in relation to the Council's Budget and Policy Framework and reports of the Overview and Scrutiny Board;
- (k) consider motions; and
- (l) deal with questions from Members in accordance with section 4.27; and
- (m) receive questions from, and provide answers to, the public in the provisions of 4.26.

**4.14 How are extraordinary meetings of the Council conducted?**

4.14.1 Calling extraordinary meetings

Extraordinary meetings may be called:

- (a) at the request of the Chair of the Council;
- (b) by the Council by resolution;
- (c) at the request of the Monitoring Officer; or

- (d) by any five Members of the Council (which may include the Mayor) if they have signed a requisition presented to the Chair of the Council and the Chair has refused to call a meeting or has failed to call a meeting within seven (7) days of the presentation of the requisition.

#### 4.14.2 Business

The business to be conducted at an extraordinary meeting shall be restricted to the item or items of business contained in the request for the extraordinary meeting and there shall be no consideration of previous minutes or reports from Committees etc. except that the Chair may at their absolute discretion permit other items of business to be conducted for the efficient discharge of the Council's business.

#### 4.14.3 Conduct of extraordinary meetings

Save as otherwise set out in this section 4.14, the procedure for extraordinary meetings will be the same as for an ordinary meeting of the Council.

### **4.15 What is the timing, location and duration of Council meetings?**

#### 4.15.1 Time of meetings

The time and place of meetings will be determined by the Chair and notified in the summons.

#### 4.15.2 Duration of meetings

- (a) Any meeting of the Council that has lasted for three hours will be adjourned immediately. Any remaining business will be considered at a time and date fixed by the Chair. If they do not fix a date, the remaining business will be considered at the next ordinary meeting.
- (b) Notwithstanding (a) above, where a meeting includes the presentation of awards or presentations by outside bodies, the permitted duration is extended to 3 hours 30 minutes.

### **4.16 How is notice of a Council meeting given?**

4.16.1 The Council will give notice to the public of the time and place of any meeting in accordance with the Access to Information Procedure Rules in section 16 of this Constitution. At least five (5) working days before a meeting, the Monitoring Officer will send a signed summons to every Member of the Council. 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.

4.16.2 The agenda and reports for each meeting will be made available to Members in electronic form at least five (5) working days before the meeting, unless a report is confidential or contains exempt information, in which case it will only be shared with Executive Members or members of the relevant Committee.

### **4.17 Who chairs Council meetings?**

The person presiding at the meeting may exercise any power or duty of the Chair.

**4.18 What is the quorum for Council meetings?**

- 4.18.1 The quorum of a meeting will be 25% (12) of the whole number of Members (including the Mayor) (47). For the avoidance of doubt, the whole number of Members does not include vacancies.
- 4.18.2 If a quorum is not present within five minutes of the start of a Council meeting, the meeting will be abandoned. The business of the meeting will be considered at the next ordinary meeting of the Council or at an extraordinary meeting convened for that purpose.

**4.19 How are Council meetings cancelled, postponed or rearranged?**

- 4.19.1 A Council meeting may be cancelled, postponed, or rearranged by the Chair, or the Vice Chair in the Chair's absence.
- 4.19.2 24 hours' notice must be given of any cancellation, postponement, or rearrangement of a meeting, and a reason must be given.

**4.20 Are Members allowed to attend Council meetings remotely?**

- 4.20.1 Members, including the Mayor, and Officers may not attend Council or Committee meetings remotely.
- 4.20.2 A person called to a meeting who is not a Member or an Officer, for example, an external expert, may attend a meeting remotely.

**QUESTIONS AT A MEETING – GENERAL**

**4.21 What is the scope of questions that can be asked at a Council meeting?**

The Chair, on the advice of the Monitoring Officer, may reject a question if it:

- (a) is not about a matter for which the Council has a responsibility or which affects the Borough;
- (b) is defamatory, frivolous or offensive;
- (c) is substantially the same as a question which has been put at a meeting of the Council in the past six months;
- (d) requires the disclosure of confidential or exempt information; or
- (e) is otherwise inappropriate to be raised at a Council meeting.

The Chair shall ultimately decide if a question is appropriate to be raised at a Council meeting.



#### **4.22 How much time is allotted for questions at a Council meeting?**

- 4.22.1 The total cumulative time permitted for questions from members of the public and Councillors at any Council meeting is 30 minutes. The Chair may, at their discretion, extend the total cumulative time permitted for questions to 45 minutes where there is a pressing need for debate in a public forum that cannot wait for the next meeting.
- 4.22.2 Questioners will be allowed two minutes to ask their question, and Councillors will be allowed three minutes to respond to any question put to them.
- 4.22.3 Any questions that cannot be answered within the allotted time will receive a written response within 21 working days.

#### **4.23 Can a question be withdrawn?**

If a questioner wishes to withdraw a question before the agenda papers for a Council meeting have been circulated, they may do so without consent. If the agenda papers have been circulated, a question may only be withdrawn with the consent of the person to whom it was put.

#### **4.24 When will a question be referred to the Executive or a Committee?**

No discussion will take place on any question, but any Member may move that a matter raised by a question be referred to the Executive or the appropriate Committee. Once seconded, such a motion will be voted on without discussion.

#### **4.25 How are questions recorded?**

- 4.25.1 The Monitoring Officer will maintain a record of questions submitted to the Council which is open to public inspection. Rejected questions will include reasons for rejection.
- 4.25.2 Copies of all questions will be circulated to all Councillors and will be made available to the public attending the meeting.

### **QUESTIONS AT A MEETING – MEMBERS OF THE PUBLIC**

#### **4.26 How may members of the public ask questions of the Council?**

##### **4.26.1 General**

Members of the public may ask questions of the Mayor, Executive Members or the Chair of a Committee at ordinary meetings of the Council (with the exception of the Annual Meeting and the meeting designated for setting the Budget).

##### **4.26.2 Order of questions**

Questions will be asked in the order in which notice of them was received, except that the Chair may group together similar questions.

##### **4.26.3 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 5.00pm seven (7) working days before the date of the meeting. Each question must give the name and address of the questioner and specify to whom the question is to be addressed (if appropriate). Questioners will be allowed two minutes to ask their question, and Councillors will be allowed three minutes to respond to any question put to them.

#### 4.26.4 Number of questions

At any one meeting no person may submit more than one question and no more than one such question may be asked on behalf of an organisation. No person may submit more than five questions in any Municipal Year without the Council Chair's consent.

#### 4.26.5 Asking a question at a Council meeting

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

#### 4.26.6 Supplementary questions

Members of the public are not permitted to ask supplementary questions.

#### 4.26.7 Written answers

Any question which cannot be dealt with during the time allotted for questions from the public, either because there is insufficient time or because of the non-attendance of the Councillor to whom it was to be put, will be dealt with by a written answer.

### **QUESTIONS AT A MEETING – MEMBERS**

#### **4.27 How may Members ask questions at Council meetings?**

##### 4.27.1 Questions at Council meetings

Subject to the rest of this section 4.27, a Member of the Council may ask:

- (a) the Mayor;
- (b) an Executive Member;
- (c) the chair of any Committee;

a question at a Council meeting.

##### 4.27.2 Questions on notice

- (a) Subject to section 4.27.4, a Member may ask the Chair, the Mayor, an Executive Member, or the chair of a Committee a question or make a comment on any matter in relation to which the Council has powers or duties or which affects Middlesbrough as a whole, and which (in the case of a Committee) falls within its terms of reference.
- (b) Members must submit to the Monitoring Officer any question they wish to pose to a Member or an Executive Member three (3) working days before the date of the relevant Council meeting. If the question relates to urgent matters, it will be sufficient for the Member to submit the question to the Monitoring Officer before the meeting, provided the Member or Executive Member to whom the question is to be submitted has agreed.
- (c) The notice of questions to be posed at a meeting will be circulated to all Councillors after the closure of the notice period set out in this section 4.27.2.

#### 4.27.3 Questions without notice

- (a) A Member may ask a question of an Executive Member, or make a comment on any report submitted to a Council meeting, provided that they have notified the Monitoring Officer of the subject of the question by 5.00pm on the day before the meeting.
- (b) A Member may only ask a question or make a comment without notice on any matter relating to information, Executive reports, or Committee reports circulated after 5.00pm on the day before the meeting in relation to the following:
  - (i) any announcements of correspondence from the Chair, the Mayor, Executive Members, or the Head of Paid Service;
  - (ii) any statement of report of the Mayor;
  - (iii) Executive Functions;
  - (iv) any reports of the Overview and Scrutiny Board or a Scrutiny Panel; or
  - (v) reports about, and questions and answers on, the business of Joint Arrangements and external organisations,

when that item is being received or under consideration by the Council and where time allows.

#### 4.27.4 Order of Questions

Questions of which notice has been given under Rule 4.27.2 or 4.27.3 will be listed on the agenda in the order determined by the Chair of the Council, or the chair of the relevant Committee.

#### 4.27.5 Content of Questions

Questions under Rule 4.27.2 or 4.27.3 must, in the opinion of the Chair, with advice from the Monitoring Officer:

- (a) contain no expressions of opinion;
- (b) relate to matters on which the Council has or may determine a policy; and
- (c) not relate to questions of fact.

#### 4.27.6 Response

An answer may take the form of:

- (a) A direct oral answer at the meeting;
- (b) where the desired information is in a publication of the Council or other published work, a reference to that publication; or
- (c) where the reply cannot conveniently be given orally, a written answer circulated within 10 working days to the questioner.

#### 4.27.7 Supplementary Question

A Member asking a question under section 4.27.2 or 4.27.3 may, at the Chair's discretion, ask one supplementary question without notice of the Member to whom the first question was posed. The supplementary question must arise directly out of the original question or the reply.

#### 4.27.8 Joint Committees, Joint Authorities, and outside bodies

Councillors may ask questions about the proceedings, and/or the discharge of functions, of Joint Committees, Joint Authorities, and outside bodies insofar as they affect the Council. Any such question must be submitted to the Monitoring Officer at least seven (7) working days before the relevant meeting.

## **MOTIONS**

### **4.28 What are the notice requirements for motions?**

#### 4.28.1 Notice of motions

Except for motions which can be moved without notice under section 4.30 and in cases of urgency, written notice of a motion, must be delivered to the Monitoring Officer at least nine (9) working days before the Council meeting at which it is to be considered. Motions received will be open to public inspection.

#### 4.28.2 Urgent motions

- (a) A Member may move an urgent motion provided that they provide at least three (3) working days' notice to the Monitoring Officer and the Chair. An urgent

motion must be submitted in writing and be accompanied by a written explanation of the urgent matter to which it relates.

- (b) Whether a motion is urgent is at the sole discretion of the Chair. Urgent matters will generally have arisen after the normal deadline for submitting motions, and will concern matters which, in the opinion of the Chair, should not be delayed until the next ordinary meeting of the Council.

#### 4.28.3 Motion set out in agenda

Motions for which notice has been given will be listed on the agenda in the order they are received. The Member submitting the motion may propose that it is moved to a later meeting or withdraw it at any point before or during the meeting.

### **4.29 What is the scope of motions?**

#### 4.29.1 Subject matter of motions

Motions must relate to matters for which the Council has a responsibility, or which affect the wellbeing of the administrative area of the Council.

#### 4.29.2 Previous motions

- (a) A motion or amendment to rescind a motion agreed by the Council within the past six months cannot be moved unless the notice of motion is signed by at least  $\frac{1}{4}$  of all Members (which may include the Mayor).
- (b) A motion or amendment in similar terms to one that has been rejected at a meeting of the Council in the past six months cannot be moved unless the notice of motion or amendment is signed by at least half (24) of all Members (which may include the Mayor). Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six (6) months.

### **4.30 Which motions can be moved without notice?**

#### 4.30.1 The following motions may be moved without notice:

- (a) to appoint a Chair of the meeting at which the motion is moved;
- (b) in relation to the accuracy of the minutes of a meeting;
- (c) to change the order of business in the agenda of a meeting;
- (d) to refer something to an appropriate body or individual;
- (e) to appoint a Committee or Member arising from an item on the summons for the meeting, for example, where a Councillor is nominated to fill a vacancy on a Committee;
- (f) to receive reports or adopt of recommendations of Committees or Officers and any resolutions following from them;

- (g) to withdraw a motion;
- (h) to amend a motion;
- (i) to proceed to the next business;
- (j) that the question be now put;
- (k) to adjourn a debate;
- (l) to extend the duration of the meeting beyond three hours;
- (m) to adjourn a meeting;
- (n) to suspend a particular Council Procedure Rule;
- (o) to exclude the public and press from a meeting in accordance with the Access to Information Procedure Rules;
- (p) to not hear further a Member named under section 4.54.3 or to exclude them from the meeting under section 4.54.4; and
- (q) to give the consent of the Council where its consent is required by this Constitution.

## **MOTIONS – RULES OF DEBATE**

### **4.31 When may Members make speeches in relation to a motion?**

#### **4.31.1 No speeches until motion seconded**

If a motion is accepted, the proposer shall read the motion out loud to the meeting. No speeches may be made until the motion has been seconded.

#### **4.31.2 Right to require motion in writing**

Unless notice of the motion has already been given, the Chair may require it to be written down and handed to him before it is discussed.

#### **4.31.3 Secunder's speech**

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

#### **4.31.4 Content and length of speeches**

Speeches must be directed to the question under discussion or to a personal explanation or point of order. No speech may exceed 5 minutes without the consent of the Chair.

#### 4.31.5 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 they last spoke;
- (c) if their first speech was on an amendment moved by another Member, to speak on the main issue (whether or not the amendment on which they spoke was carried);
- (d) in exercise of a right of reply;
- (e) on a point of order;
- (f) by way of personal explanation; and
- (g) to answer a question directed at them by another Member.

#### **4.32 How are motions amended?**

##### 4.32.1 Amendments to motions

- (a) Where possible, an amendment to a motion should normally be submitted two (2) days before the meeting at which the motion will be debated. However, amendments proposed during a meeting may be submitted in writing to the Chair for consideration. The Chair may, having consulted the Monitoring Officer, adjourn the meeting to consider such an amendment if they consider it necessary. For the avoidance of doubt, amendments of a minor or typographical nature may be submitted verbally during a meeting. The Chair, in consultation with the Monitoring Officer, will determine whether an amendment is minor.
- (b) An amendment must be relevant to the motion, and will either be:
  - (i) to refer the matter to an appropriate body or individual for consideration or reconsideration;
  - (ii) to leave out words;
  - (iii) to leave out words and insert or add others; or
  - (iv) to insert or add words,as long as the effect of (ii) to (iv) is not to negate the effect of the motion.

- (c) 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 decided.
- (d) If an amendment is not carried, other amendments to the original motion may be moved.
- (e) 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.
- (f) After an amendment has been carried, the Chair will read out the amended motion before accepting any further amendments, or if there is none, put it to the vote.

#### 4.32.2 Motions to amend the Budget

Proposed amendments to the Budget, must be submitted in writing at least three (3) working days before the meeting for review by the Chief Finance Officer.

#### 4.32.3 Alteration of motion

- (a) A Member may alter a motion of which he has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.
- (b) A Member may alter a motion which he has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.
- (c) Only alterations which could be made as an amendment may be made.

#### 4.32.4 Right of Reply

- (a) 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.
- (b) 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.
- (c) The mover of the amendment has no right of reply to the debate on their amendment.

### **4.33 When can a motion be withdrawn?**

#### 4.33.1 Withdrawal of motion

- (a) If a Member wishes to withdraw a motion before the agenda papers for a Council meeting have been circulated, they may do so without consent. If the agenda papers have been circulated, a motion may only be withdrawn with the consent of the Chair of the Council.



- (b) A Member may withdraw a motion at a meeting at which it has been 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.

#### **4.34 What procedural motions may be moved during a debate?**

##### **4.34.1 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 time for the meeting be extended beyond three hours;
- (h) to exclude the public and press from the meeting in accordance with the Access to Information Procedure Rules;
- (i) to not hear further a Member named under section 4.54.3 or to exclude them from the meeting under section 4.54.4; and
- (j) to move directly to a vote on the motion.

##### **4.34.2 Closure motions**

- (a) A Member who has not previously spoken on a motion may move, without comment, the following motions at the end of a speech of another Member;
  - (i) to proceed to the next business;
  - (ii) that the question be now put;
  - (iii) to adjourn a debate; or
  - (iv) to adjourn a meeting.

- (b) If a motion to proceed to the next business is seconded and the Chair thinks the item has been sufficiently discussed, they will give the mover of the original motion a right of reply and then put the procedural motion to the vote.
- (c) If a motion that the question be now put is seconded and the Chair thinks the item has been sufficiently discussed, he will put the procedural motion to the vote. If it is passed, they will give the mover of the original motion a right of reply before putting their motion to the vote.
- (d) If a motion to adjourn the debate or to adjourn the meeting is seconded and the Chair thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, they will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

#### **4.35 What are points of order and when do they arise?**

- 4.35.1 A point of order is a request from a Member to the Chair to rule on an alleged irregularity in the procedure of the meeting. A Member may raise a point of order at any time. The Chair will hear them immediately and consult with the Monitoring Officer before ruling on the matter.
- 4.35.2 A point of order may only relate to an alleged breach of these Council Procedure Rules or the law. The Member must indicate the rule or law that they consider has been broken, and the way in which it has been broken. The ruling of the Chair on the matter will be final.

#### **4.36 What is a personal explanation and when is it used?**

- 4.36.1 A Member may make a personal explanation (being a point of clarification relating specifically to an individual Member) 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 Chair on the admissibility of a personal explanation will be final.

#### **4.37 How are motions voted on?**

##### **4.37.1 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.

##### **4.37.2 Chair's casting vote**

If there are equal numbers of votes for and against, the Chair will have a second or casting vote. There will be no restriction on how the Chair chooses to exercise a casting vote.

##### **4.37.3 Method of voting**

Unless a ballot or recorded vote is demanded under section 4.37.4, the Chair will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting

#### 4.37.4 Ballots

The vote will take place by ballot if half of the Members present at the meeting demand it. The Chair will announce the numerical result of the ballot immediately the result is known.

#### 4.37.5 Recorded vote

If 12 of the Members present at the meeting (i.e., the number of Members equal to the quorum) demand it, or if the motion relates to the Budget, Council Tax or the issuing of the precept<sup>12</sup>, the names for and against the motion or amendment or abstaining from voting will be recorded and entered into the minutes. A demand for a recorded vote will override a demand for a ballot.

#### 4.37.6 Right to require individual vote to be recorded

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

#### 4.37.7 Voting on the Budget and Council Tax

Any Member who has at least two months' unpaid Council Tax may not vote on the Budget. If a Member who is in such Council Tax arrears is present at a meeting where Council Tax or precepts are discussed, they must disclose this to the meeting and not vote on question relating to Council Tax or precepts.<sup>13</sup>

#### 4.37.8 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.

### **MOTIONS OF NO CONFIDENCE**

#### **4.38 What is a motion of no confidence?**

A motion of no confidence is a statement or vote about whether a person who holds a position of responsibility within the Council is fit to hold that position. Depending to whom the motion of no confidence relates, it may or may not have a practical effect. For example, people holding elected positions cannot be removed from those positions unless they are disqualified from holding such a post. However, votes of no confidence can be used to show the intent of the Council with regard to a particular person, and places it within a formal setting.

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<sup>12</sup> [The Local Authorities \(Standing Orders\) \(England\) \(Amendment\) Regulations 2014, section 2](#)

<sup>13</sup> [Local Government Finance Act 1992, section 106](#)

#### **4.39 Who can a motion of no confidence be brought against?**

A motion of no confidence may be submitted in respect of:

- (a) the Mayor;
- (b) an Executive Member;
- (c) a Councillor;
- (d) the Chair of the Council; and
- (e) the chair of any Committee.

#### **4.40 How is a motion of no confidence brought in respect of the Mayor, an Executive Member or a Councillor?**

4.40.1 A motion of no confidence may be brought to the Council in respect of an Executive Member in relation to their position on the Executive; however, only the Mayor may remove an Executive Member from their position on the Executive.

4.40.2 A motion of no confidence may be brought to the Council in respect of the Mayor; however, the Mayor will remain in office until their resignation, disqualification, or the appointment of a successor.

4.40.3 A motion of no confidence may be brought to the Council in respect of a Councillor (including an Executive Member); however, they will remain in office until their resignation, disqualification, or the appointment of a successor.

#### **4.41 How is a motion of no confidence brought in respect of the Chair?**

A motion of no confidence may be brought to the Council in respect of the Chair; however, the Chair will remain in office until their resignation, disqualification, or the appointment of a successor<sup>14</sup>.

#### **4.42 How often can a person be subject to a vote of no confidence?**

Only one motion of no confidence in respect of an individual may be considered in any 12-month period.

#### **4.43 What happens if a Member is disqualified?**

If a Member (including the Mayor) is disqualified from holding office, they will be removed from office (including from any position they hold within the Council or on any Committee) with immediate effect.

### **OTHER MATTERS FOR CONSIDERATION BY THE COUNCIL**

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<sup>14</sup> [Local Government Act 1972, section 3](#)

## **Recommendations**

### **4.44 Who may make recommendations to Full Council?**

Recommendations may be made to Full Council by the Executive, Committees and Statutory Officers.

### **4.45 How are recommendations made to Full Council by the Executive?**

The Executive shall make recommendations to Full Council on matters falling within the Council's functions, on matters falling to the Council to determine, and on matters on which the Executive is required to consult with, or obtain the approval of, the Council. Any such recommendation shall be moved by the Mayor. A seconder is not required.

### **4.46 How are recommendations made to Full Council by Committees?**

The Council shall consider the recommendations of any Committee on matters falling within that Committee's terms of reference. Any such recommendation shall be moved by the chair of the Committee. A seconder is not required.

### **4.47 How are recommendations made to Full Council by Statutory Officers?**

The Head of Paid Service, the Monitoring Officer, the Chief Finance Officer, and the Director of Children's Services may make reports and/or recommendations to the Council as necessary, or as required in the exercise of their statutory functions.

## **Petitions**

### **4.48 When will a petition be considered by the Council?**

Any petition to be considered by the Council must have at least 500 signatures and should be submitted to the Monitoring Officer at least seven (7) working days before the date of the Council meeting at which it is to be considered.

### **4.49 How are petitions dealt with by the Council?**

4.49.1 The [Council's Petition Scheme](#) applies to the consideration of any petition.

4.49.2 A petitioner will be given up to two minutes to present a petition to the Council meeting at which it is tabled.

4.49.3 The Mayor or Executive Member who has responsibility for the subject matter of the petition may speak, but the presentation of, and response to each petition received, is limited to no more than 5 minutes.

4.49.4 The Council cannot take any decisions, or pass any motion, in respect of any petition received that relates to Executive Functions.

## **Reports**

### **4.50 When can the Mayor present a report to the Council?**

- 4.50.1 The Mayor may present a report, or make a verbal statement, at every ordinary meeting of the Council.
- 4.50.2 The Mayor will be allowed ten minutes to present their report or make their verbal statement, unless the Chair permits otherwise.
- 4.50.3 Members have a right of reply to the Mayor's report.
- 4.50.4 The total time allotted in a meeting to the report and any response / questions shall not be more than 30 minutes, unless the Chair permits otherwise.

#### **4.51 When can the chair of the Overview and Scrutiny Board report to the Council?**

The chair of the Overview and Scrutiny Board may present a report at any meeting of the Council, except the Annual Meeting and the meeting at which the Budget is set. The chair should set out the findings of the Overview and Scrutiny Board and the Scrutiny Panels.

### **Executive matters**

#### **4.52 When are Executive matters considered by the Council?**

- 4.52.1 Executive Functions are considered by the Council at every ordinary meeting, except the Annual Meeting and the meeting at which the Budget is set. This includes reports from the Mayor and Executive Members, past decisions made by the Executive (including "single member" decisions"), and forthcoming business of the Executive.
- 4.52.2 In relation to forthcoming business, the Executive will present reports to the Council on the following:
  - (a) decisions that have been taken since the last Council meeting that have been through the Call-in period described in section 7;
  - (b) decisions to be taken up until the date of the Council meeting; and
  - (c) decisions that are planned to be made after the Council meeting.
- 4.52.3 The Council may not take any decision in relation to Executive Functions.

### **MINUTES OF MEETINGS**

#### **4.53 How are the minutes of Council meetings recorded?**

##### **4.53.1 Signing the minutes**

- (a) The Chair will sign the minutes of the proceedings at the next suitable meeting. The Chair will move that the minutes of the previous meeting be signed as a correct record.
- (b) The only part of the minutes that can be discussed is their accuracy.

4.53.2 No requirement to sign minutes of previous meeting at extraordinary meeting

Where, in relation to any meeting, the next meeting for the purpose of signing the minutes is an extraordinary meeting, the next ordinary meeting will be treated as a suitable meeting for the purpose of signing those minutes.

4.53.3 Form of minutes

Minutes will contain all motions and amendments in the form and order the Chair put them.

4.53.4 Record of attendance

A record of attendance by Members at a Council meeting will be maintained. Any apologies received from a Member before the meeting will be noted in the record of attendance.

4.53.5 Exclusion of public

Members of the public and press may only be excluded from a Council meeting either in accordance with the Access to Information Procedure Rules in section 16 of this Constitution or Rule 4.55.2.

## **CONDUCT AT MEETINGS**

### **4.54 How should Members conduct themselves at Council meetings?**

4.54.1 Speaking at meetings

When a Member speaks at a Council meeting, they must stand (if able) and address the meeting through the Chair. If more than one Member signifies their intention to speak, the Chair will ask one to speak. Other Members must remain silent whilst a Member is speaking unless they wish to make a point of order or a point of personal explanation.

4.54.2 Chair speaking

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

4.54.3 Member not to be heard further

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

4.54.4 Member to leave the meeting

If the Member continues to behave improperly after such a motion is carried, the Chair 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.

#### **4.55 What happens if a Council meeting is disturbed?**

##### **4.55.1 General Disturbance**

If there is a general disturbance making orderly business impossible, the Chair may adjourn the meeting for as long as they think necessary.

##### **4.55.2 Disturbance by the public**

###### **(a) Removal of member of the public**

If a member of the public interrupts proceedings, the Chair will warn the person concerned. If they continue to interrupt, the Chair will order their removal from the meeting room. A member of the public so removed will not be entitled to return to the meeting, and may be subject to restrictions on their attendance at future meetings.

###### **(b) Clearance of part of meeting room**

If there is a general disturbance in any part of the meeting room open to the public, the Chair may call for that part to be cleared. All members of the public involved in the general disturbance will not be entitled to return to the meeting, and may be subject to restrictions on their attendance at future meetings.

#### **4.56 Is filming and the use of social media permitted during Council meetings?**

4.56.1 Unless the press and the public are excluded from the meeting in accordance with the Access to Information Procedure Rules at section 16 of this Constitution, filming and use of social media is permitted during meetings so long as there is no disturbance to the conduct of the meeting.

4.56.2 Mobile devices should be switched to silent during Council meetings.

### **SUSPENSION OF THE COUNCIL PROCEDURE RULES**

#### **4.57 When can the Council Procedure Rules be suspended?**

All of these Council Procedure Rules may be suspended by motion on notice or without notice if at least one half of the whole number of Members are present and vote. Suspension can only be for the duration of the meeting.

### **COMMITTEES**

#### **4.58 How do the Council Procedure Rules apply to Committees**

4.58.1 The following Council Procedure Rules apply to Committee meetings:



- (a) Section 4.15 in relation to the timing, location and duration of meetings;
- (b) Section 4.16 in relation to giving notice of a meeting;
- (c) Section 4.17 in relation to chairing meetings;
- (d) Section 4.20 in relation to remote attendance of meetings;
- (e) Section 4.30 in relation to moving motions without notice;
- (f) Section 4.31 in relation to making speeches in relation to a motion;
- (g) Sections 4.38 to 4.42 (as applicable) in relation to votes of no confidence;
- (h) Section 4.43 in relation to disqualification of a Member;
- (i) Section 4.54 in relation to Member conduct at meetings, except sections 4.54.1 (Speaking at meetings) and 4.54.2 (Chair speaking);
- (j) Section 4.55 in relation to disturbances to meetings;
- (k) Section 4.56 in relation to filming of meetings;
- (l) Section 4.57 in relation to suspension of the Council Procedure Rules;
- (m) Section 4.58 in relation to the application of the Council Procedure Rules to Committees;
- (n) Section 4.59 in relation to the appointment of Committee chairs;
- (o) Section 4.60 in relation to quorum;
- (p) Section 4.61 in relation to cancelling, postponing and rearranging meetings;
- (q) Section 4.62 in relation to substitutes; and
- (r) Section 4.63 in relation to votes of no confidence in a Committee chair.

For the avoidance of doubt, any reference to the Chair in the sections listed above shall apply to the chair of a Committee (unless the context dictates otherwise).

4.58.2 For the avoidance of doubt, the rules of procedure for meetings of the Executive and its Committees are set out in section 6.

#### **4.59 How are Committee chairs appointed?**

4.59.1 The Council will appoint all Committee chairs and vice chairs at its Annual Meeting.

4.59.2 Where there is a Committee chair vacancy, the relevant vice chair shall act as the chair until a replacement is appointed at the next ordinary meeting of the Council.

- 4.59.3 A chair or vice chair may resign from their post by written notice to the Monitoring Officer. Their resignation will take effect when the Monitoring Officer receives the notice.
- 4.59.4 If the chair and the vice chair of a Committee are absent from a meeting, the Committee members will appoint a chair for the meeting. The person presiding at the meeting may exercise any power of the chair. If the chair or the vice chair joins the meeting part-way through, they will act as chair for the remainder of the meeting.
- 4.59.5 Chairs and vice chairs of sub-committees shall be appointed by their parent Committee.
- 4.59.6 The Council may at any time remove the chair or vice chair of a Committee.
- 4.59.7 An Executive Member may not chair any meeting of the Council, the Overview and Scrutiny Board, a Scrutiny Panel, the Standards Committee, the Corporate Affairs Committee or the Audit Committee.
- 4.59.8 Where the Council Procedure Rules apply to Committee meetings, references to the Chair should instead be read as references to the chair of that Committee.

#### **4.60 What is the quorum for a Committee meeting?**

Unless otherwise stated in this Constitution, the quorum for a Committee meeting will be the greater of three or 25% of the whole of the membership of that Committee. For the avoidance of doubt, the provisions of section 4.5.2 apply equally to Committees.

#### **4.61 How are Committee meetings cancelled, postponed or rearranged?**

Cancellation, postponement, or rearrangement of Committee meetings is by the chair of the relevant Committee, or the vice chair in their absence. The provisions of section 4.19 apply to any such cancellation, postponement, or rearrangement.

#### **4.62 Can a substitute attend a Committee meeting instead of a Councillor?**

- 4.62.1 The Monitoring Officer is permitted to appoint a substitute to a Committee if requested by a Member. The substitute shall be from the same Group as the Councillor for whom they are substituting.
- 4.62.2 A Member may also, by giving at least 24 hours' notice to the Monitoring Officer, designate a substitute to attend a Committee meeting. The designation shall apply to the specific meeting or for such longer period as the Member specifies. A Member may designate a different substitute for each Committee on which they sit.
- 4.62.3 A Member may terminate the designation of a substitute with immediate effect by written notice to the Monitoring Officer.
- 4.62.4 Substitute Members have the same powers and duties as the Committee member for whom they are substituting, save that they may not exercise any special powers or duties.

4.62.5 At the start of a meeting where a substitute has been appointed, they shall identify the Committee member for whom they are substituting, and that Member will be excluded from the meeting.

**4.63 How is a motion of no confidence brought in respect of a Committee chair?**

4.63.1 Any member of a Committee may submit a motion of no confidence against its chair to be added to the agenda of the next meeting of the relevant Committee. The Member must submit such a motion at least nine (9) working days before the date of the Committee meeting, unless the Monitoring Officer agrees that it may be submitted as an urgent item. Failure by the chair of the Committee to admit the motion of confidence may be submitted as a notice of motion to Council.

4.63.2 During consideration of the motion of no confidence, the Committee chair shall stand down and the Monitoring Officer, or their representative, will chair the meeting.

4.63.3 The motion of no confidence shall be debated in accordance with these Council Procedure Rules. If the motion is passed by a vote of at least two thirds of the Members present at the meeting, the Committee chair shall stand down immediately. The remainder of the meeting will be chaired by the vice chair of the Committee, or another Member elected for that purpose in the vice chair's absence.

4.63.4 Any vote of no confidence in a Committee chair must be approved by Full Council. If Full Council gives its approval, the Committee chair shall cease to hold that position. The Council shall appoint a new chair for the relevant Committee in accordance with these Council Procedure Rules.

4.63.5 A motion of no confidence in a Committee chair may be brought by a Member who is not a member of the Committee as a notice of motion to the Council.

## **5 COUNCILLORS**

This section explains the role of Councillors. It also sets out who can be a Councillor and how they are elected.

### **5.1 How many Councillors does the Council have?**

The Council comprises 46 Councillors.

### **5.2 Who can stand for election as a Councillor?**

Anyone who is a registered voter in the Borough, or who lives or works in the Borough, is eligible to stand for election as a Councillor.

### **5.3 How are Councillors elected?**

5.3.1 Councillors are elected by the voters of each Ward in accordance with a scheme drawn up by the Local Government Committee and approved by the Secretary of State.

5.3.2 Elections for Councillors are held every four years in May. Elections take place on the first Thursday in May.

### **5.4 How long does a Councillor's term last?**

5.4.1 A Councillor's term of office starts four (4) days after they are elected and ends four (4) days after the date of the next election.

5.4.2 If a Councillor ceases to be a Councillor before the end of their term of office, a by-election may be triggered<sup>15</sup>.

### **5.5 What is a Councillor's role?**

#### **5.5.1 Key Roles**

Councillors will:

- (a) collectively be the ultimate policy-makers and carry out a number of strategic and civic functions for the Council;
- (b) contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision-making;
- (c) effectively represent the interests of their Ward and of individual constituents;
- (d) respond to constituents' enquiries and representations, fairly and impartially;
- (e) participate in the governance and management of the Council; and

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<sup>15</sup> [Local Government Act 1972, Part V](#)

- (f) maintain the highest standards of conduct and ethics.

#### 5.5.2 Rights and Duties

Councillors will:

- (a) have access to the documents, information, land and buildings of the Council they need to carry out their roles (in accordance with the law), except for any documents judged by the Monitoring Officer not to be appropriate to be shared;
- (b) keep confidential and exempt information out of the public domain (unless the Council has given its consent) and not divulge confidential information to anyone other than a Councillor or Officer who needs to know it.

For the purposes of this section 5.5.2, “confidential” and “exempt” information are defined in the Access to Information Procedure Rules in section 16 of this Constitution.

#### **5.6 How should Councillors behave?**

The Mayor and the Councillors will at all times observe the Members’ Code of Conduct and the Protocol on Member / Officer Relations set out in section 24 of this Constitution.

#### **5.7 What allowances do Councillors receive?**

The Mayor and the Councillors will be entitled to receive allowances in accordance with the Members’ Allowances Scheme set out in section 22 of this Constitution.

## **6 THE MAYOR AND THE EXECUTIVE**

This section explains the function of the Executive, which includes the Mayor as its leader. It also sets out the role of the Deputy Mayor.

### **6.1 What is the role of the Executive?**

The Executive is appointed to carry out all the Council's functions which are not the responsibility of any other part of the Council, whether by law or under this Constitution.

### **6.2 What form does the Executive take?**

The Executive consists of the Mayor and at least two (2), but not more than nine (9), Councillors who are appointed by the Mayor.

## **THE MAYOR**

### **6.3 How is the Mayor elected?**

6.3.1 The Mayor is elected by the voters who live in the Borough.

6.3.2 Elections for Mayor are held every four years. The Mayor takes office four (4) days after they are elected.

### **6.4 What is the Mayor's term of office?**

6.4.1 The Mayor's term of office ends four (4) days after the date on which their successor is elected, unless they cease to be the Mayor on an earlier date.

6.4.2 If the Mayor ceases to be Mayor before the end of their term of office, the Deputy Mayor will act as Mayor until an election is held. The election must be held within 35 days of notification of the vacancy.

### **6.5 Who can stand for election as Mayor?**

6.5.1 The eligibility criteria for the position of Mayor are the same as those for elected Members (see section 5.2).

### **6.6 What is the Mayor's role?**

The Mayor's role includes:

- (a) acting as the Council's principal public spokesperson;
- (b) providing overall strategic direction to the Council;
- (c) appointing the Executive and the Deputy Mayor;
- (d) deciding on the scheme of delegation for Executive functions;

- (e) chairing meetings of the Executive;
- (f) representing the Council on external bodies and/or appointing to outside bodies;
- (g) proposing the Budget and Policy Framework and any amendments to those documents;
- (h) promoting local strategic partnerships; and
- (i) acting as the Council's representative on the Tees Valley Combined Authority.

## **6.7 Is the Mayor a Councillor?**

6.7.1 The Mayor is not a Councillor, but the same rules apply to the Mayor unless the law or context requires otherwise<sup>16</sup>. In particular, the Mayor:

- (a) is subject to the same rules about qualification and disqualification as any other Councillor;
- (b) may be a member of, attend and speak at any meeting of the Council, its Committees and sub-committees, except the Standards Committee and Overview and Scrutiny Board. The Mayor may only speak at an Overview and Scrutiny Board or Standards Committee meeting when invited to do so and may not vote at those meetings; and
- (c) is subject to the same rules about casual vacancies as apply to all Councillors.

6.7.2 All relevant provisions of section 5 apply to the Mayor in the same way as to Councillors.

6.7.3 The Mayor is the only person entitled to use the title of "Mayor".

## **THE DEPUTY MAYOR<sup>17</sup>**

### **6.8 How is the Deputy Mayor appointed?**

6.8.1 At the first Annual Meeting of the Council after their election, the Mayor will appoint a member of their Executive to act as Deputy Mayor.

6.8.2 The Deputy Mayor will hold office until the end of the Mayor's term of office unless they are no longer a Member of the Council or the Executive, they resign as Deputy Mayor, or they are removed from the position by the Mayor.

6.8.3 If the position of Deputy Mayor is vacant, the Mayor shall appoint another Deputy Mayor to fill the position.

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<sup>16</sup> [The Local Authorities \(Elected Mayor and Mayor's Assistant\) \(England\) Regulations 2002, paragraph 2](#)

<sup>17</sup> [Local Government Act 2000, Schedule 1A, paragraph 1](#)

6.8.4 The Deputy Mayor is the only person entitled to use the title of “Deputy Mayor”.

### **6.9 What is the Deputy Mayor’s role?**

6.9.1 The Deputy Mayor will step into the role of Mayor if the Mayor is for any reason unable to act, or if the office of Mayor is vacant. The Deputy Mayor will act as Mayor until the Mayor is able to act, or the office of Mayor is filled.

6.9.2 If the Deputy Mayor is unable to act as described above, the Executive will act as Mayor, or appoint a member of the Executive to do so.

6.9.3 The Deputy Mayor is also the Mayor’s deputy as representative on the Tees Valley Combined Authority.

### **6.10 How is the Deputy Mayor removed from office?**

6.10.1 The Mayor may remove the Deputy Mayor from office. The Mayor should report any removal of the Deputy Mayor to the Proper Officer at the next meeting of the Council.

## **THE EXECUTIVE**

### **6.11 Who can be appointed to the Executive?**

6.11.1 The Mayor will appoint their Executive from among the Councillors.

6.11.2 No Member may be co-opted to the Executive and Executive Members may not have deputies or substitutes.

6.11.3 The Chair and the Vice Chair of the Council may not sit on the Executive.

6.11.4 Executive Members may not sit on the Overview and Scrutiny Board, any Scrutiny Panel or on the Audit Committee.

### **6.12 How are Executive Members appointed?**

6.12.1 Subject to section 6.2, the Mayor will decide the size and composition of the Executive. Executive Members do not need to belong to a political group and the Executive need not reflect the political balance of the Council.

6.12.2 The Mayor will report Executive Member appointments to Full Council and the Proper Officer as and when they are made.

6.12.3 Executive Members will hold office until:

- (a) their appointment is terminated by the Mayor;
- (b) they resign from the Executive; or
- (c) they are no longer a Councillor.



6.12.4 Any changes to the Executive should be reported to the Proper Officer and the next meeting of Full Council.

**6.13 What happens if the Executive is unable to act?**

If all the Executive Members are unable to act for any reason, the Council will appoint an interim Executive to discharge the Executive Functions.

**6.14 Proceedings of the Executive**

Proceedings of the Executive will take place in accordance with the Executive Procedure Rules set out in this section 6.

**6.15 Who is responsible for the discharge of Executive Functions?**

6.15.1 The Mayor will maintain a list setting out who is responsible for discharging Executive Functions (individual Executive Members, Executive Committees, Officers or Joint Arrangements).

**EXECUTIVE PROCEDURE RULES**

**DELEGATION OF EXECUTIVE FUNCTIONS**

**6.16 How may Executive decisions be delegated by the Mayor?**

6.16.1 Executive Functions may be exercised by the Mayor.

6.16.2 The Mayor may also delegate authority to exercise Executive Functions (to the extent they determine) to:

- (a) the Executive as a whole;
- (b) an Executive Committee;
- (c) an Executive Member;
- (d) an Officer;
- (e) a Joint Arrangement; or
- (f) another local authority.

**6.17 How are Executive delegations communicated to the Council?**

6.17.1 At the Annual Meeting of the Council, the Mayor will present the Council with a record of the delegations they have made for inclusion in the Scheme of Delegations. The record presented to the Council must contain the following information:

- (a) the names, addresses and Wards of the people appointed to the Executive by the Mayor;

- (b) the extent of any authority delegated to each of those Executive Members individually, including the limit on that authority;
- (c) the terms of reference and constitution of any Executive Committees appointed by the Mayor and the names of the Executive Members who have been appointed to those Committees;
- (d) the nature and extent of any delegation of Executive Functions to any other local authority or Joint Arrangement, and the names of any Executive Member appointed to a joint committee; and
- (e) the nature and extent of any delegation of Executive Functions to Officers, including any limit on that delegation, and the title of the Officer to whom the delegation is made.

6.17.2 The Scheme of Delegations will be adopted by the Council at its Annual Meeting, in accordance with section 4.12.2(i).

#### **6.18 Can the Executive sub-delegate a delegated authority?**

6.18.1 The Executive may sub-delegate a delegated authority to an Executive Committee, an Officer, any Joint Arrangement, or another local authority, unless the Mayor directs otherwise.

6.18.2 An Executive Committee may sub-delegate a delegated authority to an Officer, unless the Mayor directs otherwise.

6.18.3 The delegation of an Executive Function does not prevent them from being exercised by the person or body who delegated it.

#### **6.19 When can Executive delegations be changed in-year?**

6.19.1 The Mayor may amend the delegation of Executive Functions at any time by written notice to the Proper Officer setting out the change to be made. The Proper Officer shall inform all Councillors of any change within five (5) days and report it at the next ordinary meeting of the Council. The change takes effect on the date the Proper Officer informs Councillors of the change.

6.19.2 Where the Mayor withdraws or changes a delegation to a Committee, notice of this change to the chair of the Committee will be deemed to be notice to that Committee.

### **CONFLICTS OF INTEREST**

#### **6.20 What happens if the Mayor or Executive Member(s) have a conflict of interest?**

If the Mayor or an Executive Member has a conflict of interest in relation to an Executive matter, this should be dealt with in accordance with the Member Code of Conduct in section 24.

### **MEETINGS OF THE EXECUTIVE**

## **6.21 When and where are Executive meetings held?**

- 6.21.1 The Executive shall meet at least 10 times a year at times to be determined by the Mayor. The Executive will meet at the Council's main offices or another location determined by the Mayor.
- 6.21.2 Regard will always be had to the principles of decision making set out in section 13 of this constitution in determining the status of meetings of the Executive and in relation to the frequency, timing and location of meetings.
- 6.21.3 Meetings of the Executive shall be convened in accordance with this section 6 and the Access to Information Procedure Rules in Section 16 of this Constitution.

## **6.22 What are the notice requirements for meetings of the Executive?**

- 6.22.1 Unless the urgency procedures in sections 6.35 or 6.36 apply, Executive Members will be entitled to receive five (5) working days' notice of an Executive or Executive Committee meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency. The notice should set out the reasons for holding any part of the meeting in private, details of any representations received about why the meeting should be in public and the response to those representations.
- 6.22.2 The agenda and reports for each meeting will be made available to Members in electronic form at least five (5) working days before the meeting.

## **6.23 What is the quorum for an Executive meeting?**

The quorum at any meeting of the Executive, or any Committee of the Executive, is three.

## **6.24 How are Executive meetings conducted?**

### **6.24.1 Chairing Executive meetings**

If the Mayor is present at a meeting of the Executive, they will act as the chair. In the Mayor's absence, the Deputy Mayor will preside. In the absence of both, the Executive shall elect a chair for the meeting.

## **6.25 Who may attend Executive meetings?**

### **6.25.1 Attendance by others**

Other Members, Officers and external stakeholders may be invited to private meetings of the Executive at the Mayor's discretion. For Executive Committees, such invitations are at the discretion of the chair of the relevant Committee.

### **6.25.2 Attendance by members of the public<sup>18</sup>**

- (a) Members of the public are entitled to attend Executive meetings unless:

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<sup>18</sup> [The Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012, Part 2](#)

- (i) the presence of the public is likely to result in the Council breaching a legal obligation to keep information confidential;
  - (ii) a lawful power is used to exclude the public in order to maintain orderly conduct or prevent misbehaviour at a meeting; or
  - (iii) the Executive decides to close a meeting to the public in accordance with the Access to Information Procedure Rules because exempt information would otherwise be likely to be disclosed.
- (b) Members of the public may be excluded from a meeting or part of a meeting for one of the reasons set out above.

## **6.26 What business is transacted at Executive meetings?**

6.26.1 At each meeting of the Executive, the following business will be conducted:

- (a) consideration of the minutes of the last meeting;
- (a) declarations of interest, if any;
- (b) matters referred to the Executive (whether by the Overview and Scrutiny Board or a Scrutiny Panel, or by the Council) for reconsideration by the Executive in accordance with the provisions contained in the Overview and Scrutiny Procedure Rules set out in section 7 of this Constitution or the Budget and Policy Framework Procedure Rules set out in section 17 of this Constitution;
- (c) consideration of reports from the Overview and Scrutiny Board or a Scrutiny Panel;
- (d) reports from Member bodies which are the responsibility of the Executive; and
- (e) matters set out in the agenda for the meeting.

## **PRIVATE MEETINGS OF THE EXECUTIVE**

### **6.27 How are private meetings of the Executive convened?**

6.27.1 The Council must give at least 28 days' notice of its intention to hold a meeting of the Executive in private<sup>19</sup>.

6.27.2 The Council will:

- (a) publish a notice of a meeting to be held in private on the public notice board in the Town Hall and on the Council's website;
- (b) include in the notice the reasons why the meeting is to be held in private;

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<sup>19</sup> [Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012](#)

- (c) if compliance with the notice period set out in section 6.22.1 is impracticable:
  - (i) the meeting may only be held in private with the permission of the chair of the Overview and Scrutiny Board, or if the chair is unavailable or unable to act, the Chair of the Council;
  - (ii) the chair of the Overview and Scrutiny Board (or the Chair of the Council, as appropriate) must be provided with a clear explanation for why the meeting must be held in private; and
  - (iii) the notice provisions in (a) and (b) above will apply.

## **6.28 Who may attend private meetings of the Executive?**

### **6.28.1 Attendance by Executive Members**

- (a) All Executive Members will be served notice of all private meetings of the Executive or its Committees, whether they are members of that Committee or not.
- (b) All Executive Members are entitled to attend a private meeting of any Executive Committee.

### **6.28.2 Attendance by Members**

Members who are not Executive Members will not be entitled to attend private meetings of the Executive or its Committees without the prior agreement of the Mayor or the chair of the relevant meeting.

### **6.28.3 Attendance by Officers**

- (a) The Head of Paid Service, the Chief Finance Officer, the Monitoring Officer, and their nominees are entitled to attend any meeting of the Executive and its Committees. The Executive may not meet unless the Proper Officer has been given reasonable notice that a meeting is to take place.
- (b) A private Executive meeting may only take place in the presence of the Proper Officer or their nominee with responsibility for recording and publicising the decisions made at that meeting. Where a decision is to be made at the meeting, the Head of Paid Service, the Chief Finance Officer, the Monitoring Officer, and their nominees are entitled to attend a private Executive meeting.

## **6.29 Who decides if a meeting will be held in public or in private?**

The Executive will decide whether meetings relating to matters which are not Key Decisions will be held in public or private.

## **EXECUTIVE REPORTS**

**6.30 What information should Executive reports contain about consultation with stakeholders?**

All reports to the Executive from any Executive Member on proposals relating to the Budget and the Policy Framework must contain details of the nature and extent of consultation with stakeholders and the Overview and Scrutiny Board or any Scrutiny Panel (as relevant), and the outcome of that consultation. Reports about other matters will set out the details and outcome of consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.

**6.31 In whose name will Executive reports be issued?**

Reports to the Executive will normally appear in the name of the relevant Chief Officer and will incorporate advice from appropriate Officers. The originator of a report will ensure that draft reports are the subject of consultation with the relevant Executive Member, the Chief Executive and any relevant Chief Officer and Heads of Service, including in all cases the Chief Finance Officer and the Monitoring Officer.

**KEY DECISIONS AND THE FORWARD WORK PROGRAMME**

**6.32 What are the notice requirements for a Key Decision?**

Subject to section 6.35 (general exception) and section 6.36 (special urgency), a Key Decision may not be taken unless:

- (a) a notice (the “Forward Work Programme”) has been published in connection with the matter in question;
- (b) the Key Decision has been published 28 days before the decision is taken on the Council’s Forward Plan. Where such publication of intention to take a Key Decision is impractical, the chair of the Overview and Scrutiny Board must be informed.
- (c) at least five (5) days have elapsed since the publication of the Forward Plan; and
- (d) where the decision is to be taken at a meeting of the Executive or its Committees, notice of the meeting has been given in accordance with the Access to Information Procedure Rules.

**6.33 When are Forward Plans published?**

The Mayor will prepare “Forward Plans” to cover a period of at least four months, beginning with the first day of any month. The Forward Plan is a live document and an updated version will be published when any new Forward Plan item is added.

**6.34 What does the Forward Work Programme contain?**

- 6.34.1 The “Forward Work Programme” will contain matters which the Mayor believes will be the subject of a Key Decision of the Executive, its Committees, an individual Executive

Member, Officers, or under a Joint Arrangement in the course of the discharge of an Executive Function during the period covered by the Forward Work Programme. It will contain the following details, in so far as the information is available or might reasonably be obtained:

- (a) the matter in respect of which a decision is to be made;
- (b) where the decision taker is an individual, their name and title (if any), and where the decision taker is a body, its name and details of its membership;
- (c) the date on which, or the period within which, the decision will be taken;
- (d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- (e) the means by which any such consultation is proposed to be undertaken;
- (f) the steps any person might take who wishes to make representations to the Executive or the decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter.

6.34.2 The Forward Work Programme will also contain matters which are non-Key Decisions; however, there is no deadline for these decisions to be published on the Forward Plan.

6.34.3 Exempt information need not be included in the Forward Work Programme and confidential information should not be included.

**6.35 When can a Key Decision that has not been included in the Forward Work Programme still be made (the “general exception”)**

If a matter which is likely to be a Key Decision has not been included in the Forward Work Programme, then subject to section 6.36, the decision may still be taken if:

- (a) the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next Forward Work Programme;
- (b) the Monitoring Officer has informed the chair of the Overview and Scrutiny Board, or in the absence the chair of the relevant Scrutiny Panel, or if neither is available, each member of the Overview and Scrutiny Board or Scrutiny Panel (as appropriate) in writing of the matter to which the decision is to be made;
- (c) the Proper Officer has made copies of that notice available to the public at the offices of the Council; and
- (d) at least five (5) days have elapsed since the Proper Officer complied with (a) and (b) above.

### **6.36 When does “special urgency” apply in relation to a Key Decision?**

If the urgency with which a decision must be taken means that section 6.35 (general exception) cannot be followed, a decision may only be made if the chair of the Overview and Scrutiny Board or the chair of the relevant Scrutiny Panel (as appropriate) agrees that the decision cannot be reasonably deferred. If there is no such chair or if the chair is unable to act, then the agreement of the Chair of the Council, or in their absence the Vice Chair will suffice.

## **EXECUTIVE ARRANGEMENTS**

### **6.37 Which parts of the Constitution are Executive arrangements?**

6.37.1 The following sections of this Constitution are the Executive arrangements:

- (a) Section 6 – The Mayor and the Executive (including the Executive Procedure Rules);
- (b) Section 7 – Overview and Scrutiny (including the Overview and Scrutiny Procedure Rules);
- (c) Section 10 – Joint Arrangements;
- (d) Section 13 – Decision-Making;
- (e) Section 16 – Access to Information Procedure Rules; and
- (f) The Scheme of Delegations.

## **EXECUTIVE SCHEME OF DELEGATION**

### **6.38 Which decisions are made by the Executive?**

#### **6.38.1 The Executive collectively**

The Executive will be responsible collectively for determining the following matters in respect of any and all functions that fall within the Executive terms of reference:

- (a) To take Executive decisions when there are public meetings of the Executive, convened in accordance with the relevant legislation.
- (b) Key Decisions, not delegated by the Mayor to an Executive Committee, an Executive Member, an Officer or a Joint Arrangement.
- (c) Strategic and significant decisions arising from Service reviews.
- (d) Proposals, which will be submitted to the Council as part of the annual Budget and Policy Framework, together with in-year departures from the Budget and Policy Framework.



- (e) Save for matters reserved for Full Council, new policies and procedures and changes to existing policies and procedures likely to have a significant impact on Service provision or the organisation of the Council.
- (f) Allocation of funding within the budgetary framework, together with proposals and overall expenditure levels, for projects with significant corporate implications, including those for which it is proposed to let a contract, in accordance with Financial Procedure Rule D.
- (g) Council-wide strategic performance and financial management / monitoring together with associated action.
- (h) Significant Council-wide matters which are not Key Decisions.
- (i) All reports referred to the Executive by the Overview and Scrutiny Board and its Scrutiny Panels.
- (j) Ownership of risk management and regular review of the strategic risk register.

#### 6.38.2 Individual Members

Executive Portfolio Holders will normally be responsible for the following matters in relation to the functions and Service areas within the scope of their Executive Portfolio:

- (a) Minor variations to existing policies and procedures.
- (b) Oversight of departmental service plans, having regard to the Budget and Policy Framework.
- (c) Monitoring of Service performance information.
- (d) Oversight of Executive Portfolio Service reviews, including, improvement plans, external inspection, reviews and non-strategic corporate matters.
- (e) Oversight of plans and strategies, which are not part of the Budget and Policy Framework.
- (f) Decisions which are within the Executive Portfolio Holder's remit.
- (g) Matters relating to bids for funding which do not have major financial or strategic significance, or which have either been approved in principle by the Executive or as part of the Budget and Policy Framework.

Details of the scope of each Executive Portfolio can be found in the [Executive Scheme of Delegation](#).

#### **6.39 Which decisions are made by joint bodies?**

The Joint Archives Committee will exercise Executive Functions in accordance with the terms of the agreement currently in operation.

## **6.40 Which Executive decisions are delegated to Officers?**

### **6.40.1 The Chief Executive**

- (a) Where an emergency or disaster involving destruction of or danger to life or property occurs, or there are reasonable grounds for believing such an emergency or disaster to be imminent, and the Chief Executive is of the opinion that it is likely to affect all or part of the inhabitants of the Borough, they have all the Council's powers to incur expenditure delegated to them by law<sup>20</sup>.
- (b) Before exercising this delegated power, the Chief Executive shall, if possible, consult the Mayor or, in their absence, the Executive Member in charge of the relevant Portfolio. The Chief Executive shall inform them of their actions as soon as practicable.
- (c) They shall also, as soon as practicable, endeavour to inform any Councillor whose Ward is affected setting out what, in their opinion, needs to be done immediately and what has already been done.
- (d) Where the delegated powers in section (a) above are exercised, Contract Procedure Rules and Financial Regulations are deemed to be waived for that purpose.
- (e) The Chief Executive shall report to the Council, and any other relevant body, any action taken under the powers delegated above as soon as practicable, including the extent to which it has been necessary to operate outside the Contract Procedure Rules and Financial Regulations. This report will include details of actions taken by others under (f) below.
- (f) In the absence of the Chief Executive, the lead Officer operating under the Council's emergency management procedures may exercise the delegated authority of the Chief Executive under this section 6.40.1. This Officer shall report back to the Chief Executive as soon as possible.
- (g) The Chief Executive's use of emergency powers shall only be permitted during the period for which the relevant emergency or disaster is continuing, as determined by the Chief Executive, in consultation with the Mayor.

### **6.40.2 Officers**

Officers have the power to undertake, without reference to the Council, the Executive, or to any Committee, matters of day-to-day management and associated activities. Subject to the provisions within the Mayor's scheme of delegation above, Officers can take Executive non-Key Decisions. Unless specifically delegated by the Mayor and his Executive, Officers do not have delegated powers to take Key Decisions.

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<sup>20</sup> [Local Government Act 1972, section 138](#)



## **7 OVERVIEW AND SCRUTINY<sup>21</sup>**

This section explains the functions of the Overview and Scrutiny Board, which provides oversight of the Council's and the Executive's decision-making.

### **7.1 What is Overview and Scrutiny?**

7.1.1 The Council is required by law to discharge certain scrutiny functions. These functions are an essential component of local democracy. Scrutiny committees should be powerful committees that can contribute to the development of Council policies and hold the Executive to account for its decisions. Scrutiny committees should also review existing policies, consider proposals for new policies, and recommend new policies.

7.1.2 Scrutiny should be carried out in a constructive way and should contribute to the delivery of efficient and effective services that meet the needs and aspirations of local citizens. Scrutiny committees should not shy away from challenging and questioning decisions and making constructive criticism.

### **7.2 What is the role of Overview and Scrutiny?**

7.2.1 In order to achieve the objectives set out in this section 7, the Council has appointed an Overview and Scrutiny Board, which will be responsible for:

- (a) reporting annually to Council on the workings of the scrutiny process;
- (b) review and scrutiny of decisions made, or actions taken, in connection with the discharge of any of the Council's functions whether by the Executive or another part of the Council;
- (c) making reports or recommendations to the Council or the Executive in connection with the discharge of any Executive Function;
- (d) considering any matter which affects the Borough or its citizens;
- (e) exercising the right to call-in for reconsideration decisions made but not yet implemented by the Executive and Officers;
- (f) assisting in conducting reviews of the Strategic Plan and Performance Management Framework process; and
- (g) responding to Executive consultation requests.

#### **7.2.2 Resources**

The Overview and Scrutiny Board may exercise its powers, utilising the resourcing support model the Council has put in place.

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<sup>21</sup> [Local Government Act 2000](#)

### **7.3 What are the specific functions of the Overview and Scrutiny Board?**

#### **7.3.1 Policy Development and Review**

The Overview and Scrutiny Board may:

- (a) assist the Council and the Executive in the development of its Budget and Policy Framework by in-depth analysis of policy issues;
- (b) conduct research, including community and other consultation in the analysis of policy issues and possible options;
- (c) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
- (d) question Executive Members, Committees and appropriate Chief Officers or other Officers (after consultation with the relevant Chief Officer) about the detail of the facts of an issue or proposal affecting the Borough, including Budget proposals;
- (e) 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;
- (f) consider the impact of policies to assess if they have made a difference.

#### **7.3.2 Scrutiny of Performance and Service Delivery matters**

The Overview and Scrutiny Board may:

- (a) review and scrutinise decisions made by, and performance of, the Executive, Committees and Officers, 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 Services;
- (c) question Executive Members, Committees and appropriate Chief Officers or other Officers (after consultation with the relevant Chief Officer) 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;
- (d) make recommendations to the Executive and/or the Council arising from the outcome of the scrutiny process;
- (e) review and scrutinise the performance of other public bodies in the Borough that have responsibilities for services to, and the health and well-being of, the community, and invite reports from them by requesting them to address the

Overview and Scrutiny Board and local people about their activities and performance; and

- (f) in furtherance of any of the above, question and gather evidence from any person (with their consent).

### 7.3.3 Health

In relation to scrutiny of health-related matters, the Overview & Scrutiny Board may:

- (a) advise the Council on arrangements for undertaking health scrutiny jointly with other authorities, particularly in respect of regional and specialist services, or where NHS bodies do not have coterminous boundaries with the Council;
- (b) advise the Council on protocols for how any joint health scrutiny arrangements might operate;
- (c) require an officer of a local NHS body to attend to answer questions about matters under review; and
- (d) make reports and/or recommendations to local NHS bodies and to the local authority.

The Council confers its powers of review and Scrutiny, including the power of referral to the Secretary of State for Health to the Health Scrutiny Panel<sup>22</sup>.

### 7.3.4 Finance

The role of the Overview and Scrutiny Board in respect of developing the Budget is set out in section 7.3.1.

### 7.3.5 Annual report

The Overview and Scrutiny Board must report annually to Full Council on their workings with recommendations for their future work programme and amended working methods, if appropriate.

## 7.4 **How are the proceedings of the Overview and Scrutiny Board managed?**

Overview and Scrutiny Board and Scrutiny Panels will conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in this section 7.

## 7.5 **What are Scrutiny Panels?**

- 7.5.1 In order to assist with discharging its scrutiny function, the Overview and Scrutiny Board also has sub-committees, called Scrutiny Panels. These are responsible for scrutiny of specific topics. The Overview and Scrutiny Board can also appoint ad hoc

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<sup>22</sup> [The Local Authority \(Public Health, Health and Wellbeing Boards and Health Scrutiny\) Regulations 2013, section 21](#)

Scrutiny Panels to scrutinise a particular piece of work, for example, in relation to the review and development of the Policy Framework.

- 7.5.2 The functions outlined in section 7.3 shall apply equally to Scrutiny Panels, as appropriate.

## **OVERVIEW AND SCRUTINY PROCEDURE RULES**

These Overview and Scrutiny Procedure Rules set out the rules of procedure and debate that apply to the Overview and Scrutiny Board and Scrutiny Panels.

## **OVERVIEW AND SCRUTINY ARRANGEMENTS**

### **7.6 What are the arrangements for the Overview and Scrutiny Board and Scrutiny Panels?**

- 7.6.1 The Council will have an Overview and Scrutiny Board and Scrutiny Panels as set out in this section 7 and will appoint to them as it considers appropriate from time to time.

- 7.6.2 The Overview and Scrutiny Board may, in addition to the standing Scrutiny Panels appointed by the Council at its Annual Meeting, appoint sub-committees on an ad hoc basis. The Council or the Overview and Scrutiny Board may also appoint additional Scrutiny Panels to undertake specific time-limited reviews. These Scrutiny Panels would be appointed for a fixed period on the expiry of which they shall cease to exist.

- 7.6.3 Where the relevant chair considers it appropriate, church and parent governor representatives will be appointed to the Overview and Scrutiny Board, and to the Scrutiny Panel whose remit includes responsibility for the scrutiny of education. They may also be invited to attend any other Scrutiny Panel considering education and related matters if the chair deems it necessary or appropriate. Such representatives, when appointed, will have the right to participate in any meeting that considers education and related matters and shall be entitled to vote on any question:

- (a) which relates to any education functions which are the responsibility of the Executive; and
- (b) which falls to be considered at the meeting.

### **7.7 What are the terms of reference for the Overview and Scrutiny Board?**

- 7.7.1 The terms of reference for the Overview and Scrutiny Board shall include:

- (a) the performance of all overview and scrutiny functions on behalf of the Council;
- (b) the appointment of such sub-committees as it considers appropriate to fulfil specific overview and scrutiny functions which, for the purpose of the scrutiny of health, might include Joint Arrangements as detailed in section 10;
- (c) approving an annual overview and scrutiny work programme, including the programme of any Scrutiny Panel appointed so as to ensure that the Overview

and Scrutiny Board's and Scrutiny Panels' time is effectively and efficiently utilised;

- (d) where matters fall within the remit of more than one Scrutiny Panel, determining which of those Scrutiny Panels will assume responsibility for any particular issue, or if it so decides, to undertake the scrutiny itself;
- (e) ensuring that referrals from the Overview and Scrutiny Board or a Scrutiny Panel to the Executive, either by way of report or for reconsideration, are managed efficiently and do not exceed the limits set out in this Constitution;
- (f) at the request of the Executive, making decisions about the priority of referrals if reports to the Executive exceed the limits in this Constitution, or if the volume of such reports creates difficulty for the management of Executive business, or jeopardises the efficient running of Council business.

7.7.2 Where a matter overlaps between more than one Scrutiny Panel, the Overview and Scrutiny Board will decide which Scrutiny Panel will consider the matter.

## **7.8 Who can be a member of the Overview and Scrutiny Board or a Scrutiny Panel?**

7.8.1 Executive Members may not be members of the Overview and Scrutiny Board or of a Scrutiny Panel.

7.8.2 No Member may be involved in scrutinising a decision in which they have been directly involved.

## **MEETINGS**

### **7.9 When are Overview and Scrutiny Board meetings held?**

The Overview and Scrutiny Board and Scrutiny Panels will meet at regular intervals to be determined by the relevant chair. Extraordinary meetings may be called as and when considered appropriate by:

- (a) the chair of the Overview and Scrutiny Board or the relevant Scrutiny Panel;
- (b) any five (5) Members (including voting Co-Opted Members, where they have been appointed) of the Overview and Scrutiny Board or the relevant Scrutiny Panel; or
- (c) the Proper Officer.

### **7.10 What is the quorum for the Overview and Scrutiny Board and Scrutiny Panel meetings?**

The quorum for Overview and Scrutiny Board and Scrutiny Panel meetings is the greater of three (3) and one quarter of the whole membership (including, in respect of education matters, Co-Opted Members).

## **MATTERS TO BE CONSIDERED BY OVERVIEW AND SCRUTINY**



**7.11 How is the Overview and Scrutiny Board work programme set?**

The Overview and Scrutiny Board is responsible for setting its own work programme, and that of the Scrutiny Panels. In setting the work programme, the Overview and Scrutiny Board shall take into account the wishes of members of all political parties represented in its membership.

**7.12 How are items added to the Overview and Scrutiny Board and Scrutiny Panel meeting agendas?**

Any member of the Overview and Scrutiny Board or a Scrutiny Panel shall be entitled to submit relevant items to the Proper Officer for inclusion on the agenda for the next available meeting.

**7.13 What is the role of Overview and Scrutiny in policy review and development?**

7.13.1 The role of the Overview and Scrutiny Board in relation to the development of the Council's Budget and Policy Framework is set out in detail in the Budget and Policy Framework Procedure Rules in section 17.

7.13.2 In relation to the development of the Council's approach to other matters not forming part of its Budget and Policy Framework, the Overview and Scrutiny Board may make proposals to the Executive for developments in so far as they relate to matters within their terms of reference.

7.13.3 The Overview and Scrutiny Board and Scrutiny Panels may hold inquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so.

**7.14 What is the process for consideration of Overview and Scrutiny reports to the Executive?**

7.14.1 All formal reports from the Overview and Scrutiny Board will be submitted to the Proper Officer and added to the agenda for the next meeting of the Executive (if the proposals are consistent with the existing Budget and Policy Framework), or to the Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed Budget and Policy Framework).

7.14.2 The Council or the Executive shall consider the report of the Overview and Scrutiny Board at their next available meeting – usually within eight weeks of it being added to the agenda. If it is not considered by the Executive within that time, the Proper Officer will call a meeting of the Council to consider the report and make recommendations to the Executive.

**INFORMATION AVAILABLE TO OVERVIEW AND SCRUTINY**

**7.15 To what documents do members of the Overview and Scrutiny Board and Scrutiny Panels have access?**

- 7.15.1 In addition to their rights as Councillors, members of the Overview and Scrutiny Board and Scrutiny Panels have additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in section 16 of this Constitution.
- 7.15.2 Nothing in this paragraph prevents more detailed liaison between the Executive and the Overview and Scrutiny Board and Scrutiny Panels, as appropriate, depending on the particular matter under consideration.

**7.16 When and how can Members and Officers be called to give account?**

- 7.16.1 The Overview and Scrutiny Board and Scrutiny Panels may scrutinise and review decisions made or actions taken in connection with the discharge of any Council function. As well as reviewing documentation, in fulfilling the Overview and Scrutiny role, they may require the Mayor, any Executive Member, the Head of Paid Service, any Chief Officer, and/or, after consultation with the relevant Chief Officer, another Senior Officer, to attend in relation to matters within their remit, and it is the duty of those persons to attend if so required.
- 7.16.2 For the purposes of section 7.16.1, “Senior Officer” includes any Chief Officer, their deputy and other appropriate Officer holding a senior position. Where there are concerns about the appropriateness of the Officer who should attend, the relevant Chief Officer shall discuss this with the chair or the vice chair of the Overview and Scrutiny Board or the relevant Scrutiny Panel with a view to achieving consensus. In the absence of consensus, the Head of Paid Service shall determine who is the most appropriate Officer.
- 7.16.3 Where any Member or Officer is required to attend any Overview and Scrutiny Board or Scrutiny Panel meeting under this provision, the chair of that meeting will inform the Proper Officer. The Proper Officer shall inform the Member or Officer in writing, giving at least five (5) working days’ notice of the meeting at which they are required to attend. Any notice will state the nature of the item on which they are required to attend to give account and whether any papers are required to be produced for the meeting.
- 7.16.4 Where the account to be given to the Overview and Scrutiny Board or a Scrutiny Panel will require the production of a report, the Member or Officer concerned will be given sufficient notice to allow for preparation of that documentation.
- 7.16.5 Where, in exceptional circumstances, the Member or Officer is unable to attend on the required date, the Overview and Scrutiny Board or Scrutiny Panel shall, in consultation with the Member or Officer, arrange an alternative date for attendance.

**7.17 When may others attend Overview and Scrutiny meetings?**

- 7.17.1 The Overview and Scrutiny Board or a Scrutiny Panel may invite people other than those people referred to in paragraph 7.16 above to address it, discuss issues of local

concern and/or answer questions. It may for example wish to hear from residents, stakeholders and members and officers in other parts of the public sector and shall invite such people to attend.

7.17.2 The Overview and Scrutiny Board or a Scrutiny Panel can request an officer or representative of an outside body to attend to answer questions about any scrutiny matter that is under review<sup>23</sup>.

7.17.3 Any Scrutiny Panel set up to review and scrutinise health services may require information to be provided by certain NHS bodies about the planning, provision and operation of health services that is reasonably needed to carry out health scrutiny and/or require employees including non-executive directors of certain NHS bodies to attend before them to answer questions.

## **PARTY WHIP**

### **7.18 What happens if a member of the Overview and Scrutiny Board or a Scrutiny Panel is subject to a party whip?**

When considering any matter in respect of which a member of the Overview and Scrutiny Board, or a Scrutiny Panel, is subject to a party whip, the member must declare the existence of the whip, and the nature of it before the commencement of the deliberations on the matter. The declaration and the detail of the whipping arrangements shall be recorded in the minutes of the meeting.

## **HEALTH SCRUTINY**

### **7.19 What are the arrangements for scrutiny of health matters?**

Any Scrutiny Panel established to review and scrutinise health services shall operate within the Overview and Scrutiny Procedure Rules set out in this section 7, and the following additional rules shall apply:

- (a) In carrying out a review or scrutiny, the Scrutiny Panel shall:
  - (i) have regard to regulations and guidance on health scrutiny matters that have been issued by the Secretary of State;
  - (ii) invite interested parties to comment on matters under review; and
  - (iii) take account of any relevant information available, including any relevant information provided by a patients' forum
- (b) Reports or recommendations from the Scrutiny Panel shall include:
  - (i) an explanation of the matters reviewed or scrutinised;
  - (ii) a summary of the evidence considered;

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<sup>23</sup> [Health and Social Care Act 2001](#) and [Local Government and Public Involvement in Health Act 2007](#)

- (iii) a list of the participants involved in the review;
  - (iv) any recommendations on the matter reviewed or scrutinised.
- (c) When the panel is responding to a consultation from a local NHS body about proposals for substantial developments or variations in services, it shall do so by the date specified by the NHS body.

## **CALL-IN PROCEDURE**

### **7.20 What is Call-in?**

7.20.1 Legislation<sup>24</sup> provides that Executive decisions which have been made but not yet implemented may be “called in” for consideration by a local authority’s scrutiny function. This includes decisions made by the Executive (collective or individual) and Key Decisions which have been delegated to Chief Officers.

7.20.2 The Overview and Scrutiny Board has responsibility for Call-in.

### **7.21 Which decisions can be Called-in?**

The following decisions may be Called-in:

- (a) a decision taken collectively by the Mayor and the Executive;
- (b) a decision taken by the Mayor or an individual Executive Member; and
- (c) a Key Decision taken by an Officer under delegated powers.

### **7.22 Which decisions cannot be Called-in?**

7.22.1 The following decisions may not be Called-in:

- (a) a decision to which section 7.21 does not apply;
- (b) a decision that has been Called-in previously;
- (c) a decision relates to a policy or Budget matter which requires the approval of Full Council; and
- (d) a decision that has been implemented following a recommendation from the Overview and Scrutiny Board and/or a Scrutiny Panel.

### **7.23 When can Call-in be triggered?**

7.23.1 Decisions in relation to Executive Functions must be published within two (2) working days of the decision being made. All Members will be sent an electronic notice of all

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<sup>24</sup> [Local Government Act 2000, section 9F](#) and [Localism Act 2011, Schedule 2](#)

such decisions. A record of these decisions will also be published on the Council's website.

- 7.23.2 The notice of the decision will specify the date on which the decision was made and will specify that the decision will come into force (and may be implemented) on the fifth working day after the publication of the decision.
- 7.23.3 During that five (5) working day period, any five (5) Members (including voting Co-opted Members in respect of education matters) may request that the Monitoring Officer Calls-In the decision for scrutiny by the Overview and Scrutiny Board.
- 7.23.4 Decisions may be implemented from the sixth working day following their publication unless a valid Call-in has been received by the Monitoring Officer.
- 7.23.5 Call-in should only be used in exceptional circumstances when Members believe that it is a proportionate step to benefit the delivery of Services under the Budget and Policy Framework or will improve the decision-making process.

## **7.24 What is the process for Calling-In a decision?**

### **7.24.1 Scrutiny Call-in Request**

A duly completed "Scrutiny Call-in Request Form" must be submitted to Democratic Services by 4.00pm on the fifth working day after publication of the relevant decision. The notice must contain the signatures of the five (5) non-Executive Members Calling-In the decision along with the reasons for the Call-in. Members who have a prejudicial interest in the decision may not sign a Call-in Form.

### **7.24.2 Validity of Call-in**

The Monitoring Officer will, in consultation with the chair of the Overview and Scrutiny Board, determine the validity of the Call-in as soon as possible following receipt of the Scrutiny Call-in Request Form. The Monitoring Officer may reject a Call-in if, in their opinion, it does not meet the requirements for Call-in or is vexatious, frivolous, or otherwise inappropriate.

### **7.24.3 Meeting to consider Call-in**

- (a) Democratic Services will notify the decision-maker and all Members that the decision has been Called-in and will call a meeting of the Overview and Scrutiny Board on such date as they may determine, where possible in consultation with the chair of the Overview and Scrutiny Board, and in any event no sooner than 10 working days from the date of the Scrutiny Call-in Request Form.
- (b) The signatories to the Scrutiny Call-in Request Form will normally be expected to attend the Overview and Scrutiny Board meeting to explain the reasons for the Call-in.

## **7.25 Does Call-in apply to urgent decisions?**

- 7.25.1 Urgent decisions may proceed despite a Call-in if the decision-maker has the agreement of:
- (a) the chair of the Overview and Scrutiny Board;
  - (b) in the absence of the chair of the Overview and Scrutiny Board, the Chair of the Council; or
  - (c) in the absence of the Chair, the Vice Chair of the Council.
- 7.25.2 In exceptional circumstances there may be urgent decisions that must be implemented immediately upon the decision being taken and a Call-in is therefore not possible. These must be identified by the Mayor, the Executive, or the relevant decision-maker at the time the decision is taken and the reasons behind their urgency should be explained and reported in the record of decision.
- 7.25.3 Decisions taken as a matter of urgency must be reported quarterly to the Council by the chair of the Overview and Scrutiny Board, together with the reasons for their urgency.

## **7.26 When can Members and Officers be called to account in relation to Call-in?**

- 7.26.1 A Member or Officer may only be called to account in relation to Call-in with the permission of the chair of the Overview and Scrutiny Board. Permission must be requested at least five (5) working days before the date of the relevant meeting. In exceptional circumstances, the chair of the Overview and Scrutiny Board may permit a shorter notice period of three (3) days. The person calling a Member or Officer to account must explain the relevance of the witness to the Call-in.
- 7.26.2 The Overview and Scrutiny Board may also call Members and Officers to give account.
- 7.26.3 Members called to attend a meeting relating to Call-in should consider their duty to declare an interest and make such a declaration if appropriate.
- 7.26.4 Members and Officers called to account in relation to Call-in may only provide factual information.
- 7.26.5 Sections 7.26 and 7.27 apply to Members and Officers called to attend meetings relating to Call-in.

## **7.27 What happens at a Call-in meeting?**

### **7.27.1 Scrutiny of a Called-in decision**

- (a) At a meeting to consider the Call-in of a decision, the Overview and Scrutiny Board will exercise its powers to scrutinise the decision that has been Called-in.
- (b) Every effort will be made to deal with the Call-in in a single meeting. However, in exceptional circumstances, the meeting may be adjourned so that additional

information can be obtained and/or (with the consent of the chair of the meeting or the relevant Executive Member) additional Members or Officers can be called to account.

- (c) If the meeting is adjourned as set out in section 7.27.1 above, the Called-in decision will be held in abeyance until the meeting is reconvened. If the reconvened meeting is not held on the date set at the time of the adjournment, the decision will take immediate effect on that date.

#### 7.27.2 Referral back to the decision-maker

- (a) The Overview and Scrutiny Board may refer a decision back to the decision-maker with recommendations. The decision-maker will have 10 working days from the date the decision is referred back to decide whether to amend the decision.
- (b) If the Overview and Scrutiny Board's recommendations are not accepted in full, the decision-maker should inform the Overview and Scrutiny Board and give reasons for rejecting its recommendations.
- (c) Whatever is determined by the decision-maker on reconsideration, the subsequent decision will not be open to further Call-in.
- (d) If the decision-maker decides to withdraw the decision and place it back on the Forward Plan for consideration at a later date, the decision may then be subject to Call-in.

#### 7.27.3 No case to answer

If the Overview and Scrutiny Board decides at a meeting to consider the Call-in of a decision that the decision should not be referred back to the decision-maker for reconsideration, the Monitoring Officer will advise the Mayor, the Chief Executive and (if appropriate) the delegated decision taker, that the decision may be implemented.

#### 7.27.4 Confirmation of original decision

If the decision-maker confirms the original decision, the decision may be implemented immediately and may not be subject to a further Call-in. The decision-maker should demonstrate that appropriate consideration has been given to the Overview and Scrutiny Board's recommendations.

### **7.28 How are decisions that are contrary to the Budget and Policy Framework Called-in?**

- 7.28.1 Where the Overview and Scrutiny Board or a Scrutiny Panel is of the opinion that an Executive decision is, or if made would be, contrary to the Policy Framework, or contrary to or not wholly in accordance with the Budget, then it shall seek advice from the Monitoring Officer and/or the Chief Finance Officer.

- 7.28.2 In respect of functions which are the responsibility of the Executive, the Monitoring Officer's and/or Chief Finance Officer's report(s) shall be presented to the Executive with a copy to every member of the Council. Regardless of whether the decision is delegated or not, the Executive must meet to decide what action to take in respect of the Monitoring Officer's report and to prepare a report:
- (a) if the Monitoring Officer and/or the Chief Finance Officer decide that the decision is contrary to the Policy Framework, or contrary or not wholly in accordance with the Budget, to the Council; or
  - (b) if the Monitoring Officer and/or Chief Finance Officer decide that the decision is not so contrary, to the Overview and Scrutiny Board.
- 7.28.3 If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer and/or the Chief Finance Officer is that the decision is or would be contrary to the Policy Framework, or contrary to or not wholly in accordance with the Budget, the Overview and Scrutiny Board or Scrutiny Panel may refer the matter to Council.
- 7.28.4 In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council shall meet within 10 days of the request by the Overview and Scrutiny Board. At the meeting it will receive a report of the decision or proposals and the advice of the Monitoring Officer and/or the Chief Finance Officer. The Council may either:
- (a) endorse a decision or proposal of the Executive decision taker as falling within the existing Budget and Policy Framework. In this case, no further action is required, save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
  - (b) amend the Council's Financial Procedure Rules or any relevant policy to reflect the decision or proposal of the body or individual responsible for that Executive Function and agree to the decision with immediate effect. In this case, no further action is required save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
  - (c) where the Council accepts that the decision or proposal is contrary to the Policy Framework, or contrary to or not wholly in accordance with the Budget, and does not amend the existing Policy Framework to accommodate it, require the Executive to reconsider the matter in accordance with the advice of the Monitoring Officer and/or the Chief Finance Officer.



## **8 STANDARDS**

This section explains the functions of the Standards Committee and how Councillors are held to account through the Members' Code of Conduct.

### **8.1 What is Standards?**

The Council has adopted a Members' Code of Conduct to which all Councillors are required to adhere. The Standards Committee is responsible for deciding on alleged breaches of the Members' Code of Conduct and any applicable sanctions, as well as advising on standards issues more generally.

### **8.2 Who sits on the Standards Committee?**

8.2.1 There are nine (9) Councillors on the Standards Committee. The makeup of the Standards Committee must be politically balanced (i.e. a proportional number of members representing each political group in the Council). The Mayor may not be a member of the Standards Committee.

8.2.2 Where the Standards Committee is considering a complaint against a member of a Parish Council, and/or an agenda item concerns or may affect a Parish Council, a member of each Parish Council will be entitled to sit on the Standards Committee.

8.2.3 The chair of the Standards Committee is elected each year at the Annual Meeting of Full Council. The Standards Committee chair may not be an Executive Member.

8.2.4 If the position of chair of the Standards Committee is vacant, a new chair will be elected at the next Council meeting.

### **8.3 What is the role of the Standards Committee?**

8.3.1 The Standards Committee is responsible for ensuring individual oversight of key issues that relate to ethics in Local Government.

8.3.2 The Standards Committee is also responsible for:

- (a) promoting and maintaining high standards of conduct by Members and the Mayor;
- (b) assisting Members and the Mayor to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) monitoring the operation of, and compliance with, the Members' Code of Conduct;
- (e) advising Members and the Mayor on matters relating to the Members' Code of Conduct;

- (f) arranging to train Members and the Mayor on matters relating to the Members' Code of Conduct;
- (g) considering reports relating to the conduct of Members which may be referred to it by the Council or Chief Officers, including issues relating to Members' interests and the maintenance and management of any relevant registers of interests;
- (h) receiving information from the Monitoring Officer on live complaints and the likely timelines for their investigation to be completed;
- (i) considering relevant reports referred by the Monitoring Officer and the Chief Finance Officer and making recommendations thereon to the Council as necessary;
- (j) granting dispensations to Members, Co-opted members and Parish Councillors and the Mayor from the requirements relating to declarations of interest. The Monitoring Officer may grant a dispensation where the matter is urgent and report it to the next available Standards Committee;
- (k) determining, after due investigation, allegations of breaches of the Members' Code of Conduct and the imposing of any relevant sanctions;
- (l) receiving references from the Corporate Affairs Committee regarding issues of attendance by Members at training on the Code of Conduct; and
- (m) discharging the above functions in relation to Parish Councils.

#### **8.4 When does the Standards Committee meet?**

- 8.4.1 The Standards Committee meets every three months to monitor and carry out assurance in relation to the handling of, complaints. For the avoidance of doubt, the provisions of section 4 as they relate to Committees shall apply to Standards Committee meetings.
- 8.4.2 The Standards Committee will also meet to conduct hearings, as set out in the Standards Hearings Procedure Rules below.

#### **STANDARDS HEARING PROCEDURE RULES**

In these Standards Hearing Procedure Rules, capitalised terms not otherwise defined in this Constitution shall have the meanings set out below:

- |                       |  |
|-----------------------|--|
| “Complainant”         | the person making a complaint about a Subject Member to the Standards Committee;           |
| “Communications Plan” | the plan setting out the way in which a Member must communicate with Members and Officers; |

|                         |   |
|-------------------------|---|
| “Independent Person”    | the independent person appointed by the Council to provide their views on any Standards complaint <sup>25</sup> ; |
| “Investigating Officer” | the person responsible for investigating a complaint and producing a report;                                      |
| “Subject Member”        | a Member who is the subject of a complaint to the Standards Committee.  |

## **8.5 What are the rules of procedure for Standards Committee hearings?**

These procedure rules shall apply to the Standards Committee when considering the Investigating Officer’s report under these arrangements.

## **8.6 What is the composition of the Standards Committee?**

The Standards Committee comprises nine (9) Members and, if required, two (2) Parish Councillors.

## **8.7 What is the purpose of a Standards Committee hearing**

8.7.1 The purpose of the hearing is for the Standards Committee to consider, on the evidence provided, whether the Subject Member has breached the Members’ Code of Conduct. The conduct of others, for example Officers, is dealt with through another process.

8.7.2 The Independent Person will be invited to attend and participate in the Standards Committee meeting but will not have voting rights.

## **8.8 How and when are Standards Committee hearings convened?**

8.8.1 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Standards Committee. The hearing will be held in public no earlier than 14 working days and no later than 28 working days after the Monitoring Officer has copied the Investigating Officer’s final report to the Complainant and the Subject Member. Members of the public and press will be excluded from meetings of the Standards Committee where it is likely that confidential or exempt information will be disclosed<sup>26</sup>.

8.8.2 The Monitoring Officer, in consultation with the chair of the Standards Committee, will convene a meeting of the Standards Committee.

8.8.3 If the Subject Member is unavailable for the proposed date of the meeting, the Monitoring Officer, in consultation with the chair of the Standards Committee, will determine whether the meeting can be arranged outside of the prescribed timescale. If a meeting cannot be arranged within the prescribed timescale, the Subject Member may be requested to provide a reasonable explanation to the chair of the Standards Committee, along with any appropriate evidence of their unavailability.

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<sup>25</sup> [Localism Act 2011, section 28](#)

<sup>26</sup> [Local Government Act 1972, Schedule 12A](#)

8.8.4 Where the Subject Member fails to attend the Standards Committee meeting and where the Standards Committee is not satisfied with their explanation for their absence from the hearing, the Standards Committee may, having regard to any written representations submitted by the Subject Member, and/or the Investigating Officer's report resolve to proceed with the hearing in the Subject Member's absence and make a determination. Alternatively, if the Standards Committee is satisfied with the Subject Member's reasons for not attending the hearing, it may adjourn the hearing to another date. The Standards Committee may resolve, in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously. Standards Committee hearings shall only be adjourned once, if the Subject Member fails to attend a second scheduled meeting without exceptional circumstances, the meeting shall proceed in the Subject Member's absence.

**8.9 How are matters decided at a Standards Committee hearing?**

All matters/issues before the Standards Committee will be decided by a simple majority of votes cast, with the Chair having a second or casting vote.

**8.10 Who may accompany/represent a Subject Member at a Standards Committee hearing?**

The Subject Member may choose to be accompanied by and/or represented at a Standards Committee meeting by a fellow Councillor, friend or colleague. The Subject Member will not be entitled to be represented by a solicitor or other legal representative, or by any Officer.

**8.11 What is the order of business for a Standards Committee hearing?**

8.11.1 Subject to section 8.11.2 below, the order of business of a Standards Committee hearing will be as follows:

- (a) apologies for absence;
- (b) declarations of interests;
- (c) approval of minutes of the previous meeting;
- (d) if the Subject Member is absent, consideration of whether to adjourn or to proceed with the hearing (refer to section 8.8.4 above);
- (e) introduction by the chair, of members of the Standards Committee, the Independent Person, Monitoring Officer or Deputy, Investigating Officer, Democratic Services Officer, the Committee's legal adviser, the Subject Member and their representative;
- (f) receipt of representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public / press;

- (g) determination of whether the public / press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public / press. When the public / press are excluded from any part of the meeting, filming, photography and/or audio recordings of the meeting will be prohibited in accordance with the Protocol on Filming Council Meetings section 24 of this Constitution; and
- (h) consideration of the report of the Investigating Officer and determination of the matter.

8.11.2 The chair may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

8.11.3 The Standards Committee may adjourn the hearing at any time.

8.11.4 Witnesses

- (a) The process of the hearing is inquisitorial, and not adversarial. Witnesses should not be made to feel uncomfortable or that their integrity is being questioned. The purpose of the hearing is to establish the facts.
- (b) All questions to witnesses should be made through the chair.

8.11.5 Presentation of the complaint

- (a) The Investigating Officer will present their report to the hearing, including any documentary evidence or other material, and call their witnesses. No new points will be permitted.
- (b) The Subject Member or their representative may question the Investigating Officer, and any witnesses called by the Investigating Officer.
- (c) The Standards Committee may question the Investigating Officer, the Independent Person, and any witnesses called by the Investigating Officer, upon the contents of the Investigating Officer's report.

8.11.6 Presentation of the Subject Member's response

- (a) The Subject Member, or their representative, will present their response to the Investigating Officer's report and call their witnesses.
- (b) The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member.
- (c) The Standards Committee may question the Subject Member, the Independent Person, the Advisory Officer, and any witnesses called by the Subject Member.

8.11.7 Summing up

- (a) The Investigating Officer will sum up their report.

- (b) The Subject Member or their representative will sum up their response to the Investigating Officer's report.

#### 8.11.8 Deliberations and decisions of the Standards Committee

- (a) Having heard the representations / views of all parties, the Standards Committee will adjourn the hearing and deliberate in private (assisted on matters of law by a legal adviser) to consider whether, on the facts found, the Subject Member has failed to comply with the Members' Code of Conduct, and if so, what sanctions should be applied.
- (b) Before reaching a decision, the Standards Committee will consider the views expressed by the Independent Person, including any views on sanctions to be applied and/or recommendations to the Council, a Parish Council, or the Monitoring Officer.
- (c) Where the complaint has a number of aspects, the Standards Committee may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (d) The Standards Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.
- (e) The Standards Committee may at any time come out of private session and reconvene the hearing in public to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Committee cannot be presented, then the Committee may adjourn the hearing and issue directions as to the additional evidence required and from whom.
- (f) If evidence presented to the Standards Committee highlights other potential breaches of the Council's or Parish Council's Members' Code of Conduct, then the chair will outline the Standards Committee's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.
- (g) Having deliberated on its decision and/or recommendations and the application of any sanctions, the Standards Committee will reconvene the hearing in public and the chair will announce:
  - (i) the Standards Committee decision as to whether or not the Subject Member has failed to comply with the relevant Members' Code of Conduct, detailing the breaches, and the principal reasons for the decision;
  - (ii) the sanctions (if any) to be applied;
  - (iii) the recommendations (if any) to be made to the Council or Parish Council (as appropriate) and/or Monitoring Officer; and

- (iv) that there is no right of appeal against the Standards Committee decision and/or recommendations.

## **8.12 What are the possible sanctions the Standards Committee can determine?**

8.12.1 Subject to section 8.12.4 below, where the Standards Committee determines that the Subject Member has failed to comply with the relevant Members' Code of Conduct, any one or more of the sanctions below, or any further sanctions deemed appropriate by the Standards Committee, may be applied / recommended, within the powers of the Committee (this list is not exhaustive):

- (a) a recommendation to the Council or Parish Council (as appropriate) that the Subject Member be issued with a formal censure (i.e., the issue of an unfavourable opinion or judgement or reprimand) by motion;
- (b) the issue of an instruction that the Subject Member is removed from specified Committee(s) of the Council;
- (c) a recommendation to the Mayor that the Subject Member be removed from the Executive or removed from particular Executive Portfolio responsibilities;
- (d) an instruction to the Monitoring Officer, or the Parish Council (as appropriate), to arrange training for the Subject Member;
- (e) a recommendation to the Council, or Parish Council (as appropriate), that the Subject Member is removed from all outside appointments to which they have been appointed or nominated by the Council, Executive or Parish Council;
- (f) an instruction to the Monitoring Officer, or Parish Council (as appropriate), to withdraw facilities provided to the Subject Member by the Council, or Parish Council, such as a computer, website and/or email and internet access;
- (g) an instruction to the Monitoring Officer or Parish Council (as appropriate), to implement a Communications Plan for the Subject Member;
- (h) an instruction to the Monitoring Officer, or Parish Council (as appropriate), to exclude the Subject Member from the Council or Parish Council's offices or other premises, except for meeting rooms as necessary for Council or Parish Council Committee meetings;
- (i) an instruction to the Monitoring Officer, or Parish Council (as appropriate), to apply the informal resolution process;
- (j) an instruction to the Monitoring Officer, or Parish Council (as appropriate), to issue a press release or other form of publicity; or
- (k) an instruction to the Monitoring Officer, or Parish Council (as appropriate), to restrict the Subject Member's access to confidential or exempt information.

8.12.2 The Standards Committee has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.

8.12.3 The Standards Committee may specify that any sanction takes effect immediately or takes effect at a later date and/or that the sanction be time limited. If the sanctions are not complied with within the timescale directed by the Standards Committee, the Monitoring Officer will report the fact to the chair of the Standards Committee, wherein further sanctions may be considered by the Standards Committee.

8.12.4 When deciding whether to apply one or more sanctions referred to in section 8.12.1 above, the Standards Committee will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. In determining reasonableness, the Standards Committee will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:

- (a) What was the Subject Member's intention, and did they know that they were failing to follow the Council's or Parish Council's Members' Code of Conduct?
- (b) Did the Subject Member receive advice from Officers before the incident and was that advice acted on in good faith?
- (c) Has there been a breach of trust?
- (d) Has there been financial impropriety, for example, improper expense claims or procedural irregularities?
- (e) What was the result / impact of failing to follow the Council's or Parish Council's Members' Code of Conduct?
- (f) Was there an impact on others?
- (g) How serious was the incident?
- (h) Does the Subject Member accept that they were at fault?
- (i) Did the Subject Member apologise to the relevant persons?
- (j) Has the Subject Member previously been reprimanded or warned for similar misconduct?
- (k) Has the Subject Member previously breached the Council's or Parish Council's Members' Code of Conduct?
- (l) Is there likely to be a repetition of the incident?

### **8.13 How and when are Standards Committee decisions and recommendations published?**

8.13.1 Within five (5) working days of the Standard Committee's announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Standards Committee's decision and



recommendations, and the reasons for the decision and recommendations, on the Council's website.

8.13.2 Within five (5) working days of the announcement of the Standards Committee's decision, the Monitoring Officer will provide a full written decision and the reasons for the decision, including any recommendations, to:

- (a) the Subject Member;
- (b) the Complainant; and
- (c) the clerk to the Parish Council (if appropriate).

## **9 RESPONSIBILITY FOR FUNCTIONS**

This section explains the remit of certain Council Committees which have delegated responsibility for specific functions, including the Corporate Affairs Committee, Audit Committee, the Licensing Committee and the Planning and Development Committee.

### **9.1 What are the Council's Standing Committees?**

9.1.1 The Council has the following standing Committees, which are responsible for exercising specific functions:

- (a) Standards Committee;
- (b) Corporate Affairs Committee
- (c) Audit Committee;
- (d) Licensing Committee; and
- (e) Planning and Development Committee.

9.1.2 The Procedure Rules for the Standards Committee, including the Procedure Rules relating to Standards hearings, are set out in section 8. The Procedure Rules for the other Committees are set out in section 9. For the avoidance of doubt, the Council Procedure Rules in section 4 apply to all Committees unless otherwise stated in this Constitution.

## **CORPORATE AFFAIRS COMMITTEE**

This section explains the function of the Corporate Affairs Committee.

### **9.2 What functions does the Corporate Affairs Committee have?**

#### **9.2.1 General**

- (a) Deal with any matter which is not an Executive Function and that has not been delegated to any other Committee.
- (b) Consider any items of urgency that would require the approval of the Council, as determined by the Head of Paid Service in consultation with the Chair and the leader of the Majority Group.

### **9.3 What is the membership of the Corporate Affairs Committee?**

There are 7 Councillors who sit on the Committee. Membership of the Committee is politically balanced.

### **9.4 How is the chair of the Corporate Affairs Committee appointed?**

The chair of the Committee is appointed at the Annual Meeting in accordance with section 4.12.2(g).

### **9.5 What is the quorum for Corporate Affairs Committee meetings?**

The quorum for Corporate Affairs Committee meetings is the greater of three (3) and one quarter of its whole membership.

## AUDIT COMMITTEE

This section explains the function of the Audit Committee, which fulfils the Council's statutory audit function.

### 9.6 What functions does the Audit Committee have?

The Audit Committee has delegated powers to:

#### 9.6.1 General

Consider whether appropriate accounting policies have been followed in the Council's annual statement of accounts and whether there are any concerns arising from the financial statements or from the audit that need to be brought to the attention of the Executive.

#### 9.6.2 Financial

Receive reports on the Council's treasury and investment management policies, practices and activities, including 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 the Council's treasury management practices and the investment management practices.

#### 9.6.3 External Audit Functions

- (a) Advise on the appointment of the Council's external auditor.
- (b) Discuss with the external auditor the nature and scope of audit coverage, including value for money (VFM).
- (c) Review external audit reports and annual audit letters, together with the management response, and make recommendations to the Executive.
- (d) Examine any other concerns of the external auditors.

#### 9.6.4 Internal Audit Functions

The Council's internal audit function is delivered by Veritau (Tees Valley). For the purposes of this section 9, "Audit Manager" refers to the person within the company with designated responsibility for overseeing internal audit of the Council.

- (a) Monitor the progress and performance of internal audit.
- (b) Review the internal audit annual plan.
- (c) Consider significant findings of internal audit reviews and investigations, together with management responses, and monitor implementation of agreed recommendations.

- (d) Advise the Executive on the internal audit function, resourcing and standing within the Council.
- (e) Ensure co-ordination between internal and external auditors.
- (f) Consider the Audit Manager's annual report and comment annually on the adequacy and effectiveness of internal audit control systems within the Council.

#### 9.6.5 Risk Management Functions and Business Continuity Functions

- (a) Support and monitor the implementation and ongoing processes for identifying and managing key risks for the Council.
- (b) Ensure that effective and proper processes and procedures are in place to ensure business continuity of the Council.

#### 9.6.6 Internal Control Functions

- (a) Review the Annual Governance Statement, a statutory document, which explains the processes and procedures in place to enable the Council to carry out its functions effectively.
- (b) Monitor the Council's compliance with its own published standards and controls and recommend any necessary changes to the Financial Procedure Rules in section 18 and the Contract Procedure Rules in section 19.

#### 9.6.7 Corporate Governance

- (a) Keep under review the Council's arrangements for corporate governance and propose any necessary actions to ensure compliance with best practice.
- (b) Keep under review corporate policies such as the [Whistleblowing Policy](#) and [Anti-fraud Strategy](#) .
- (c) Ensure that effective systems are in place to underpin the Council's processes and ensure the highest standards in respect of audit and corporate governance matters.
- (d) Maintain an overview of complaints handling and Ombudsman investigations.
- (e) To exercise the Council's functions in relation to the control of pollution or the management of air quality pursuant to the Pollution Prevention and Control Act 1999<sup>27</sup>, Part IV of the Environment Act 1995<sup>28</sup>, Part I of the Environmental Protection Act 1990<sup>29</sup>, and the Clean Air Act 1993<sup>30</sup>, including the determination of applications for variation of authorisations under sections 10<sup>31</sup>

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<sup>27</sup> [Pollution Prevention and Control Act 1999](#)

<sup>28</sup> [Environment Act 1995, Part IV](#)

<sup>29</sup> [Environmental Protection Act 1990, Part I](#)

<sup>30</sup> [Clean Air Act 1993](#)

<sup>31</sup> [Environmental Protection Act 1990, section 10](#)

and 11<sup>32</sup> of the Environmental Protection Act 1990, and permits under the Regulation 17 of the Pollution Prevention and Control Regulations 2000<sup>33</sup>, involving a substantial change.

9.6.8 Reporting

Report to the Executive or to the Council, as appropriate, with findings and recommendations.

**9.7 What is the membership of the Audit Committee?**

There are 7 Councillors who sit on the Committee. Membership of the Committee is politically balanced.

**9.8 How is the chair of the Audit Committee appointed?**

The chair of the Committee is appointed at the Annual Meeting in accordance with section 4.12.2(g).

**9.9 What is the quorum for Audit Committee meetings?**

The quorum for Audit Committee meetings is the greater of three (3) and one quarter of its whole membership.

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<sup>32</sup> [Environmental Protection Act 1990, section 11](#)

<sup>33</sup> [Pollution Prevention and Control Regulations 2000, Regulation 17](#)

## **LICENSING COMMITTEE**

This section sets out the powers and functions of the Council's Licensing Committee, and its Sub-Committees, which is responsible for the Council's licensing functions.

### **9.10 What are the terms of reference of the Licensing Committee?**

The Licensing Committee has delegated powers to exercise the functions of the Council in relation to all licensing functions except where those functions are delegated to an Officer.

### **9.11 What is the Membership of the Licensing Committee**

There are 14 Councillors who sit on the Licensing Committee. Membership of the Licensing Committee is politically balanced.

### **9.12 How is the chair of the Licensing Committee Appointed**

The chair of the Licensing Committee is appointed at the Annual Meeting in accordance with section 4.12.2(g).

### **9.13 What is the quorum for Licensing Committee Meetings**

The quorum for a Committee meeting will be the greater of four (4) or one quarter of the whole of the membership of that Committee.

### **9.14 What are the main powers and duties of the Licensing Committee?**

9.14.1 The Licensing Committee's main powers and duties include but are not limited to the following which it may delegate to its Licensing Sub Committees, in accordance with their terms of reference and legislation, or to Officers. The functions of the Licensing Authority through the Licensing Committee or officers are set out in part B of the Scheme of Delegations.

9.14.2 The Licensing Committee is responsible for the Council's licensing functions delegated to it under section 101 of the Local Government Act 1972.

9.14.3 The Licensing Committee is the Statutory Committee created under sections 6 and 7 of the Licensing Act 2003 for functions in relation to the regulation of the supply or sale of alcohol, regulated entertainment and the provision of late-night refreshment.

9.14.4 The Licensing Committee is the Statutory Committee created under section 154 of the Gambling Act 2005 for functions in relation to the regulation of premises and permits used for gambling.

9.14.5 The Licensing Committee has been delegated the functions under the Scrap Metal Dealers Act 2013 in relation to licensing of site licences for scrap metal and collectors' licences for mobile collectors of scrap metal.

9.14.6 The main licensing functions under the Licensing Act 2005, Gambling Act 2005 and Scrap Metal Dealers Act 2013 were delegated to its Licensing Sub Committees under those Acts by the Licensing Committee.

9.14.7 The Licensing Committee has power to exercise the licensing functions in respect of the regulation of the private hire and hackney carriage (or “taxi”) trade under the Town Police Clauses Acts 1847 and 1889 and Part II of the Local Government (Miscellaneous Provisions) Act 1976, including:

- (a) The power to licence hackney carriage and private hire vehicle proprietors, operators and drivers including reviews of licensees if there are grounds for concern which the relevant Chief Officer considers appropriate for the Licensing Committee to consider.
- (b) To be consulted on the Licensing Authority’s private hire and hackney carriage Policy.
- (c) Any associated functions under that Act.

9.14.8 The Licensing Committee has power to licence, sex shops, sex cinemas, sex establishments and sexual entertainment venues including reviews and to carry out associated functions under Part II and Schedule 3 of the Local Government Miscellaneous Provisions Act 1982.

9.14.9 The Licensing Committee has the power to determine whether to designate areas for street trading as either consent, licensed or prohibited streets and associated functions under Part III and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1976.

9.14.10 The Licensing Committee has the power to determine applications for village greens or common land and associated functions under the Commons Act 2006 and the Commons Registration Act 1965

9.14.11 The functions carried out by the Licensing Committee include:

- (a) Imposing any condition, limitation or restriction, or determining any other terms, on an approval, consent, licence, permission or registration granted in the exercise of its functions.
- (b) Determining whether to take enforcement action in respect of any breach of any approval, consent, licence, permission or registration granted or breach of any condition, limitation or term to which any such approval, consent, licence, permission or registration is subject to the exercise of its functions.
- (c) Revoking any approval, consent, licence, permission or registration granted in the exercise of its functions.
- (d) Amending, modifying or varying any approval, consent, licence, permission or registration granted in the exercise of its functions or any condition, limitation restriction or term to which it is subject.

**9.15 What are the Sub-Committees of the Licensing Committee?**



The Licensing Committee has the following Sub-Committees:

- (a) Licensing Sub Committee A;
- (b) Licensing Sub Committee B;
- (c) Licensing Sub Committee C;
- (d) Casino Licensing Sub Committee; and
- (e) Licensing Sub Committee General

#### **9.16 What are the Terms of Reference of the Sub-Committees**

- 9.16.1 Licensing Sub-Committees A, B and C have delegated powers to exercise the Council's Licensing functions to hear and decide upon applications requests and referrals under the Licensing Act 2003 and Gambling Act 2005 except so far as such functions have been delegated to Officers.
- 9.16.2 The Casino Licensing Sub-Committee has powers to determine stages 1 and 2 of any "large casino competition" should a competition be launched in accordance with the relevant requirements of the Gambling Act 2005, the Council's Statement of Principles, any relevant Regulations, Code of Practice and Guidance.
- 9.16.3 The Licensing Sub-Committee General has delegated powers to exercise the Council's Licensing functions to hear and decide upon applications, renewals variations and revocations of licences under the Scrap Metal Dealers Act 2013.

#### **9.17 What is the Membership of the Licensing Sub-Committees**

- 9.17.1 The Licensing Sub-Committees A, B, C and General consist of a Chair and two members or the Licensing Committee, who have received training, on a pro rata basis. Only a member of the Licensing Committee may substitute a member appointed to a Sub Committee, provided they have received training.
- 9.17.2 The Casino Licensing Sub-Committee Membership will be members of the Licensing Committee and appointed by the Licensing Committee or Council, should the Council decide to launch a competition for a large casino in Middlesbrough.

#### **9.18 How are the chairs appointed to the Licensing Sub-Committees**

- 9.18.1 The chair of the Licensing Sub-Committee A, Licensing Sub Committee General and the Casino Licensing Sub Committee is the Chair of the Licensing Committee appointed at the Annual General Meeting.
- 9.18.2 The chairs of Licensing Sub-Committees B and C are appointed by the Licensing Committee.

#### **9.19 What is the quorum for Licensing Sub Committee Meetings**

For a Licensing Sub-Committee meeting or hearing to be held there must be three members of the Licensing Committee, being a chair and two members. The Casino Licensing Sub Committee must consist of all the number of members allocated to that Sub Committee for a meeting or hearing to be convened.

## **9.20 What are the main powers and duties of the Licensing Sub Committees**

- 9.20.1 Under the Licensing Act 2003, Licensing Sub Committees A, B and C, the main powers and duties include but are not limited to the following:
- 9.20.2 The regulation of the sale or supply of alcohol, regulated entertainment and late-night refreshment. Determining applications for Personal Licences, Premises Licences, Club Premises Certificates, Provisional Statements, Variations, changes to a Designated Premises Supervisor, Transfers, Temporary Event Notices and Interim Authorities if representations have been received and in the case of Personal Licences where there are unspent convictions. To determine reviews of licences, certificates or other permissions under the Act.
- 9.20.3 Under the Gambling Act 2005, Licensing Sub Committees A, B and C, the main powers and duties include but are not limited the regulation of premises used for gambling. Determining applications for Premises Licences, Permits, Transfers, Provisional Statements and Temporary Use Notices where representations have been received, and to determine reviews of licences or permissions.
- 9.20.4 Under the Scrap Metal Dealers Act 2013, Licensing Sub Committee General, the main powers and duties include but are not limited to making determinations whether a person applying for a licence is suitable, where there are causes for concern, for either a Site Licence for a licence to operate areas as a scrap metal dealer or a Collector's Licence to operate as a mobile collector.
- 9.20.5 Under the Gambling Act 2005, the Casino Licensing Sub Committee will have the power to determine the applications for a large casino should the Council decide to launch a competition under the Act.
- 9.20.6 Licensing Sub Committees meetings and hearings are subject to the rules set down by respective relevant Acts, the Gambling Act (proceedings of Licensing Committees and Sub Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 the Licensing Act (Hearings) Regulations 2005 together with any associated guidance, policy and codes of practice.

## **PLANNING AND DEVELOPMENT COMMITTEE**

This section sets out the powers and functions of the Council's Planning and Development Committee, which is responsible for the Council's planning and development functions.

### **9.21 What are the Planning and Development Committee's terms of reference?**

The Planning and Development Committee has delegated powers to exercise the powers of the Council to deal with all planning and development functions, except where those functions are delegated to an Officer.

### **9.22 What is the membership of the Planning and Development Committee?**

There are 10 Councillors who sit on the Planning and Development Committee. Membership of the Planning and Development Committee is politically balanced.

### **9.23 How is the chair of the Planning and Development Committee appointed?**

The chair of the Committee is appointed at the Annual Meeting in accordance with section 4.12.2(g).

### **9.24 What is the quorum for a Planning and Development Committee meeting?**

The quorum for Corporate Affairs Committee meetings is the greater of three (3) and one quarter of its whole membership.

### **9.25 What are the powers and duties of the Planning and Development Committee?**

9.25.1 The Planning and Development Committee has the following powers:

- (a) Power to require information as to interests in land.
- (b) Duty to give notice etc. of applications for planning permission.
- (c) Power to determine applications for planning permission.
- (d) Power to decline to determine applications for planning permission.
- (e) Power to grant planning permission for development already carried out.
- (f) Power to grant or refuse planning permission for development without complying with conditions to which previous planning permission is subject.
- (g) Power to determine application for planning permission made by a local authority, alone or jointly with another person.
- (h) To determine the making of Tree Preservation Orders and to determine applications for consent to take action in relation to trees within Tree Preservation Orders.
- (i) To consider and adopt supplementary planning guidance relating to Development Control matters and to develop Local Planning Guidance.

- (j) Conservation Area Boundary Reviews and Designation and Conservation Area Character Assessments.
- (k) Power to issue a certificate for existing proposed lawful use or development.
- (l) Duties relating to applications for listed building consent and conservation area consent.
- (m) Power to apply for an injunction in relation to a listed building.
- (n) Power to grant consent for the display of advertisements.
- (o) Power to determine applications for listed building consent and related powers.
- (p) Power to determine applications for conservation area consent.
- (q) Power to issue enforcement notices in relation to demolition of unlisted buildings in a conservation area.

9.25.2 The Planning and Development Committee's functions include:

- (a) Imposing any condition, limitation or restriction, or determining any other terms, on an approval, consent, licence, permission or registration granted in the exercise of its functions.
- (b) Determining whether to take enforcement action in respect of any breach of any approval, consent, licence, permission or registration granted or breach of any condition, limitation or term to which any such approval, consent, licence, permission or registration is subject to the exercise of its functions.
- (c) Revoking any approval, consent, licence, permission or registration granted in the exercise of its functions.
- (d) Amending, modifying or varying any approval, consent, licence, permission or registration granted in the exercise of its functions or any condition, limitation restriction or term to which it is subject.
- (e) Determining whether a charge should be made, and the amount of any such charge, for any approval, consent, licence, permission or registration where there is a power to charge and the amount of the charge is not otherwise prescribed.

## **10 JOINT ARRANGEMENTS**

This section explains when and how the Council may enter into Joint Arrangements. It also gives details of Joint Arrangements that the Council has entered into with other local authorities.

### **10.1 What are Joint Arrangements?**

There are circumstances where the Council or the Executive is entitled to carry out certain functions jointly with another local authority. Joint Arrangements apply to how the Council works with other local authorities.

### **10.2 When will the Council enter Joint Arrangements?**

In order to promote the economic, social or environmental well-being of the Borough, the Executive 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.

### **10.3 How do Joint Arrangements operate?**

10.3.1 The Council may establish Joint Arrangements with one or more local authorities and/or their executives to exercise functions which are not Executive Functions in any of the participating authorities, or to advise the Council.

10.3.2 The Executive may establish Joint Arrangements with one or more bodies to exercise Executive Functions. Joint committees may be set up to exercise these functions. Only Executive Members can sit on these committees, and they do not need to be politically balanced.

10.3.3 If a joint committee is concerned with functions that affect only a part of the Borough which is smaller than two-fifths of the total by area or population, the Executive may appoint Councillors who are not Executive Members to the joint committee. Any such Councillor should be the Member for a Ward contained in the Borough covered by the joint committee.

10.3.4 Details of any Joint Arrangements including any delegations to joint committees will be recorded in the Scheme of Delegations.

10.3.5 The Access to Information Procedure Rules in section 16 of this Constitution apply to any Joint Arrangement.

### **10.4 What Joint Arrangements does the Council have in place?**

## **JOINT HEALTH AND WELLBEING BOARD**

The Council has established a Single Health and Wellbeing Board with Redcar and Cleveland Borough Council. The Board's aims are to:

- (b) provide strategic direction for health and wellbeing related initiatives.
- (c) ensure that the councils have strategic influence over commissioning decisions across health, public health and social care;
- (d) strengthen democratic legitimacy by involving democratically elected representatives and patient representatives in commissioning decisions alongside commissioners across health and social care;
- (e) provide a forum for challenge, discussion, and the involvement of local people in health and social care decision-making;
- (f) ensure the Joint Strategic Needs (and assets) Assessment (JSNA) is undertaken and develop a joint Health and Wellbeing Strategy to address needs and improve health and wellbeing outcomes. This will include supporting the development of joint commissioning and integrating services across health and care where this makes sense; and
- (g) create a more effective and responsive local health and care system. Other services that impact on health and wellbeing such as housing and education provision will also be addressed.
- (h) liaise with the Integrated Care Board.

## **TEESSIDE PENSION FUND COMMITTEE**

See section 23 for the role and functions of the Teesside Pension Fund Committee.

### **10.5 How is delegation to and from other local authorities managed?**

- 10.5.1 The Council may delegate Non-Executive Functions to another local authority or, where those functions are the responsibility of the executive of another local authority, to that executive.
- 10.5.2 The Executive may delegate Executive Functions to another local authority or the executive of another local authority in certain circumstances.
- 10.5.3 The decision to accept a delegation from another local authority is made by Full Council.

## 11 OFFICERS

This section sets out the role of Officers, and their management and employment arrangements. It also explains the roles of the three statutory officers: the Head of Paid Service (who is the Chief Executive at Middlesbrough), the Monitoring Officer and the Chief Finance Officer.

### 11.1 What is the management structure for Officers?

#### 11.1.1 General

The Council may engage such staff (referred to as Officers) as it considers necessary to carry out the functions of the Council.

#### 11.1.2 Statutory Officers

- (a) Certain posts are required by law.
- (b) The Council will designate the following posts as shown:

| Council post                              | Designation           | Role   |
|---|-----------------------|--|
| Chief Executive                           | Head of Paid Service  | Responsible for management functions                                   |
| Director of Legal and Governance Services | Monitoring Officer    | Responsible for the lawfulness and fairness of Council decision-making |
| Director of Finance                       | Chief Finance Officer | The Council's 'Responsible Finance Officer'                            |

#### 11.1.3 Restrictions on posts

- (a) The Monitoring Officer may not be the Head of Paid Service or the Chief Finance Officer<sup>34</sup>.
- (b) The Chief Finance Officer may not be the Monitoring Officer<sup>35</sup>.

#### 11.1.4 Structure

The Head of Paid Service will determine and publicise a description of the overall structure of the Council showing the management structure and deployment of Officers.

### 11.2 What does the Head of Paid Service do?

<sup>34</sup> [Local Government and Housing Act, section 5](#)

<sup>35</sup> [Local Government and Housing Act, section 5](#)

The Head of Paid Service may report to Council on the way the discharge of the Council's functions is co-ordinated, the number and grade of Officers required for the discharge of those functions and the organisation of Officers.

### **11.3 What does the Monitoring Officer do?**

#### **11.3.1 Reviewing and maintaining the Constitution**

The Monitoring Officer will review and maintain the Council's Constitution as set out in section 2.

#### **11.3.2 Ensuring lawfulness and fairness of decision-making**

(a) If the Monitoring Officer considers that a proposal, decision or omission of the Council or the Executive would give rise to unlawfulness or maladministration, they will report this to Full Council or the Executive (as appropriate, depending on the nature of the function to which it relates). Before making a report, the Monitoring Officer will consult with the Head of Paid Service and the Chief Finance Officer.

(b) The proposal or decision will not be implemented until the report has been considered.

#### **11.3.3 Supporting the Standards Committee**

The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct by supporting the Standards Committee.

#### **11.3.4 Conducting investigations**

The Monitoring Officer will conduct or secure investigations, or arrange for investigations to be conducted, into complaints made under the Members' Code of Conduct and make reports and/or recommendations in respect of them to the Standards Committee.

#### **11.3.5 Proper Officer for access to information**

The Monitoring Officer will ensure that Executive decisions, together with the reasons for those decisions and relevant Officer reports and background papers, are made publicly available as soon as possible.

#### **11.3.6 Advising whether Executive decisions are within the Budget and Policy Framework**

The Monitoring Officer will, in conjunction with the Chief Finance Officer, advise whether decisions of the Executive are in accordance with the Budget and Policy Framework.

#### **11.3.7 Providing advice**



The Monitoring Officer will advise Councillors and the Mayor on the scope of their powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework issues.

#### 11.3.8 Other responsibilities

The Monitoring Officer is also responsible for corporate Complaints, Ombudsman cases and whistleblowing. The Monitoring Officer may delegate these responsibilities to other Officers.

### 11.4 **What does the Chief Finance Officer do?**

The Chief Finance Officer is the Council's most senior financial Officer and fulfils the statutory role of Chief Finance Officer.

#### 11.4.1 Ensuring lawfulness and financial prudence of decision making

- (a) If the Chief Finance Officer considers that a proposal, decision or course of action of the Council 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, they will report this to Full Council or the Executive (as appropriate, depending on the nature of the function to which it relates). Before making a report, the Chief Finance Officer will consult with the Head of Paid Service and the Monitoring Officer.
- (b) The proposal or decision will not be implemented until the report has been considered.

#### 11.4.2 Administration of financial affairs

The Chief Finance Officer is responsible for the administration of the Council's financial affairs.

#### 11.4.3 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.

#### 11.4.4 Providing advice

The Chief Finance Officer will advise Councillors and the Mayor on the scope of their powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework and the Mayor, and will support and advise Councillors and Officers in their respective roles.

#### 11.4.5 Give financial information

The Chief Finance Officer will provide appropriate financial information to the media, members of the public and the community.

**11.5 How are the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer supported in their role?**

The Council will provide the resources and Officers it deems sufficient to support the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer in performing their duties.

**11.6 How should Officers behave?**

Officers will comply with the Officers' Code of Conduct and the Protocol on Member / Officer Relations set out in section 24 of this Constitution.

**OFFICER EMPLOYMENT PROCEDURE RULES**

**11.7 What are the employment arrangements for Officers?**

The recruitment, selection and dismissal of Officers will comply with the Officer Employment Rules set out in section 11 of this Constitution.

**11.8 Who can be appointed as an Officer?**

**11.8.1 Declarations**

- (a) Any candidate for appointment as an Officer, must state in writing whether they are the husband, wife, parent, grandparent, partner, child, stepchild, adopted child, grandchild, sibling, uncle, aunt, nephew, niece or close personal friend of the Mayor, a Councillor, an Officer, or of the partner of such persons.
- (b) No candidate so related to the Mayor, a Councillor or an Officer will be appointed without the authority of the relevant Chief Officer or an Officer nominated by them.

**11.8.2 Seeking support for an appointment**

- (a) The Council will disqualify any applicant who directly or indirectly seeks the support of the Mayor, any Councillor or any Officer or the Head of Governors of any educational establishment for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- (b) No Councillor, nor the Mayor, will seek support for any person for any appointment with the Council or give a reference for any person for any appointment with the Council.

**11.9 How are Chief Officers recruited?**

11.9.1 Where the Council proposes to appoint a Head of Paid Service, a Chief Officer, Monitoring Officer, Chief Finance Officer or other statutory or non-statutory Chief Officer<sup>36</sup> and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

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<sup>36</sup> [Local Government Act 1989, section 2\(6\) and \(7\)](#)

- (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;
- (c) make arrangements for a copy of the statement mentioned in (a) above to be brought to the attention of potential applicants.

## **OFFICER APPOINTMENTS**

### **11.10 How are Chief Officers appointed?**

11.10.1 A “Chief Officer Appointments Committee” of seven Members nominated annually by the Council, which shall include the Mayor, the Deputy Mayor and the relevant Executive Portfolio holder, shall appoint the Head of Paid Service. The appointment shall be approved by Full Council following the recommendation of the Chief Officer Appointments Committee.

11.10.2 Full Council may approve the appointment of the Head of Paid Service provided that no well-founded objection has been received from an Executive Member within three (3) days of notification of the Chief Officer Appointments Committee’s recommendation.

11.10.3 The Chief Officer Appointments Committee will appoint Chief Officers, including the Monitoring Officer and the Chief Finance Officer, unless such appointment is on an interim basis (six months or less).

11.10.4 Interim appointments of Chief Officers are to be made by the Head of Paid Service.

11.10.5 An offer of employment can be made in respect of a Chief Officer post save where an Executive Member provides a well-founded objection to the appointment within the timeframe set out in section 11.10.2 above.

### **11.11 How are other Officers appointed?**

11.11.1 Officers who are not Chief Officers will be appointed by the relevant line manager in accordance with the Council’s Recruitment and Selection Procedure. Members are not involved in the recruitment of Officers who are not Chief Officers.

## **POLITICAL ASSISTANTS**

### **11.12 What is a Political Assistant and how are they appointed?**

11.12.1 A Political Assistant is a person who is appointed to assist members of a political group within the Council in discharging their functions.

11.12.2 A Political Assistant may be appointed by any Group which qualifies for one<sup>37</sup> and to which such a post has been allocated by the Council.

11.12.3 Each Group which qualifies for a Political Assistant may only appoint one. The Council will only allocate a maximum of three posts of Political Assistant and these shall be allocated to the three largest Groups who qualify.

11.12.4 Political Assistants will be appointed by the Head of Paid Service in consultation with the relevant Group Leader or their nominee. The Group Leader or their nominee shall be entitled to attend any interview for the relevant Political Assistant.

### **11.13 Can the Mayor appoint an assistant?**

The Mayor may appoint an assistant to assist them in the discharge of their functions. Any such assistant will be appointed as an employee of the Council<sup>38</sup>.

### **11.14 What happens when the Council is responsible for appointing someone but not for employing them?**

Where the Council is responsible for appointing someone but not for employing them, the appointment will be the responsibility of the relevant Chief Officer in line with relevant guidance and/or the Council's Recruitment and Selection Procedure.

## **DISCIPLINARY PROCEDURES**

### **11.15 What are the Council's disciplinary procedures for Officers?**

#### **11.15.1 Statutory Officers**

Disciplinary action in respect of Statutory Officers shall be conducted in accordance with the in the relevant statutory procedure<sup>39</sup>.

#### **11.15.2 Other Chief Officers**

Disciplinary action in respect of Chief Officers who are not Statutory Officers shall be conducted in accordance with Part Four of the [Conditions of Service of the Joint Negotiating Committee of Chief Officers of Local Authorities](#).

#### **11.15.3 Other Officers**

##### **(a) Involvement of Councillors and the Mayor**

Councillors and the Mayor will not be involved in any disciplinary action relating to Officers who are not Chief Officers except:

- (i) Where their involvement is necessary for any investigation or inquiry into alleged misconduct; or

<sup>37</sup> [Local Government and Housing Act 1989, section 9](#)

<sup>38</sup> [The Local Authorities \(Elected Mayor and Mayor's Assistant\) \(England\) Regulations 2002, section 3](#)

<sup>39</sup> [The Local Authorities \(Standing Orders\) \(England\) Regulations 2001, Schedule 3](#)

- (ii) As a member of the Council's Staff Appeals Committee (the body with delegated powers to hear relevant staff appeals against grievances, dismissal etc.) for the purpose of hearing appeals.

## **MANAGEMENT STRUCTURE**

## **12 FINANCE, CONTRACTS AND LEGAL MATTERS**

This section sets out how the Council's finances are managed, how it enters into contracts, and who is responsible for legal matters relating to the Council. It also explains how the Council's Common Seal is used.

### **12.1 How are the Council's finances managed?**

The Council's financial affairs are managed as set out in the Financial Procedure Rules in section 18 of this Constitution.

### **12.2 How are contracts entered into by the Council?**

Every contract made by the Council will comply with the Contract Procedure Rules in section 19 of this Constitution.

### **12.3 Who is responsible for legal proceedings in which the Council is involved?**

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 that such action is necessary to protect the Council's interests.

### **12.4 How are Council documents authenticated?**

Where any document is necessary to 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.

### **12.5 How does the Council execute documents?**

12.5.1 The Council may execute documents under seal, or by signing the relevant document. Whether the Council is required to execute a document under seal will depend on the nature of the document.

12.5.2 The Monitoring Officer is responsible for the Council's common seal and will keep it in a safe place.

12.5.3 If the Council has decided on a matter, that decision (or a part of it) will be authority to execute any related document.

12.5.4 The Monitoring Officer will decide when the common seal should be affixed to a document. The Monitoring Officer, or another person authorised by them, will attest affixing of the common seal.

## **13 DECISION-MAKING**

The purpose of this section is to set out who is responsible for making the various decisions of the Council. It also explains the principles under which decision-making powers are delegated to different people. Full detail of who can make decisions in relation to a specific function is set out in the Scheme of Delegation.

### **13.1 Who are the Council's decision makers?**

13.1.1 Under this Constitution, there are a number of different decision makers:

- (a) Full Council;
- (b) a Committee or its sub-committee(s);
- (c) the Mayor;
- (d) the Executive;
- (e) a Committee of the Executive;
- (f) an individual Executive Member;
- (g) a Joint Committee; and
- (h) an Officer.

13.1.2 The Council will maintain a Scheme of Delegation setting out who within the Council is responsible for different decisions.

### **13.2 On which principles is Council decision-making based?**

13.2.1 The principles underpinning Council decision-making are:

- (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) the giving of reasons for a decision (including options considered).

### **13.3 How are delegations of Council functions recorded?**



The Council will maintain the tables in Part 1 of the Scheme of Delegations setting out the responsibilities for the Council's function which are not Executive Functions<sup>40</sup>.

#### **13.4 Which decisions are made by Full Council?**

13.4.1 The Council is the decision-making body for all Non-Executive Functions, and any functions reserved to Full Council by law. It may delegate many of those functions to a Committee or an Officer. The functions of Full Council are set out in section 4.

13.4.2 The Council Procedure Rules in section 4 of this Constitution set out how Full Council makes decisions.

#### **13.5 Which decisions are made by the Executive?**

13.5.1 The Executive makes decisions in relation to all Executive Functions. The functions of the Executive are set out in section 6.

13.5.2 The Executive Procedure Rules in section 6 of this Constitution set out how the Executive makes decisions.

#### **13.6 Which decisions are made by the Overview and Scrutiny Board?**

13.6.1 The Overview and Scrutiny Board makes decisions in relation to its functions. The functions of the Overview and Scrutiny Board are set out in section 7.

13.6.2 The Overview and Scrutiny Procedure Rules in section 7 of this Constitution set out how the Overview and Scrutiny Board makes decisions.

#### **13.7 Which decisions are made by other Committees?**

13.7.1 Other Committees make decisions in relation to the functions that have been delegated to them. The functions of the Standards Committee are set out in section 8 and the functions of the Corporate Affairs Committee, and the Audit Committee, the Licensing Committee and the Planning and Development Committee are set out in section 9. The functions of any other Committee will be as described in its terms of reference.

13.7.2 The Council Procedure Rules in section 4 of this Constitution set out how Committees make decisions (unless provided otherwise in this Constitution).

#### **13.8 How does a Council body make a decision when acting as a tribunal?**

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 as contained in Article 6 of the [European Convention on Human Rights](#).

#### **13.9 Which decisions are made by Officers?**

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<sup>40</sup> [Local Authorities \(Functions and Responsibilities\) \(England\) Regulations 2000](#)

13.9.1 Decisions may be delegated to Officers by Full Council, the Executive, a Committee or a Joint Committee, either under a general authorisation, or a specific express authorisation under the Scheme of Delegation. Any decision made under a delegated authority should be recorded in writing if it is a significant organisational / operational decision taken in relation to Council / Executive functions, which is not a Key Decision or a routine organisational / operational decision.

13.9.2 For the avoidance of doubt, it is not necessary for Officers to record in writing routine organisational / operational decisions taken in relation to Council / Executive functions which are neither Key Decisions nor significant decisions and:

- (a) are within an approved Budget;
- (b) do not conflict with the Budget and Policy Framework or other approved policies; and
- (c) do not raise new issues of policy,

unless otherwise required by law.

### **13.10 What is a “Key Decision”<sup>41</sup>?**

13.10.1 A Key Decision is a decision that:

- (a) will incur expenditure or savings in excess of the financial threshold set out in the Financial Limits Annex or more; or
- (b) will have a significant impact on two or more Wards.

Key Decisions must be made in accordance with the Executive Procedure Rules set out in section 6 of this Constitution.

13.10.2 The Council will, unless it is impracticable to do so, treat as if it were a Key Decision any decision which is likely to have a significant impact on communities in one Ward or electoral division. Where a decision is only likely to have a significant impact on a very small number of people in one Ward or electoral division, the decision-maker will ensure that those people are nevertheless informed of the forthcoming decision in sufficient time for them to exercise their rights to see the relevant papers and input into the decision-making process. The Council will also have regard to the existence of significant communities of interest that cannot be defined spatially in determining whether a decision is a Key Decision pursuant to this section 13.10.2.

13.10.3 The following will also be Key Decisions:

- (a) a proposal by the Executive to amend the Policy Framework;

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<sup>41</sup> [The Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012, paragraph 8](#)

- (b) a decision by the Executive to amend the Policy Framework where the Council has granted it power to do so; and
- (c) the Executive's response to a report of the Overview and Scrutiny Board or a Scrutiny Panel when the decision is to implement an action and the Key Decision thresholds are met.

13.10.4 A decision will not be a Key Decision if it relates to:

- (a) a bid for funding in excess of the Key Decision threshold specified in the Financial Limits Annex where a further report will be submitted to the Executive for approval if the bid is successful;
- (b) inevitable expenditure for the day-to-day delivery of Services (for example, supplies, salaries and wages), as determined by the Head of Paid Service;
- (c) a transaction which is carried out as part of the efficient administration of the Council's finances within the Council's agreed policies (for example, Treasury management);
- (d) an invitation to tender or the signing of a contract to:
  - (i) fulfil the policy intention of a Key Decision;
  - (ii) implement a policy under the Budget and Policy Framework;
  - (iii) implement a capital project named in the approved capital programme;  
or
  - (iv) provide for the continuation of an approved policy or Service;
- (e) a proposal that is included in Budget in sufficient detail for it to be understood by interested parties; and
- (f) care packages, service responses and expenditure for care and accommodation which relate to individual service users, and which are exempt.

### **13.11 How are Key Decisions published?**

A Key Decision must be published on the Council's Forward Plan 28 days before the decision is taken. Where the publication of the intention to take a Key Decision is impractical, the Chair of Overview and Scrutiny Board must be informed.

## **14 FINANCIAL AND CONTRACT PROCEDURE RULES (STANDING ORDERS)**

### **14.1 What are the Standing Orders?**

- 14.1.1 The Chief Finance Officer shall prepare and maintain a document containing the rules (Standing Orders) to be followed in respect of financial and contract procedures, which shall be referred to as the Financial and Contract Procedure Rules (Standing Orders). They are divided into the Financial Procedure Rules (Financial Regulations) and the Contract Procedure Rules.
- 14.1.2 The Financial Procedure Rules are set out in section 18 and the Contract Procedure Rules are set out in section 19 and shall be considered part of this Constitution and are hereby deemed incorporated into this Constitution.
- 14.1.3 All financial transactions and contract proceedings of the Council must be carried out in accordance with the Financial and Contract Procedure Rules.

## **15 SCHEME OF DELEGATIONS**

### **15.1 What is the Scheme of Delegations?**

- 15.1.1 The Monitoring Officer, on behalf of the Council, shall prepare and maintain a register of delegations from the Council and the Mayor to Committees, Executive Members, and Officers, which shall be referred to as the Scheme of Delegations.
- 15.1.2 The Scheme of Delegations shall be considered part of this Constitution and is hereby deemed incorporated into this Constitution.
- 15.1.3 The exercise of all powers not contained in the Scheme of Delegations must be subject to an explicit authority from the Council, the Mayor or the Executive, as appropriate.

## **16 ACCESS TO INFORMATION PROCEDURE RULES**

These rules set out how and when members of the public may attend Council meetings, and public rights of access to information relating to the Council. They also cover Member rights of access to information relating to Executive decisions.

### **16.1 What is the scope of these Procedure Rules?**

16.1.1 These rules apply to all meetings of the Council, the Executive, the Overview and Scrutiny Board Overview and Scrutiny Panels, the Standards Committee, and regulatory Committees.

16.1.2 These rules do not apply to the Licensing Committee<sup>42</sup>.

### **16.2 How do these Rules relate to other public access rights?**

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

### **16.3 Where can I find more information about how to access information relating to the Council?**

16.3.1 Citizens can find more information about how to access the information to which they are entitled in the Council's [Public Information and Information Requests Policy](#).

16.3.2 Members can find more information about how to access the information to which they are entitled in the Access to Information Procedures.

## **ATTENDING COUNCIL MEETINGS**

### **16.4 When may members of the public attend Council meetings?**

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

### **16.5 How much notice with the Council give before a meeting?**

16.5.1 Unless a meeting is convened at short notice, the Council will give at least five (5) working days' notice of any meeting by posting details of the meeting on the public notice board inside the main reception of the Town Hall, and on its website.

16.5.2 Where it is necessary to hold a meeting, or part of a meeting in private and exclude the press and public in order to consider exempt or confidential information, (whether during the whole or part of the proceedings at the meeting) the reasons will be specified in the resolution to exclude the press and public. The reasons will depend on the nature of the business to be transacted.

## **ACCESS TO MEETING DOCUMENTS**

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<sup>42</sup> [Licensing Act2003, section 9](#)

**16.6 What access will the public have to meeting agendas and reports before the meeting?**

- 16.6.1 The Council will make copies of the agendas of meetings that are open to the public available for inspection at the main reception of the Town Hall and on its website at least five (5) 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.
- 16.6.2 The Council will make copies of the reports available on its website and upon request to Democratic Services. Where reports are prepared after the agenda has been sent out, the Council shall make each such report available to the public as soon as the report is completed and sent to Councillors.

**16.7 When will the Council provide copies of documents?**

- 16.7.1 The Council will make available for the use of members of the public present at meetings, a reasonable number of copies of the agenda and of those reports which are open to the public.
- 16.7.2 The Council will supply copies of the following to any person on request:
- (a) any agenda and reports which are open to public inspection;
  - (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
  - (c) if the Proper Officer thinks fit, copies of any other documents supplied to Members and the Mayor in connection with an item.

A charge will apply for copying and postage.

- 16.7.3 Copies will also be made available on the Council's website, which can be downloaded free of charge.
- 16.7.4 Copies of documents supplied to members of the public, in respect of which the Council is the copyright holder, may be reproduced in any publicly available medium.

**16.8 How can minutes of meetings be accessed?**

The Council will publish on its website and make available hard copies of the following documents for six (6) years after the date of a meeting:

- (a) the minutes of the meeting or, in the case of meetings of the Executive, records of decisions taken including the reasons for those decisions, excluding any part of the minutes, or record of decisions, when the meeting was 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.

## **16.9 How are background papers provided to the public?**

### **16.9.1 List of background papers**

- (a) The Officer preparing the report will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in their opinion:
  - (i) disclose any facts or matters on which the report or an important part of the report is based; and
  - (ii) which have been relied on to a material extent in preparing the report.
- (b) This does not include any published works or those which disclose exempt or confidential information (as defined in section 16.12) and/or in respect of reports to the Executive, the advice of a political adviser, or any draft report or document.

### **16.9.2 Public inspection of background papers**

The Council will make available, on request, for public inspection for four (4) years after the date of a formal Committee meeting one (1) copy of each of the documents on the list of background papers.

## **SUMMARY OF PUBLIC ACCESS RIGHTS**

### **16.10 Where are the public's rights summarised?**

These Access to Information Procedure Rules are a written summary of the public's rights to attend meetings and to inspect and copy documents. A copy of these rules will be kept at the Council's principal offices and will be made available for public inspection.

## **EXCLUSION OF THE PUBLIC FROM MEETINGS**

### **16.11 When can members of the public be excluded from Council meetings?**

#### **16.11.1 Confidential information: requirement to exclude public**

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

#### **16.11.2 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 the disclosure of which to the public is prohibited by or under another Act or by Court Order.



16.11.3 Exempt information: discretion to exclude public

- (a) The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted that exempt information would be disclosed.
- (b) Where the meeting will determine any person’s civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998<sup>43</sup> 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.

**16.12 What is “exempt information”?**

16.12.1 Exempt information means information falling within any of the categories set out in the following table, subject to the qualifications and interpretations in Parts 2 and 3 of Schedule 12A to the Local Government Act 1972<sup>44</sup>.

16.12.2 Information falling within any of paragraphs 1-7 in the table below is not exempt information if it relates to a proposed development for which the local planning authority may grant itself planning permission under regulation 3 of the Town and Country Planning General Regulations 1992<sup>45</sup>.

| Category  | Condition   |
|---|---|
| 1. Information relating to any individual.  | Public interest test applies (see below)  |
| 2. Information which is likely to reveal the identity of an individual.   | Public interest test applies (see below)  |
| 3. Information relating to the financial or business affairs of any particular person (including the authority holding that information). | Information is not exempt if it is required to be registered under: <ul style="list-style-type: none"> <li>• The Companies Act 1985;</li> <li>• The Friendly Societies Act 1974;</li> <li>• The Friendly Societies Act 1992;</li> <li>• The Industrial and Provident Societies Acts 1965 to 1978;</li> <li>• The Building Societies Act 1986;</li> <li>or</li> <li>• The Charities Act 1993</li> </ul> Public interest test applies (see below) |
| 4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any       | Public interest test applies (see below)  |

<sup>43</sup> [Human Rights Act 1998 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>44</sup> [Local Government Act 1972 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>45</sup> [The Town and Country Planning General Regulations 1992 \(legislation.gov.uk\)](http://legislation.gov.uk)

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| labour relations matter arising between the authority or a Minister of the Crown and employees of, or officer-holders under the authority.   |  |
| 5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.   |  |
| 6. Information which reveals that the authority proposes –<br><br>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or<br><br>(b) to make an order or direction under any enactment.  | Public interest test applies (see below) |
| 7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.   | Public interest test applies (see below) |
| 8. In relation to a meeting of a Standards Committee which is convened to consider a matter referred under the provisions of section 70(4) or (5) or 71(2) of the Local Government Act 2000):<br><br>7A Information which is subject to any obligations of confidentiality.<br><br>7B Information which relates in any way to matters concerning national security.<br><br>7C The deliberations of a Standards Committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred to it. | Public Interest test applies (see below) |

**16.13 What is the “public interest test”?**

16.13.1 Information which:

- (a) falls within any of paragraphs 1-5 and 7 to 8 of section 16.12 above; and
- (b) is not prevented from being exempt by virtue of the “qualifications” above,

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.

16.13.2 The starting point is that there is a general public interest in release and the public authority has to decide whether in any particular case it would serve the interest of the public better to either disclose or withhold the information.

16.13.3 There is no legal definition of what the public interest is, but the following have been identified as some of the relevant considerations:

- (a) There is a distinction between public interest and what merely interests the public.
- (b) Does it further the understanding of and participation in the public debate of issues of the day?
- (c) Does it promote accessibility and transparency by public authorities for decisions taken by them or in the spending of public money?
- (d) Does it allow individuals and companies to understand decisions made by public authorities affecting their lives?
- (e) Does it bring to light information affecting public health and public safety?

**16.14 What does “exempt information” mean in the context of Health Scrutiny?**

The following will be exempt information for the purposes of Health Scrutiny:

| Category   | Condition   |
|--|---|
| 1. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former officeholder or applicant to become an officeholder under, a relevant body. | Information is not exempt unless it relates to an individual of that description in the capacity indicated by the description.  |
| 2. Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of a relevant body.  | Information is not exempt unless it relates to an individual of that description in the capacity indicated by the description. applicant for, accommodation provided by or at the expense of a relevant body. |
| 3. Information relating to any particular applicant for, or recipient or former recipient of, any service provided by a relevant body.   | Information is not exempt unless it relates to an individual of that description in the capacity indicated by the description.  |
| 4. Information relating to any particular applicant for, or recipient or former  | Information is not exempt unless it relates to an individual of that  |

|   |   |
|---|---|
| <p>recipient of, any financial assistance provided by a relevant body.</p>  | <p>description in the capacity indicated by the description.</p>  |
| <p>5. The amount of any expenditure proposed to be incurred by a relevant body under any particular contract for the acquisition of property or the supply of goods and services.</p>   | <p>Information is exempt if and so long as disclosure to the public of the amount there referred to would be likely to give an advantage to a person entering into, or seeking to enter into, a contract with a relevant body in respect of the property, goods or services, whether the advantage would arise as against that body or as against other such persons.</p> |
| <p>6. Any terms proposed or to be proposed by or to a relevant body in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.</p>  | <p>Information is exempt if and so long as disclosure to the public of the terms would prejudice a relevant body in those or any other negotiations concerning the property or goods or services.</p>   |
| <p>7. The identity of a relevant body (as well as of any other person, by virtue of paragraph 6 above) as the person offering any particular tender for a contract for the supply of goods or services</p>  |   |
| <p>8. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between a relevant body or a Minister of the Crown and employees of, or office-holders under, a relevant body.</p>   | <p>Information is exempt if and so long as disclosure to the public of the information would prejudice a relevant body in those or any other consultations or negotiations in connection with a labour relations matter arising as mentioned in that paragraph.</p>   |
| <p>9. Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with:</p> <p>(a) any legal proceedings by or against a relevant body, or</p> <p>(b) the determination of any matter affecting a relevant body, (whether, in either case, proceedings have been commenced or are in contemplation).</p> |   |
| <p>10. Information relating to a particular person who is or was formerly included in, or is an applicant for inclusion in, a list of persons undertaking to provide</p>  | <p>Information is not exempt unless it relates to an individual of that description in the capacity indicated by the description. of persons undertaking</p>  |

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|--|--|
| services under Part 2 of the 1977 Act prepared by a Health Authority.  | to provide services under Part 2 of the 1977 Act prepared by a Health Authority.   |
| 11. Information relating to a particular person who is or was providing services, or has made a request to a Health Authority to become a person providing services, under arrangements under section 28C of the 1977 Act. | Information is not exempt unless it relates to an individual of that description in the capacity indicated by the description. |
| 12. Information relating to a particular person who is or was formerly performing personal medical services or personal dental services in accordance with arrangements under section 28C of the 1977 Act.                 | Information is not exempt unless it relates to an individual of that description in the capacity indicated by the description. |
| 13. Information relating to any particular employee, former employee, or applicant to become an employee, of a person referred to in paragraph 10, 11 or 12.   | Information is not exempt unless it relates to an individual of that description in the capacity indicated by the description. |
| 14. Information relating to the physical or mental health of a particular individual.  |  |

**16.15 When are members of the public not permitted to have access 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 section 16.11, 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 and if applicable, why it is in the public interest it is considered that the information should not be disclosed.

**RECORDING OF DECISIONS**

**16.16 How are Executive decisions recorded?**

16.16.1 Recording decisions

- (a) A written record will be made of every Executive Decision made by the Executive and its Committees.
- (b) This decision record will include a statement, for each decision, of:
  - (i) the name of the decision-making body;
  - (ii) the decision made;

- (iii) the date the decision was made;
- (iv) the reasons for that decision;
- (v) any personal interest declared;
- (vi) any dispensation that was granted in respect of a declared conflict of interest; and
- (vii) details of any alternative options considered.

#### 16.16.2 Preparing the record of decisions

- (a) The Monitoring Officer, or their representative, shall attend any meeting of the Executive, an Executive Committee or a Joint Arrangement where all its Members are members of a local authority executive, and shall, as soon as reasonably practicable after the meeting, produce a decision record.
- (b) Where an individual Executive Member has made a decision:
  - (i) that Executive Member shall, as soon as reasonably practicable, instruct the Head of Democratic Services to produce a decision record; and
  - (ii) the decision shall not be implemented until that decision record has been produced and the Call-in period has expired (see section 7.26) and subject to (c) below.
- (c) Where the date by which a decision made by an individual Executive Member must be implemented makes compliance with section (b) above impracticable, the decision may be implemented in accordance with section 7.25.1.

#### **16.17 How are decisions of individual Executive Members recorded?**

16.17.1 An individual Executive Member may not make a Key Decision unless it has been included in the Notice of Forthcoming Executive Decisions or the procedure set out in section 6.35 (general exception) or section 6.36 (special urgency) has been complied with.

16.17.2 An Executive Member may only take an Executive Decision where they are authorised to do so in the Scheme of Delegations approved by the Mayor.

#### 16.17.3 Reports intended to be taken into account

Where an individual Executive Member receives a report which they intend to take into account in making any Key Decision, then they will not make the decision until at least five (5) days after receipt of that report.

#### 16.17.4 Availability of copies of reports to the public

Subject to any restrictions concerning confidential / exempt information in these Rules, a copy of any record produced in accordance with section 16.16 and any report considered by the Executive Member which is relevant to the decision concerned must be made available for public inspection at the Council's offices and published on the Council's website as soon as reasonably practicable after the decision has been made.

#### 16.17.5 Record of individual decisions

The decision recording rules in section 16.16 will apply.

### **16.18 How are decisions made by Officers recorded?**

16.18.1 Where an Officer intends to take a Key Decision, the decision-making process for Key Decisions must be followed. The item should be placed on the Executive Forward Plan 28 days before the decision is taken. The decision should be published within 48 hours of the decision being taken.

#### 16.18.2 Availability of copies of decisions to the public

16.18.3 Subject to any restrictions concerning confidential / exempt information in these Rules, as soon as reasonably practicable, but within 28 days, after a significant operational decision taken by an Officer in relation to a Council function, the officer will produce a written record of the decision and arrange for its publication on the Council's website together with the report (if any) in relation to the decision made. The record will include:

#### 16.18.4 Record of Officer decisions

The decision recording rules in section 16.16 will apply.

## **OVERVIEW AND SCRUTINY ACCESS TO INFORMATION**

### **16.19 What access does the Overview and Scrutiny Board have to Executive documents?**

#### 16.19.1 Right to copies

Subject to section 16.19.2 below, the Overview and Scrutiny Board and the Scrutiny Panels will be entitled to copies of any document which is in the possession or control of the Executive or its Committees and which contains material relating to:

- (a) any business transacted at a public or private meeting of the Executive or its Committees;
- (b) any decision taken by an individual Executive Member; and
- (c) any Executive decision that has been made by an Officer under their delegated powers.

The documents must be provided as soon as practicable but no later than 10 days after a request is received.

#### 16.19.2 Limit on rights

- (a) The Overview and Scrutiny Board, or any Scrutiny Panel, will not be entitled to:
  - (i) any document that is in draft form;
  - (ii) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise;
  - (iii) the advice of a political or mayoral assistant; or
  - (iv) documents subject to legal privilege or which, in the view of the Monitoring Officer, should remain confidential.
- (b) Where the Monitoring Officer determines that Overview and Scrutiny boards are not entitled to a copy of the document that has been requested for the reasons set out above, the Executive must provide the Overview and Scrutiny Board, or the relevant Scrutiny Panel, with a written statement setting out the reasons for that decision.

#### **16.20 When can the Overview and Scrutiny Board request reports?**

16.20.1 If the Overview and Scrutiny Board or a Scrutiny Panel believes that a Key Decision has been taken which was not:

- (a) included in the Forward Work Programme; or
- (b) the subject of the general exception procedure set out in section 6.35; or
- (c) the subject of an agreement with the chair of the Overview and Scrutiny Board/panel, or the Chair or Vice Chair of the Council under section 6.36 in the case of special urgency,

the Overview and Scrutiny Board or the Scrutiny Panel (as appropriate) may require the Executive to submit a report to the Council within such reasonable time as the it specifies.

16.20.2 The power to request a report is also delegated to the Proper Officer, who will require such a report on behalf of the Overview and Scrutiny Board or a Scrutiny Panel (as appropriate) when so requested by the relevant chair or any five (5) members of the relevant body. In respect of education matters this includes voting Co-opted Members.

16.20.3 Alternatively the requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Board or the Scrutiny Panel (as appropriate).

#### 16.20.4 Mayor's report to the Council in respect such a decision

- (a) The Mayor may prepare a report for submission to the next available meeting of the Council in respect of a decision which is subject to section 16.20.1 above.



However, if the next meeting of the Council is within seven (7) working days of receipt of the written notice, or the resolution of the Overview and Scrutiny Board or the Scrutiny Panel (as appropriate), the Mayor's report may be submitted to the meeting after that.

- (b) The report to Council will set out particulars of the decision, the individual or body making the decision and if the Mayor is of the opinion that it was not a Key Decision the reasons for that opinion.

#### 16.20.5 Quarterly reports on special urgency decisions

The Mayor will submit quarterly reports to the Council on the Executive decisions taken in the circumstances set out in section 6.36 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken. The report will also contain details of urgent decisions taken in accordance with the Overview and Scrutiny Procedure Rules in section 7.

### **ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS**

#### **16.21 What additional access rights do Members have to Council information?**

##### 16.21.1 Documents relating to Council and Committee business

- (a) Subject to (b) below, all Members of the Council are entitled to inspect any document which is in the possession or under the control of the Council and which contains material relating to any item of business to be dealt with at a meeting of the Council or a Committee.
- (b) (a) above does not require any document to be open to inspection if it appears to the Proper Officer that it discloses exempt information, unless that information falls within one of the following categories:
- (i) Information relating to the financial or business affairs of any particular person, including the Council, except to the extent that the information relates to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract; and/or
- (ii) Information which reveals that the Council proposes:
- to give under any enactment a notice or by virtue of which requirements are imposed on a person; or
  - to make an order or direction under any enactment Documents relating to executive business

##### 16.21.2 Documents relating to business to be transacted at public meetings of the Executive

- (a) Subject to section 16.21.4 below, any Member of the Council is entitled to inspect any document which is in the possession or under the control of the

Executive and which contains material relating to any business to be transacted at a public meeting of the Executive unless:

- (i) subject to section 16.12, the Proper Officer considers that the document discloses exempt information;
  - (ii) it contains the advice of a political or mayoral adviser;
  - (iii) it is a draft report or draft background paper; or
  - (iv) it is not a report or a background paper as defined in these rules.
- (b) Such documents must be available for inspection for at least five (5) days before the meeting concerned except that:
- (i) where the meeting is convened at shorter notice such a document must be available for inspection when the meeting is convened; and
  - (ii) where an item is added to the agenda at shorter notice, any document required to be available in relation to that item must be available when that item is added to the agenda.

#### 16.21.3 Further rights to information relating to Executive Decisions

Subject to section 16.21.4 below, all Members of the Council are entitled to inspect any document which is in the possession or under the control of the Executive and contains material relating to:

- (a) any business transacted at a private meeting;
- (b) any decision made by an individual Member in accordance with the Council's Executive arrangements; or
- (c) any decision made by an Officer in accordance with the Council's Executive arrangements when the meeting concludes or, where an Executive decision has been made by an individual Member or an Officer, immediately after the decision has been made, and in any event within 24 hours of the conclusion of the meeting, or the decision being made, as the case may be, unless the Proper Officer considers (subject to section 16.21.5 below) that the document discloses exempt information.

#### 16.21.4 Rights to inspect certain exempt information

Sections 16.21.2 and 16.21.3 do not prohibit Members from inspecting documents containing the following categories of exempt information:

- (a) Information relating to the financial or business affairs of any particular person, including the Council, except to the extent that the information relates to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract; and

- (b) Information which reveals that the Council proposes:
  - (i) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - (ii) to make an order or direction under any enactment

#### 16.21.5 Advice of a political or mayoral assistant

Nothing in sections 16.21.2 to 16.21.4 above requires any document or a part of any document to be available for inspection if it contains the advice of a mayoral / political assistant.

#### 16.21.6 Material relating to Key Decisions

All Members will be entitled to inspect background papers (except those available only in draft form) in the possession or under the control of the Executive or its Committees which relates to any Key Decision, unless section 16.21.1 or 16.21.2 above applies.

#### 16.21.7 Nature of rights

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

## **17 BUDGET AND POLICY FRAMEWORK PROCEDURE RULES**

This section sets out the process for setting the Council's Budget and Policy Framework and how this impacts decision-making.

### **17.1 What is the Budget and Policy Framework?**

The Council will be responsible for adopting a Budget and a Policy Framework. Once a Budget or a Policy Framework is in place, the Executive will be responsible for implementing it.

### **17.2 What is the process for developing the Budget and the Policy Framework?**

17.2.1 The process by which the Budget and the Policy Framework shall be developed is as follows:

#### Proposals from the Executive

- (a) Before a plan / strategy / budget is prepared, the Executive will publish initial proposals for the Budget and the Policy Framework, having first canvassed the views of local stakeholders, as appropriate and in a manner suitable to the matter under consideration. Any representations made to the Executive may be considered in formulating the initial proposals and shall be reflected in any report dealing with them.
- (b) The Overview and Scrutiny Board and any relevant Scrutiny Panel may participate in the consultation and have their response considered.
- (c) The timeline for the proposals and the consultation will be published in the Forward Work Programme.

#### First meeting of Full Council – consideration of the proposal

- (d) Once a Budget and Policy Framework proposal has been formulated, Full Council will consider the proposal and may by simple majority:
  - (i) adopt the proposal or approve submission to the relevant Secretary of State (where that is required); or
  - (ii) object to the proposal and instruct the Executive to reconsider in the light of those objections.
- (e) If the Council accepts the recommendation of the Executive without amendment, the Council may make a decision, which has immediate effect.
- (f) The decision shall be published and a copy shall be given to the Executive.

#### Reconsideration by the Executive

- (g) If the Executive is instructed to reconsider the proposal, the Council will allow at least five (5) working days for the Executive to either submit a revised

proposal or to respond to the objections in relation to the original proposal, giving reasons for the response.

- (h) In the event that (j)(i) below applies, the Executive must give particular consideration to whether a revised proposal is required.

#### Second meeting of Full Council – consideration of a revised proposal

- (i) Where the Council has objected to the proposal in accordance with (d)(ii) above, Full Council will, within ten working days of receipt by the Chief Executive of the Executive's response, consider that response and may either:
  - (i) approve the revised proposal by a simple majority of those voting; or
  - (ii) approve the original proposal by a simple majority of those voting; or
  - (iii) make amendments to the revised, or the original, proposal by a two thirds majority of those voting.

#### Minimum decisions to be made in relation to the proposal

- (j) If neither the original, nor the revised proposal is agreed (whether in its existing or amended form), the Chief Finance Officer will advise the Council of the minimum decisions and resolutions the Council must make at that meeting as required to comply with statutory requirements, and;
  - (i) if the Chief Finance Officer does not identify a decision on the proposal as required to be made at that meeting, the proposal fails and the process at (d) above must be recommenced; or
  - (ii) if the Chief Finance Officer does identify a decision on the proposal as required to be made at that meeting, there will be no time limit on the length of the meeting and the Council shall continue to meet until it has reached a final decision on the matter.
- (k) The decision shall then be made public and may be implemented immediately.

#### Virement and in-year changes

- (l) In approving the Budget and Policy Framework, the Council will also specify the extent of virement within the Budget and the degree of in-year changes to the Policy Framework which may be undertaken by the Mayor, in accordance with section 17.5 of these Budget and Policy Framework Procedure Rules. Any other changes to the Budget and the Policy Framework are reserved to the Council.

### **17.3 In what circumstances can decisions be made outside the Budget and the Policy Framework?**

- 17.3.1 Subject to the provisions of the Financial Regulations, and subject to section 17.4 below, the Executive, Executive Committees, individual members of the Executive and any Officers or Joint Arrangements discharging Executive Functions may only make decisions in line with the Budget and Policy Framework.

17.3.2 If the Executive, Executive Committee, an Executive Member, or any Officers or Joint Arrangements discharging Executive Functions want to make a decision outside the Budget and the Policy Framework, they shall take advice from the Monitoring Officer and/or the Chief Finance Officer as to whether the decision they want to make is contrary to the Policy Framework, or contrary to or not wholly in accordance with the Budget. If the advice of either of those Statutory Officers is that the decision would not be in line with the existing Budget and/or Policy Framework, the decision must be referred to the Council for decision, unless the provisions of section 17.4 apply.

**17.4 When can urgent decisions be made outside the Budget or the Policy Framework?**

17.4.1 The Executive, an Executive Committee, an Executive Member, or Officers or Joint Arrangements discharging Executive Functions may take a decision which is contrary to the Policy Framework or contrary to or not wholly in accordance with the Budget if the decision is a matter of urgency.

17.4.2 The decision may only be taken if in the opinion of the Chair, or in their absence the Vice Chair:

- (a) if it is not practical to convene a meeting of Full Council; and
- (b) if the Chair of the Overview and Scrutiny Board or relevant Scrutiny Panel agrees that the decision is a matter of urgency.

17.4.3 The reasons why it is not practical to convene a meeting of Full Council and the consent of the chair of the Overview and Scrutiny Board to the decision being taken as a matter of urgency must be noted on the record of the decision. In the absence of the chair of the Overview and Scrutiny Board, the consent of the Chair, and in the absence of both the Vice-Chair, will be sufficient.

17.4.4 Following any decision made under this urgency procedure, 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.

**17.5 What is virement and what are the rules on its use?**

17.5.1 Virement is the process by which the Council may transfer items from one budget head to another.

17.5.2 The Council has established rules for virement which are set out in the Financial Procedure Rules in section 18 of this Constitution.

17.5.3 Steps taken by the Executive, a Committee of the Executive, an Executive Member, or Officers or a Joint Arrangement discharging Executive Functions to implement Council policy shall not exceed those budgets allocated to each budget head. However, such bodies or individuals shall be entitled to vire across budget heads within the limits set out in the Financial Procedure Rules.

## **18 FINANCIAL PROCEDURE RULES**

### **A – INTRODUCTION**

#### **18.1 What are the Financial Procedure Rules?**

- 18.1.1 This section sets out the Council’s Financial Procedure Rules (or ‘Financial Regulations’), which are the financial policies and procedures of the Council.
- 18.1.2 These policies and procedures are designed to enable the Council to deliver good financial governance so that its strategic aims and objectives can be achieved in a manner that complies with applicable legislation and guidance.
- 18.1.3 This section of the Constitution sets out the rules with which anyone who makes financial decisions on behalf of the Council (including Members, Officers and others, where relevant) should comply. It also sets out the consequences of any failure to comply with the Financial Regulations.

#### **18.2 To whom do the Financial Regulations apply?**

- 18.2.1 The Financial Regulations apply to the Mayor, every Member and Officer and any other person who acts on the Council’s behalf. They have a duty to uphold the highest standards of financial governance and transparency for the Council.
- 18.2.2 **Compliance with these Financial Regulations is mandatory.** Those who are required to comply with these Financial Regulations are required to maintain ongoing knowledge and awareness of their content to ensure compliance.
- 18.2.3 All Council staff have a general responsibility to take reasonable action to ensure the security of the Council assets under their control, and for ensuring that the use of Council resources is legal, properly authorised, provides Value for Money and achieves Best Value.
- 18.2.4 It will be the responsibility of Officers (including those with line management responsibility) to address non-compliance swiftly and in the most appropriate way in the circumstances. Concerns can also be reported anonymously under the Council’s [Whistleblowing Policy and Procedure](#).
- 18.2.5 Failure to comply with these Financial Regulations may constitute a disciplinary matter that would be pursued under the Council’s disciplinary policy.
- 18.2.6 It is the responsibility of Chief Officers to ensure that their staff are appropriately trained on the proper application of these Financial Regulations to their role. Any such training must be approved by the Chief Finance Officer.

#### **18.3 How are the Financial Regulations organised?**

- 18.3.1 The Financial Regulations are organised into the following sections:

A – Introduction

B – Defined Terms

C – Roles and Responsibilities

D – Financial Planning and Budgetary Control

E – Financial Management

F – Financial Systems, Processes and Procedures

G – Employee and Personnel Matters

H – External Arrangements

#### **18.4 How and when are these Financial Regulations reviewed?**

18.4.1 The Chief Finance Officer is responsible for keeping these Financial Regulations under review and for submitting updates to them, as necessary, for approval by Full Council.

18.4.2 The Chief Finance Officer may make technical amendments to these Financial Regulations from time to time (with the approval of the Leadership Management Team) to ensure that they are consistent with legal requirements, changes in Council structure and personnel, and best practice.

#### **18.5 How does schools funding relate to these Financial Regulations?**

18.5.1 These Financial Regulations apply to all Council Services. However, local authorities are required to publish schemes for financing schools, setting out the financial relationship between them and the schools they maintain<sup>46</sup>. The Financial Regulations of a school should not be contrary to these Financial Regulations and any exceptions should be reported to the Chief Finance Officer.

#### **18.6 Where can I find more information about the Council's financial processes and procedures?**

18.6.1 The Council has a range of policy and procedural documentation that supports its financial governance arrangements.

18.6.2 These Financial Regulations should be read in conjunction with the Constitution as a whole, including in particular the Contract Procedure Rules and the Scheme of Delegation. They should also be read in the context of supporting process and procedure documents held outside the Constitution.

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<sup>46</sup> [School Standards and Framework Act 1998](#)



## B – DEFINED TERMS

Where capitalised terms are used in this section 18, they will have the meanings set out below. For the avoidance of doubt, terms defined in section 2 of this Constitution also apply to this section 18.

|  |  |
|--|--|
| “Budget Holder”                        | an Officer who has delegated responsibility for an allocated budget, at either directorate, sub-division of service, or cost centre level in line with the Council’s chart of accounts;  |
| “Capital Programme”                    | Identifies agreed capital projects and their cost over time; linked to the Capital Strategy;   |
| “Capital Strategy”                     | strategy required by CIPFA’s Prudential Code to demonstrate how the Council’s capital expenditure, capital financing and treasury management activity contribute to the provision of desired outcomes and take account of stewardship, value for money, prudence, sustainability and affordability;  |
| “CIPFA”                                | the Chartered Institute of Public Finance and Accounting;  |
| “Corporate Landlord”                   | the Officer designated to act as the Council’s landlord and fulfil its property management functions in relation to Council-owned land and buildings as set out in section 18.43;  |
| “External Audit”                       | Independent evaluation of the Council’s financial statements and Value for Money arrangements by a third party “External Auditor”;   |
| “Financial Limits Annex”               | the Annex setting out certain limits that apply to financial decision-making by the Council and which applies to these Financial Regulations;  |
| “Fixed Asset Register”                 | the register of fixed assets maintained by the Council in accordance with section 18.43.2 and which forms the basis of the Council’s accounting for capital purposes;  |
| “Internal Audit”                       | independent assurance in relation to the Council’s risk management, governance and internal controls; provided by the “Internal Audit Service”;  |
| “Key Decision Threshold”               | as defined in the Financial Limits Annex;  |
| “Medium-Term Financial Plan” or “MTFP” | a rolling 3 to 5-year plan, which considers the financial climate at both the local and national level together with available resources and budgetary pressures to set a medium-term financial strategy; the MTFP focuses on both revenue expenditure and capital expenditure, as well as setting out the Council’s overall financial strategy; |

|                                     |   |
|-------------------------------------|---|
| “Minimum Revenue Position” or “MRP” | The minimum annual revenue charge the Council must set aside to repay the principal of the debt;  |
| “Prudential Indicators”             | mandatory indicators that local authorities are required to take into account when making capital expenditure plans, including for example, capital financing requirement and total external debt;  |
| “Revenue Budget”                    | the Council’s budget for revenue spending in any financial year;  |
| “Directorate Budget”                | the budget of a particular Directorate (i.e., the area of responsibility of a Chief Officer), which forms part of the Revenue Budget and Capital Programme, and may comprise one or more sub divisions of service and cost centres;                 |
| “Statement of Accounts”             | an annual statement of the Council’s accounts setting out its financial position for the financial year;  |
| “Treasury Management Strategy”      | sets out how the Council manages its money and any financial risks to ensure that the Council has sufficient money available to manage its day-to-day business; it also supports the development of the Council’s longer-term financial strategies. |

Unless the context provides otherwise, where reference is made in these Financial Regulations to a Statutory Officer or a Chief Officer, that will include their deputies, representatives and/or other nominees.

**C – ROLES AND RESPONSIBILITIES**

This section sets out the roles and responsibilities of Council bodies, Members and individual Officers. This section should be read in conjunction with the Constitution as a whole for full details of these roles and responsibilities.

Statutory Officers, in particular the Chief Finance Officer, and Chief Officers may nominate deputies to act on their behalf and/or delegate some of their responsibilities (in accordance with the Constitution). However, notwithstanding any such nomination or delegation, the relevant Officer remains ultimate responsible for the matters set out in these Financial Regulations.

**COUNCIL BODIES**

The table below sets out the roles and responsibilities of Council bodies, including Full Council, the Executive and Committees.

|   |   |
|---|---|
| <p><b>Full Council</b><br/>(section 4 of the Constitution)</p>  | <ul style="list-style-type: none"> <li>• Adopting the Council Constitution and Member Code of Conduct</li> <li>• Adopting the Budget and Policy Framework</li> <li>• Approving and monitoring the Council’s compliance with the overall framework of accountability and control as set out in the Constitution</li> <li>• Monitoring compliance with agreed Council policy and related decisions</li> <li>• Approving procedures for recording and reporting decisions taken by or on behalf of the Council (including Key Decisions that have been delegated, and decisions made by Full Council and its Committees)</li> </ul>                      |
| <p><b>Executive</b><br/>(section 6 of the Constitution)</p>   | <ul style="list-style-type: none"> <li>• Proposing the Budget and Policy Framework to Full Council</li> <li>• Discharging Executive Functions in accordance with the Budget and Policy Framework</li> <li>• Approving delegations of Executive decision-making to individual Executive Members, Officers and/or Joint Arrangements</li> <li>• Recommending protocols to ensure that individual Executive Members consult with relevant Officers (including in relation to legal and financial liabilities and risk management issues that may arise in relation to the decision) before making a decision within their delegated authority</li> </ul> |
| <p><b>Overview and Scrutiny Committee / Scrutiny Panels (as applicable)</b><br/>(section 7 of the Constitution)</p> | <ul style="list-style-type: none"> <li>• Scrutiny of Executive decisions before or after implementation (including via the Call-in procedure)</li> <li>• Holding the Executive to account</li> <li>• Recommending future policy options</li> <li>• Reviewing the Council’s general policy and service delivery</li> <li>• Reporting to Full Council on its findings</li> </ul>  |

|   |   |
|---|---|
| <p><b>Standards Committee</b><br/>(section 8 of the Constitution)</p>         | <ul style="list-style-type: none"> <li>• Promoting and maintaining high standards of conduct among Members</li> <li>• Advising the Council on the adoption and revision of the Member Code of Conduct and monitoring its operation</li> <li>• Conducting investigations into complaints against Members</li> </ul>  |
| <p><b>Audit Committee</b><br/>(section 9 of the Constitution)</p>             | <ul style="list-style-type: none"> <li>• Fulfilling the Council's statutory audit function</li> <li>• Delegated responsibility for monitoring and overseeing:                         <ul style="list-style-type: none"> <li>○ External Audit;</li> <li>○ Internal Audit;</li> <li>○ risk management and business continuity; and</li> <li>○ corporate governance</li> </ul> </li> <li>• Consideration of the Statement of Accounts, including the Annual Governance Statement</li> <li>• Reporting to Full Council on the above</li> </ul> |
| <p><b>Other Regulatory Committees</b><br/>(section 9 of the Constitution)</p> | <ul style="list-style-type: none"> <li>• Responsibility for planning, conservation and licensing matters under powers delegated by Full Council</li> </ul>  |

## STATUTORY OFFICERS

The table below sets out the roles and responsibilities of Statutory Officers in relation to financial matters. A full role profile for each Statutory Officer can be found in Appendix 3 to the Constitution.

|                              |  |
|------------------------------|--|
| <b>Head of Paid Service</b>  | <ul style="list-style-type: none"> <li>• Responsibility for corporate and overall strategic management of the Council as a whole</li> <li>• Reporting to and providing information to the Executive, Full Council, the Overview and Scrutiny Board / Scrutiny Panels and other Committees</li> <li>• Establishing a framework for management direction, style and standards</li> <li>• Monitoring the performance of the Council</li> <li>• Responsibility, with the Monitoring Officer, for record keeping in relation to decisions made by Full Council</li> </ul>   |
| <b>Monitoring Officer</b>    | <ul style="list-style-type: none"> <li>• Promoting and maintaining high standards of conduct among Officers and Members</li> <li>• Providing support to the Standards Committee</li> <li>• Reporting any actual or potential breaches of the law or maladministration to Full Council and/or the Executive</li> <li>• Ensuring that procedures for recording and reporting Key Decisions are operating effectively</li> <li>• Ensuring that decisions and the reasons for them are published, as appropriate</li> <li>• Ensuring that Members are aware of decisions made by the Executive, individual Executive Members and Officers under delegated authority</li> <li>• Advising Members and Officers about who has authority to make a particular decision</li> <li>• Advising the Executive or Full Council whether a decision is likely to be considered to be contrary to or not wholly in accordance with the Budget and Policy Framework</li> </ul> |
| <b>Chief Finance Officer</b> | <ul style="list-style-type: none"> <li>• Acting as the Council's Officer appointed under section 151 of the Local Government Act 1972 and making such decisions as are necessary for the proper administration of the Council's financial affairs<sup>47</sup></li> <li>• Responsibility for: <ul style="list-style-type: none"> <li>○ the proper administration of the Council's financial affairs;</li> <li>○ setting and monitoring compliance with financial monitoring standards;</li> <li>○ advising on the corporate financial position and on the key financial controls necessary to secure sound financial management of the Council;</li> <li>○ providing financial information to Members, Officers and third parties;</li> </ul> </li> </ul>  |

<sup>47</sup> [Local Government Act 1972, section 151](#)

|  |   |
|--|---|
|  | <ul style="list-style-type: none"> <li>○ preparing the Revenue Budget and Capital Programme;</li> <li>○ preparing the Council's annual Statement of Accounts;</li> <li>○ treasury management, pension and trust funds; and</li> <li>○ providing advice on the safeguarding of assets including risk management and insurance</li> <li>● providing financial advice and information relating to the financial implications of decisions being taken as part of the Council's governance and formal decision-making arrangements</li> <li>● Setting and monitoring standards (which involves links with professional staff throughout the Council but does not interfere with normal line management arrangements)</li> <li>● Involvement (at their discretion) in the appointment of all staff employed in posts designated as requiring a qualified accountant or auditor, wherever located within the Council</li> <li>● Maintaining and reviewing these Financial Regulations and submitting any necessary additions or changes to the Executive and for approval by Full Council</li> <li>● Reporting, where appropriate, breaches of these Financial Regulations to the Council and/or the Executive</li> <li>● Issuing advice and guidance to underpin these Financial Regulations and to be followed by Members, Officers and others acting on behalf of the Council, including determining what constitutes a material effect on the Council's finances</li> <li>● Approving all financial procedures, records, systems and accounts operated throughout the Council, including approving any changes that are proposed</li> <li>● Advising on effective systems of internal control, which should ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice, and that public funds are properly safeguarded and used economically, efficiently and in accordance with the statutory and other authorities that govern their use</li> <li>● Making technical amendments to these Financial Regulations from time to time (with the approval of the Leadership Management Team) to ensure that they are consistent with legal requirements, changes in Council structure and personnel, and best practice</li> <li>● In compliance with section 114 of the Local Government Finance Act 1998, reporting to Full Council, Executive and the External Auditor if the Council or one of its Officers:             <ul style="list-style-type: none"> <li>○ has made, or is about to make, a decision which involves, or would involve, the Council in incurring expenditure which is unlawful;</li> </ul> </li> </ul> |
|--|---|

|                              |   |
|------------------------------|---|
|                              | <ul style="list-style-type: none"> <li>○ has taken, or is about to take, a course of action which, if pursued to its conclusion would be unlawful and likely to cause a loss or deficiency on the part of the Council; or</li> <li>○ is about to enter an item of account, the entry of which is unlawful<sup>48</sup></li> <li>○ Making a report if it appears that the Council's proposed expenditure in a financial year is likely to exceed the resources available to meet that expenditure<sup>49</sup></li> </ul> <ul style="list-style-type: none"> <li>● Nominating a properly qualified member of staff to deputise should they be unable to perform their duties personally<sup>50</sup></li> <li>● Ensuring that Internal Audit is appropriately resourced to enable it to review the adequacy and compliance of internal controls</li> </ul> <p>The Council is required to provide the Chief Finance Officer with sufficient staff, accommodation, and other resources (including legal advice, where necessary), to carry out their duties under section 114 of the Local Government Act 1972.</p> <p>In order to comply with all statutory duties and with the requirements and instructions of the Council, the Chief Finance Officer shall be given access to any information that is necessary.</p> |
| <p><b>Chief Officers</b></p> | <ul style="list-style-type: none"> <li>● Ensuring all members of staff within their Directorate are aware of the existence and content of these Financial Regulations and any other internal regulatory document, and that they comply with them</li> <li>● Consulting the Chief Finance Officer before introducing, amending or discontinuing any arrangements, guidelines and procedures for the proper administration of the financial affairs of their Directorate</li> <li>● Ensuring that the Chief Finance Officer and/or their representative is engaged in the consideration and reporting of the financial implications of all formal decisions taken within the Council's governance arrangements and that any such financial implications are agreed with the Chief Finance Officer before a report is submitted to the Executive and/or Full Council</li> <li>● Consulting the Chief Finance Officer on any matter within their responsibility which is liable materially to affect the finances of the Council before any commitment is made and before submitting policy options or recommendations</li> <li>● Consulting with and obtaining the agreement of the Chief Finance Officer or their representative before</li> </ul>  |

<sup>48</sup> [Local Government and Finance Act 1988, section 114](#)

<sup>49</sup> [Local Government and Finance Act 1988, section 114](#)

<sup>50</sup> [Local Government and Finance Act 1988, section 114](#)

|  |   |
|--|---|
|  | <p>submitting an application for a grant which would require the Council to commit its own resources in the current or subsequent years</p> <ul style="list-style-type: none"><li>• With regard to any report or information for members of the public which relates to budget planning and / or monitoring or upon which policy decisions or consultation are to be based, consulting the Chief Finance Officer about any information to be included concerning the finances of the Council, its Services and activities, giving adequate time for the Chief Finance Officer to comment in advance of the agenda / deadline date.</li><li>• Bringing to the attention of the Chief Finance Officer and the Monitoring Officer any uncertainty as to the legality of proposed, or already incurred, expenditure as soon as reasonably practicable after such uncertainty becomes apparent.</li></ul> <p>If a Chief Officer, having regard to the Chief Finance Officer's views, does not wish to amend their report, the Chief Finance Officer may require inclusion of their comments within the report before it is finalised.</p> <p>Reports shall only be submitted jointly by a Chief Officer and the Chief Finance Officer if the Chief Officer has validated and agreed the financial aspects of the report with the Chief Finance Officer. The onus is on the Chief Officer to obtain the agreement of the Chief Finance Officer.</p> |
|--|---|

The Head of Paid Service and all Chief Officers should maintain a written record of all decision-making powers that have been delegated to other members of staff (including seconded staff). All such delegations will be recorded as part of the Council's Budget monitoring and closure processes.

Where a decision has been delegated by the Head of Paid Service, a Statutory Officer, or another Chief Officer, references in these Financial Regulations to such Officer will be read as referring to the Officer to whom the delegation has been made.



**OTHER COUNCIL FUNCTIONS**

|                              |   |
|------------------------------|---|
| <p><b>Internal Audit</b></p> | <ul style="list-style-type: none"> <li>• Reviewing, appraising and reporting on the Council’s control framework, including risk management, internal controls and governance arrangements</li> <li>• Reviewing and reporting on:             <ul style="list-style-type: none"> <li>○ the extent of compliance with, and effectiveness of, relevant financial policies, plans and procedures;</li> <li>○ the adequacy and application of financial and other related management controls;</li> <li>○ the suitability of financial and other related management data; and</li> <li>○ the extent to which Council assets and interests are accounted for and safeguarded against loss of any kind from:                 <ul style="list-style-type: none"> <li>▪ fraud and other offences;</li> <li>▪ waste, extravagance and inefficient administration;</li> <li>▪ inefficient Value for Money or other causes</li> </ul> </li> </ul> </li> </ul> |
| <p><b>External Audit</b></p> | <ul style="list-style-type: none"> <li>• Reviewing and reporting on the financial aspects of the Council’s corporate governance arrangements</li> <li>• Reviewing and reporting on the Council’s financial statements</li> <li>• Issuing an opinion on the Council’s Statement of Accounts to confirm that the External Auditor is satisfied that it gives a “true and fair view” of the Council’s financial position and its income and expenditure for the relevant year and complies with the legal requirements.</li> <li>• Issuing an opinion in relation to whether the Council has achieved Value for Money from its use of resources</li> </ul>   |

## **D – FINANCIAL PLANNING AND BUDGETARY CONTROLS**

The Council is required to set a balanced Revenue Budget each year, which sets out how its financial resources are to be allocated and utilised. The Revenue Budget sets out the Council's financial plan for the coming year in relation to the delivery of statutory services, and its local aims and objectives.

The Council sets an overall Revenue Budget (which covers the costs of day-to-day running of the Council) and Capital Programme (which covers the Council's long-term investment in infrastructure and assets that enable service delivery) each year. Individual Directorate Budgets, set by Chief Officers with the support of the Chief Finance Officer, form part of the Council's annual Revenue Budget and Capital Programme.

### **18.7 What are the key elements of financial planning for local authorities?**

The key elements of financial planning are:

- (a) Medium-Term Financial Plan;
- (b) Annual Revenue Budget;
- (c) Capital Strategy and Capital Programme;
- (d) Treasury Management Strategy and Prudential Indicators;
- (e) Flexible Use of Capital Receipts Strategy (as applicable);
- (f) Minimum Revenue Provision policy;
- (g) Reserves Policy; and
- (h) Charging Policy and associated fees and charges.

## **BUDGET SETTING PROCESS**

### **18.8 How is the Budget and Policy Framework developed?**

The detailed procedure for how the Council develops its Budget and Policy Framework is set out in section 17 of the Constitution.

## **RESPONSIBILITIES IN RELATION TO BUDGETS**

### **18.9 What are Full Council's responsibilities in relation to financial planning?**

Full Council is responsible for:

- (a) agreeing the Council's Budget and Policy Framework, which will be proposed by the Executive;
- (b) setting the procedures for agreeing in-year variations to approved budgets, plans and strategies;

- (c) determining when a decision will be deemed to be contrary to the Budget or Policy Framework in accordance with sections 17.3.2 and 17.4.1 of the Constitution; any such decision should be referred to Full Council by the Monitoring Officer;
- (d) setting the level at which the Executive may reallocate Budget funds from one Directorate to another.

#### **18.10 What are the Executive's responsibilities in relation to financial planning?**

18.10.1 The Executive will propose a Budget and Policy Framework for approval by Full Council in accordance with section 17 of the Constitution.

18.10.2 The Executive is responsible for taking in-year decisions on resources and priorities in order to deliver the Budget and Policy Framework within the financial limits set by the Council.

18.10.3 Each year, the Chief Finance Officer shall report to the Executive on the general financial situation of the Council and on future financial scenarios in relation to the coming year's Budget prospects and long-term trends to inform the Budget process. Having regard to the Chief Finance Officer's reports and advice, the Executive shall recommend the general Budget strategy to be adopted with regard to preparation by Directorates of their annual Directorate Budget submissions.

#### **18.11 What are the Chief Finance Officer's responsibilities in relation to financial planning?**

18.11.1 The Chief Finance Officer must report to Full Council<sup>51</sup> that the spending plans identified in the Budget and the Council Tax calculation for the Budget year and comment on the robustness of estimates that:

- (a) direct resources towards Council priorities in an achievable way;
- (b) reflect the best estimates of pay and price increases available at the time;
- (c) consider and recognise the major financial risks facing the Council; and
- (d) contain proposals for increased income or reduced expenditure that are achievable.

18.11.2 The Chief Finance Officer must also comment on the adequacy of the level of Council reserves and their sufficiency to meet the known financial risks facing the Council over the medium term.

18.11.3 The Chief Finance Officer will ensure that Chief Officers are provided with guidance to support them in preparing their draft Directorate Budgets. This guidance will cover:

- (a) legal requirements;

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<sup>51</sup> [Local Government Act 2003](#)

- (b) medium-term planning prospects;
- (c) available resources;
- (d) spending pressures;
- (e) Best Value and other relevant government guidelines;
- (f) other internal policy documents; and
- (g) cross-cutting issues (where relevant).

#### **18.12 What are Chief Officers' responsibilities in relation to financial planning?**

Chief Officers must prepare detailed draft revenue and capital budgets for their Directorate, in consultation with the Chief Finance Officer, and in accordance with the guidance and timetable set by the Chief Finance Officer, for consideration by the Executive. This shall include budget proposals for investment, demand growth and savings, and income growth to achieve improved economy, efficiency and effectiveness of services.

### **REVENUE BUDGET PREPARATION**

#### **18.13 How is the Revenue Budget prepared?**

18.13.1 The Council operates within an annual cash limit, approved when the Budget is set each year. The Chief Finance Officers is responsible for ensuring that a Revenue Budget is prepare on an annual basis for consideration by the Executive, before submission to Full Council. The draft Revenue Budget should include allocations to different services and projects, proposed taxation levels and contingency funds.

18.13.2 Full Council may amend the Budget, or ask the Executive to reconsider it, before approving it. The process for this is set out in section 17 of the Constitution.

#### **18.14 How is the Medium-Term Financial Plan prepared?**

18.14.1 The Medium-Term Financial Plan brings together the key assumptions about financing resources (including Council Tax, non-domestic rates and general government grants) and spending pressures over the medium to longer term. The Medium-Term Financial Plan covers a period of three (3) to five (5) years.

18.14.2 This enables the Council to plan for financial risks and monitor and control the way resources are allocated and spent to meet the Council's objectives and to secure value for money and informs the setting of Directorate financial targets for the annual revenue budget and capital payments guidelines that gives authority to Budget Holders to incur expenditure to meet service standards and targets.

18.14.3 It is the responsibility of the Chief Finance Officer to ensure that reports are presented to Council, as part of the annual budget setting process, on the medium-term budget prospects and the resource constraints set by the Government.

18.14.4 Detailed processes for the preparation of the Medium-Term Financial Plan (including Directorate Medium-Term Financial plans), Revenue Budgets and the Capital Programme shall be issued by the Chief Finance Officer. These will take into account:

- (a) the need for Directorates to demonstrate value for money, efficiency and effectiveness in current services and proposals for change;
- (b) the service impact on national and local policy priorities, including statutory requirements;
- (c) policy choices available to the Council, including the implementation of statutory requirements;
- (d) the risks and opportunities in implementing changes;
- (e) the impact of proposals in the medium term; and
- (f) exit strategies related to one-off or time limited funding.

## **CAPITAL BUDGET PREPARATION**

### **18.15 When will the Council prepare the Capital Programme?**

18.15.1 A Capital Programme is prepared by the Council each year, setting out the capital projects the Council has agreed. Save as set out in section 18.19, capital projects will only be added to the Capital Programme as part of the annual Budget setting process.

18.15.2 The Capital Programme covers a period of three (3) to five (5) years in line with the Medium-Term Financial Plan period. Approval of the Capital Programme includes approval of the financing of the capital spend associated with each of the projects within the Capital Programme.

### **18.16 What is the process for preparing the Capital Programme?**

18.16.1 The Chief Finance Officer is responsible for ensuring that the Capital Programme is prepared each year for consideration by the Executive before submission to Full Council. They will also ensure that the financial implications of the Capital Programme are reflected in the Revenue Budget.

18.16.2 The Executive will recommend the policy guidelines within which a forward Capital Programme should be prepared each year through the Council's Capital Strategy report. This will define affordability, sustainability and prudence in the context of the Council's MTFP.

18.16.3 The Chief Finance Officer will report to the Executive on the current and planned Capital Programme each quarter. New capital projects recommended for Executive approval will be subject to a capital project appraisal, the format of which is to be agreed by the Executive.

### **18.17 How is capital expenditure authorised?**

- 18.17.1 Capital expenditure involves the creation, acquisition or enhancement of assets (for example, buildings and highways) to provide a long-term benefit to the Council in the delivery of services. Capital assets are integral to how services are delivered and create long-term financial revenue commitments in the form of life cycle costs and financing costs (if funded by borrowing).
- 18.17.2 The definition of capital expenditure will be determined by the Council in accordance with relevant statutory provisions, the local authority accounting code of practice issued annually by CIPFA and the advice of the Chief Finance Officer.
- 18.17.3 The Chief Finance Officer and Directors have a responsibility to provide a framework to ensure that Council resources are applied effectively to meet the priorities and objectives of the Council and that the delivery of new capital projects, and significant changes to existing capital projects are reported appropriately.
- 18.17.4 A business case should be prepared for each capital project and this should be submitted to the Chief Finance Officer for review before approval by the Executive. Business cases should comply with the principles of HM Treasury's Green Book and Business Case Guidance and the guidance provided by the Chief Finance Officer. Where a capital project is expected to change significantly (as defined above), either in cost or outcome, a revised business case must be submitted to the relevant Chief Officer before any such change is agreed. Where the change is likely to be material (as determined by guidance set out by the Chief Finance Officer), the Chief Officer should seek approval from the Executive.
- 18.17.5 Every capital project should have a designated project manager and project owner who is responsible for overseeing progress of that project, ensuring that project milestones are met, and that the project complies with the Council's project governance procedures.
- 18.17.6 Capital projects may only be approved if they are included in the Capital Programme.
- 18.17.7 Finance functions delegated to Officers, including spending limits in respect of capital expenditure, are set out in the Scheme of Delegation.

### **18.18 What happens if a capital project is being funded by external funding?**

Where capital expenditure is to be met in part or whole by a grant, contribution from another party (e.g., a government department) or from Council-wide resources (external borrowing or capital receipts), no expenditure shall be incurred until all necessary approvals have been obtained, including from the Executive.

### **18.19 When may a capital project be added to the Capital Programme in-year?**

Capital projects may be added to the Capital Programme in-year where they are wholly funded from external sources, and they are in accordance with the Budget and Policy Framework. The approval of the Executive is required for any such addition, and the Executive will consider such additions on a quarterly basis.

## **RESERVES**

### **18.20 What are the requirements for the Council to maintain reserves?**

18.20.1 The Council is required to maintain a reserve balance so that it can cope with unpredictable financial pressures and plan its future spending commitments.

18.20.2 A general strategic reserve is maintained to cover unforeseen strategic, operational and financial risks, and earmarked reserves are held for identified spending commitments. The Chief Finance Officer will ensure that there are clear protocols for the establishment and use of reserves.

### **18.21 When may reserves be used?**

18.21.1 The creation of, or addition to, any reserve will be subject to the approval of the Executive on the recommendation of the Chief Finance Officer and shall be in accordance with the purpose for which the reserve was established. For each reserve established, the purpose, usage (including the timeframe for usage) and basis of transactions will be clearly articulated.

18.21.2 The withdrawal of funds from a reserve will require the approval of the Chief Finance Officer and shall be applied for the purpose that the reserve was established. In the case of balances held by schools, the relevant Board of Governors is responsible for giving authorisation.

### **18.22 How are reserve requirements set?**

The level of reserves will be reviewed twice annually by the Chief Finance Officer at budget setting and in closing the accounts. The Chief Finance officer will advise on prudent levels of reserves and balances for the Council. In developing a reserve strategy, the Chief Finance Officer will ensure that the level of reserves:

- (a) is sufficient to ensure that the Council can comply with its statutory financial duties of setting a balanced Revenue Budget;
- (b) takes into account the known risks over the life of the Medium-Term Financial Plan; and
- (c) is capable of covering the estimated financial risk of the Council, including contingent liabilities and insurance exposure risks.

### **18.23 When must the Chief Finance Officer report on the level of reserves?**

18.23.1 The Chief Finance Officer must report to the Council if there is, or is likely to be, unlawful expenditure or an unbalanced Budget. This would include situations where reserves have become seriously depleted and it is forecast that the Council will not have the resources to meet its expenditure in a particular financial year<sup>52</sup>.

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<sup>52</sup> [Local Government Finance Act 1988, section 114](#)

18.23.2 The Chief Finance Officer must also assess and report on of the robustness of the Budget and adequacy of reserves under Section 25 of the Local Governance Finance Act 2003<sup>53</sup>.

## **FEES AND CHARGES**

### **18.24 How are fees and charges increased each year?**

18.24.1 Fees and charges will normally be reviewed and revised as part of the annual Budget setting process and will normally apply with effect from 1 April each year.

18.24.2 The Chief Finance Officer will include in the Medium-Term Financial Plan the relevant assumptions and requirements applicable to setting fees and charges.

18.24.3 The Chief Finance Officer will keep fees and charges under periodic review and will refer any in-year revisions to the Executive for approval, as required.

## **EXTERNAL FUNDING**

The Council may receive external funding in the form of grants or other financial support from the government or other funding bodies. Funding conditions should be considered carefully to ensure that they are compatible with the Council's strategic aims and objectives and available resources.

### **18.25 When may the Council seek external funding?**

The Chief Officers may only seek external funding to meet the priorities approved in the Policy Framework. Chief Officers must ensure that:

- (a) the key conditions of any external funding are understood and can be complied with, including the ability to provide match funding, as required;
- (b) any statutory requirements relating to external funding are complied with;
- (c) the Council's responsibilities are fully understood and deliverable;
- (d) there is a feasible exit strategy aligned to the expiry of the period of grant funding with respect to ongoing resource requirements and any long-term financial obligations on the Council to maintain service levels and/or assets;
- (e) the impact on the Revenue Budget and the Capital Programme is fully considered and reflected; and
- (f) the Chief Finance Officer is consulted and has agreed to a bid before it is submitted.

### **18.26 What are the Chief Finance Officer's responsibilities in relation to external funding?**

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<sup>53</sup> [Local Government Finance Act 2003, section 25](#)



The Chief Finance Officer will ensure that:

- (a) all funding notified to external bodies is received and properly recorded in the Council's accounts;
- (b) appropriate arrangements are made to ensure that the Council complies with external funding conditions in order to avoid the grant paying body having cause to clawback all or part of the original funding amount received;
- (c) the match-funding requirements are considered before entering into any external funding agreements and that future Revenue Budgets and the Capital Programme reflect these requirements;
- (d) details of new funding streams are routinely reported to the Executive as part of quarterly budget monitoring reports;
- (e) any funding application for an amount above the limit set out in the Financial Limits Annex is approved by the Executive; and
- (f) audit requirements are met in relation to external funding.

For the avoidance of doubt, applications for external funding up to the limit set out in the Financial Limits Annex will be subject to the approval of the Chief Finance Officer.

#### **18.27 What are Chief Officer's responsibilities in relation to external funding?**

Chief Officers will ensure that:

- (a) the Chief Finance Officer is informed of, and has agreed to, all external funding arrangements;
- (b) all claims for funding are approved by the Chief Finance Officer or an Officer nominated by them;
- (c) all claims for funds are made by the due date;
- (d) the match-funding requirements are considered before entering into the funding agreements and are approved by the Chief Finance Officer;
- (e) the project for which external funding has been sought progresses in accordance with the agreed project plan and funding conditions and that all expenditure is properly incurred and completely and accurately recorded;
- (f) if the funding is to support capital investment, the appropriate approval process is followed as set out in section 18.17;
- (g) notification of a successful application for external funding is obtained in writing stating the amount and conditions relating to its receipt; and
- (h) subject to section (e) above, the Executive is made aware of any application, and any successful bid, for funding from an external body.

### **18.28 What information should be included in a bid for external funding?**

- 18.28.1 All bids for external funding should include a full financial appraisal with the appropriate level of support from Finance staff. Directors shall submit to the Directorate Finance Business Partner bids for external funding and claims for validation and certification prior to submission. All grant claims should be completed in conjunction with the relevant Finance Business Partner.
- 18.28.2 Directors should ensure that any bid for external funding meets the requirements set out in the application form. Where a bid is made for discretionary external funding, particular attention should be paid to the criteria on which a funding award will be based, and the bid should be appropriately focused.

### **18.29 Who may approve a bid for external funding?**

- 18.29.1 A bid for external funding should be approved in accordance with the financial thresholds set out in the Scheme of Delegation.
- 18.29.2 All grant bids with a value up to the Key Decision Threshold should be submitted to the Chief Finance Officer's nominated deputy for approval and should be signed by that deputy and the relevant Director.
- 18.29.3 Grant bids above the Key Decision Threshold should be submitted to the Leadership Management Team for consideration and should be approved and signed by the Chief Finance Officer.

### **18.30 What happens if a bid for external funding needs to be submitted urgently?**

Where the timeframe to submit a bid for external funding is urgent or does not allow for the process set out above to be followed in full, Directors may submit the bid without following the process in full, provided that they:

- (a) gain approval from the Chief Finance Officer or an Officer nominated by them before submitting the bid;
- (b) if submission of the bid is a Key Decision, ensure that this is brought to the Executive (or the person with relevant delegated authority) at the earliest opportunity for noting;
- (c) take all reasonable steps to consider the matters set out in section 18.25 above before submission;
- (d) complete any necessary documentation as soon as reasonably practicable after the submission is made.

### **18.31 What happens if the Council is required to act as accountable body for external funding?**

Where it is necessary for the Council to act as the accountable body (on behalf of partners) in relation to external funding or any grant bids made, the relevant Chief

Officer should consult with, and gain the approval of, the Chief Finance Officer so that the necessary due diligence can be undertaken before any commitments are made.

## **E – FINANCIAL MANAGEMENT**

### **BUDGET MONITORING**

Budget monitoring ensures that, once Full Council has approved the Budget, the resources allocated under that Budget are used for their intended purpose and are properly accounted for. Budget monitoring allows the Council to oversee its Budgets throughout the financial year, ensure that all relevant controls are being used effectively, and make adjustments to respond to in-year changes. It also enables the Council to hold Budget Holders and Directorates to account for their management of the budgets allocated to them.

#### **18.32 What are Officers authorised to spend?**

Approval by Full Council of the Budget constitutes authority for the Council to incur the agreed expenditure, save to the extent that a reservation has been placed on the Revenue Budget or Capital Programme.

#### **18.33 What are the Executive's responsibilities in relation to Budget monitoring?**

The Executive is responsible for keeping under review the financial performance of each Directorate and the Council as a whole during the financial year.

#### **18.34 What are the Chief Finance Officer's responsibilities in relation to Budget monitoring?**

18.34.1 The Chief Finance Officer will establish an appropriate framework of budgetary monitoring and control which ensures that:

- (a) budgetary management is exercised within the limits set in the Budget unless agreed otherwise by Full Council;
- (b) each Chief Officer and Budget Holder has access to timely, relevant and accurate information on receipts and payments on each budget, which is sufficiently detailed to enable Budget Holders to fulfil their budgetary responsibilities;
- (c) expenditure is only committed against an approved budget head in line with the chart of accounts;
- (d) all Officers responsible for committing expenditure comply with relevant guidance and these Financial Regulations;
- (e) each cost centre has a single named Budget Holder, determined by the relevant Chief Officer; as a general principle, budget responsibility should be aligned as closely as possible to the decision-making process that commits expenditure; and
- (f) variances from approved budgets are investigated and reported by Budget Holders in accordance with guidance set annually by the Chief Finance Officer.

18.34.2 The Chief Finance Officer will make arrangements to ensure that effective monitoring and control of expenditure against Budget allocations takes place and will report to the Executive on the overall position of the Council's finances as a minimum on a quarterly basis.

**18.35 What are Chief Officers' responsibilities in relation to Budget monitoring?**

18.35.1 It is the responsibility of Chief Officers to control income and expenditure within their Directorate and to monitor performance, taking account of financial information provided by the Chief Finance Officer and/or their own systems.

18.35.2 It is the responsibility of each Chief Officer to identify Budget Holders under their direct control and to ensure that Directorate Budgets are not overspent. They should also take any action necessary to avoid exceeding their Directorate Budget allocation and alert the Chief Finance Officer to any problems at the earliest opportunity.

18.35.3 Each Chief Officer shall work with the Chief Finance Officer to report to the Leadership Management Team on a monthly basis. They will be required to present:

- (a) actual performance and variances against Directorate Budgets;
- (b) all significant variances (as defined in the Financial Limits Annex) substantiated with justifiable explanations and management actions being taken to address them;
- (c) progress of delivery of savings against any applicable savings plan;
- (d) a forecast of projected outturn performance and variance, including details of budget pressures, risks and issues.; and
- (e) a financial recovery plan to address adverse variances to bring the net expenditure within the approved budget.

**18.36 What are Budget Holders' responsibilities in relation to Budget monitoring?**

18.36.1 Chief Officers should ensure that there is a designated Budget Holder for each cost centre heading who is responsible for income and expenditure within their influence and control. They should ensure that all financial transactions are properly recorded and accounted for.

18.36.2 Budget Holders should be held accountable for their budgets and the level of service to be delivered and should understand their financial responsibilities. They will report on a monthly basis to their Directorate Management Team to enable the relevant Chief Officer to report to the Leadership Management Team as set out in section 18.35.3 above. Budget Holders must monitor the performance levels and take necessary action to align service outputs with their approved budget.

18.36.3 Budget Holders are responsible for:

- (a) reporting actual performance and variance against to their profiled budget on a monthly basis;

- (b) providing a justifiable explanation for any significant variance to their budget and management actions being taken to bring expenditure within the approved budget and
- (c) complying with guidance set out annually by the Chief Finance Officer on tolerance of variances.

**18.36.4 All Officers will take any action necessary to avoid exceeding their budget allocation and alert the Chief Finance Officer as soon as practicable if this cannot be achieved.**

## **REVENUE BUDGET OVER / UNDER SPENDING**

### **18.37 Who is responsible for ensuring that spending does not exceed the Budget?**

Chief Officers shall ensure that capital and revenue spending are each contained within their approved Budget.

### **18.38 What happens if a Directorate Budget is overspent?**

18.38.1 If any line at the level of a Directorate Budget agreed by the Council becomes, or is expected to become, overspent the appropriate Director must take action to correct the position.

18.38.2 In some circumstances, it will be permissible to transfer a budget either between directorates or between Directorates, or between budget headings within a directorate, subject to approved service plans and Council priorities. Any such transfer is known as a 'virement'. The rules contained in section 18.38.3 below (and section 17.5 of the Constitution) will apply to any virement.

18.38.3 Virement between one line in the Revenue Budget and another is allowed in accordance with the rules and limits currently prescribed by the Council, as follows:

- (a) all proposed virements must be reported to the Chief Finance Officer or an Officer nominated by them;
- (b) any virement involving a change in policy that, in the opinion of the Monitoring Officer and the Chief Finance Officer is contrary to or not wholly in accordance with the Budget and Policy Framework, will be subject to Executive approval;
- (c) any virement proposing a permanent change in staffing establishments requires the approval of the Leadership Management Team;
- (d) no proposed virement shall be used to justify additional resource allocation in following years;
- (e) once a proposed virement has been agreed / approved, the Chief Finance Officer shall ensure that the appropriate changes are made to the Council's computerised accountancy system at the earliest opportunity;

- (f) Executive approval is required for any virement where it is proposed to vire between service level budgets agreed by Council in setting the annual Revenue Budget;
- (g) Chief Officers may vire within the overall Directorate Budget allocated to them by the Council in the annual Budget setting report, within the virement rules below;
- (h) each Chief Officer will keep a record of any virement made within their allocated budget and the Chief Finance Officer will keep a central record of all virements made across the Council; and
- (i) virements will be reported in accordance with guidance provided by the Chief Finance Officer.

18.38.4 The financial limits applicable to virements are as set out in the Financial Limits Annex.

18.38.5 For the avoidance of doubt, where section 18.38.3(b) of the Financial Regulations applies, Executive approval will be required, regardless of the value of the virement.

### **18.39 When may a Chief Officer carry forward an underspend to their Directorate Budget?**

18.39.1 Directorates shall not be permitted to carry forward underspends against revenue budgets unless there are exceptional circumstances specifically agreed by the Chief Finance Officer who shall provide guidance as part of the annual accounts closure process.

18.39.2 Unless otherwise approved by the Chief Finance Officer or their nominated deputy, carry forward of underspend against revenue budgets shall only be permitted where:

- (a) that expenditure is directly linked and dependent on a specific grant which can also be carried forward to meet the expenditure incurred; or
- (b) there is a contractual commitment for goods, works and/or services that exists before the year end and, due to exceptional circumstances, the Council has been unable to obtain receipt or delivery before 31 March.

## **MANAGING CAPITAL EXPENDITURE**

### **18.40 How is capital expenditure managed?**

18.40.1 The Capital Programme is a multi-year programme to which resources are allocated to fund agreed capital projects. Not all capital projects will progress in line with their planned project timeline and delays of and acceleration to capital projects against their original plan are likely to occur across the period of the Capital Programme. This provides the Council with flexibility to manage capital projects over the medium term and ensure that desired outcomes are achieved in the most efficient and cost-effective way.

18.40.2 The Executive is able to agree in-year changes to the profile of capital spending and to either delay a capital project to a future year or bring a capital project forward to the current year, in order to meet this objective.

#### **18.41 What happens if a capital project exceeds its budgetary provision?**

18.41.1 Where the actual or estimated cost of a capital scheme is forecast to exceed its original budgetary provision, the relevant Chief Officers shall, where required by guidance provided by the Chief Finance Officer, prepare a report for the Executive outlining the proposed management actions to address the overspend. The Executive will consider and approve management actions this may include the use of virement powers contained in section 18.41.2 below or the reduction of overall expenditure within the Capital Programme.

18.41.2 Virement between one capital project and another is allowed in accordance with the rules and limits prescribed by the Council, as follows:

- (a) virements between capital projects are subject to approval by the Executive;
- (b) all necessary approvals must be obtained from external funding bodies, where necessary;
- (c) the virement must not increase the need for Council financial resources above the level approved in the Capital Programme; and
- (d) the diversion of expenditure should not increase the Council's eventual revenue costs.

18.41.3 The relevant Chief Officer will keep a record of any virement made within a project for which they are responsible, and the Chief Finance Officer will keep a central record of all virements made across the Council.

18.41.4 The Chief Finance Officer will maintain a contingency within the Capital Programme to be applied to virements between capital projects. Any such application of this contingency for virements up to the Key Decision Threshold will be subject to the approval of the Chief Finance Officer and the virement will be reported to the next meeting of the Executive. Any application of the contingency for a virement above the Key Decision Threshold will be subject to Executive approval.

#### **18.42 What happens if there are changes to a capital project?**

18.42.1 Any proposal to add, delete, substitute or substantially amend any capital project shall be subject to approval by the Executive.

18.42.2 Any in-year underspend on a capital project, whether resulting from slippage or cost savings, shall be reported to the Executive and shall not be used by services to fund additional capital expenditure unless agreed by the Executive.

## **ASSETS, SECURITY AND RISK MANAGEMENT**



The Council's assets represent a significant resource, which must be protected against loss or misuse. The need for effective measures to reduce losses has led the Council to adopt a positive strategy towards the management of risk.

#### **18.43 What is the role of the corporate landlord?**

18.43.1 The Head of Paid Service will nominate an Officer to act as Corporate Landlord on its behalf. The Corporate Landlord will:

- (a) hold the title deeds for all Council properties;
- (b) oversee and co-ordinate central records of Council assets and will liaise with the Chief Financial Officer to ensure an up to date Fixed Asset Register for accounting and valuation purposes;
- (c) ensure the proper security and maintenance of all premises occupied and/or owned by the Council;
- (d) develop an asset management strategy to include plans for the acquisition, disposal and maintenance of Council assets to secure Best Value over the course of the Medium-Term Financial Plan;
- (e) arrange for the valuation of land and building assets for accounting purposes in accordance with the Local Government Act 1989 and associated professional codes of practice; and
- (f) maintain the Council's property asset management systems.

18.43.2 The Chief Finance Officer will maintain a Fixed Asset Register of all of the Council's assets, which will identify each Director's responsibilities in relation to assets that sit within their Directorate.

18.43.3 To support the Corporate Landlord in executing their duties, Chief Officers will:

- (a) advise the Corporate Landlord of any situation where the security of Council premises is thought to be defective or where it is considered that special security arrangements may be needed;
- (b) ensure that no Council asset is subject to personal use by an employee without proper authority;
- (c) ensure the safe custody of vehicles, equipment, furniture, inventory, stores and other property belonging to the Council;
- (d) ensure that cash holdings on Council premises are kept to a minimum; and
- (e) ensure that keys to safes and similar receptacles are carried on the person of those responsible at all times.

#### **18.44 What are Chief Officers' responsibilities in relation to inventory of Council assets?**

18.44.1 All Chief Officers shall maintain an inventory for each establishment within their control, recording an adequate description of readily portable items of furniture, fittings, equipment, tools, plant and machinery in a form approved by the Chief Finance Officer.

18.44.2 All Chief Officers shall arrange for regular physical checks (at least annually) to be carried out of equipment, stores etc. against the relevant records. Any surplus, deficiency or deterioration revealed as a result of such checks shall be identified, investigated, pursued to a satisfactory conclusion and the inventory updated accordingly. All changes shall be reported to the Chief Finance Officer in accordance with the annual accounts closure process, for which guidance is issued annually.

18.44.3 The Council's property shall not be removed other than in accordance with the ordinary course of business, or used other than for the Council's purposes, except where the relevant Director has given specific written directions.

18.44.4 Assets owned by the Council shall, as far as possible, be effectively marked as Council property.

#### **18.45 When may surplus / obsolete stock be disposed of?**

18.45.1 Before Chief Officers take any action on the disposal of surplus or obsolete stock, they should consult other Chief Officers to determine if there is a continuing need for the item(s) within the Council. Where there is no internal need for the item(s), Directors shall arrange for the items to be offered for sale by competitive tender or public auction, except as agreed otherwise by the Chief Finance Officer and in accordance with the Contract Procedure Rules.

18.45.2 The Chief Finance Officer shall be notified of the intention to dispose of any item which might be regarded as a capital asset, or which was originally obtained via a leasing agreement.

#### **18.46 What are the competition requirements for disposals made by the Council?**

18.46.1 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.

18.46.2 Where Quotations or Tenders are used, the method of disposal of surplus or obsolete stocks / stores or assets other than land must be determined as follows:

18.46.3 The financial thresholds applicable to disposals made by the Council and the disposal methods to be adopted are set out in the Financial Limits Annex.

18.46.4 The Council's Asset Acquisition and Disposal Policy applies to disposals of land assets.

#### **18.47 Who must approve leasehold interests?**

Any acquisition, extension or variation by the Council of a leasehold interest in land or buildings must be approved by the Chief Finance Officer. Such arrangements must represent Value for Money and be accounted for appropriately.

**18.48 How are leased assets managed?**

18.48.1 All leased assets shall be identified and recorded separately in any inventory (section 18.44).

18.48.2 No leased asset shall be disposed of without the written agreement of the Chief Finance Officer.

18.48.3 Assets leased by the Council must be maintained in full working order in accordance with the terms of the lease and shall not be adapted for any alternative use without the prior written agreement of the Chief Finance Officer.

**18.49 What are the Council's arrangements for asset security?**

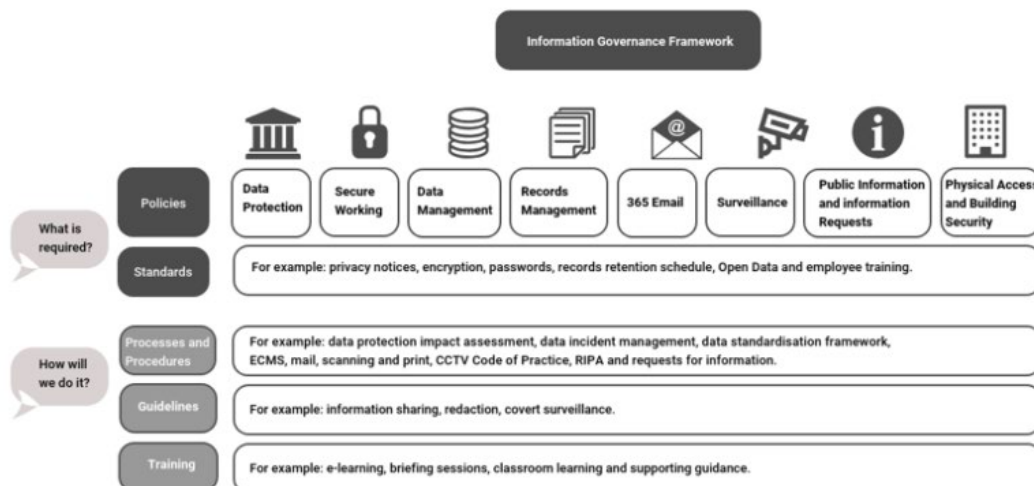
18.49.1 All Directors shall be responsible for introducing and maintaining adequate arrangements for all aspects of security of assets under their control, including personnel, stores, equipment, cash, data, and confidential information. The Chief Finance Officer shall be consulted in any case where security is thought to be defective or where it is considered that special security arrangements may be needed.

18.49.2 The Chief Finance Officer shall be responsible for ensuring that secure arrangements are made for the preparation and holding of pre-signed cheques, stock certificates, bonds and other financial documents.

18.49.3 All Directors should ensure that contingency plans are in place for the security of assets and continuity of service in the event of disaster or system failure.

**18.50 What are the Council's arrangements for information governance?**

18.50.1 All employees of the Council have a personal responsibility to protect and maintain the confidentiality of information, whether held in paper-based or computerised records. Information may be classified as sensitive, or may possess some intrinsic value, and its disclosure or loss could result in a cost to the Council in some way. Officers should ensure that operational activity complies with the policies that comprise the Information Governance Framework.



18.50.2 All Chief Officers shall ensure their staff have an awareness of safety and security issues in relation to information, and an appreciation of the individual responsibilities of staff under the Health and Safety at Work Act 1974 and otherwise to ensure the safety of individuals and the security of the Council’s assets.

18.50.3 The Council has adopted a Computer Security Code of Practice. All Chief Officers should ensure that their staff are familiar with this document, and that effective controls and security routines are operated to protect data against the hazards listed (e.g., computer viruses; unauthorised access; loss of data etc.).

18.50.4 It is the responsibility of Chief Officers to ensure that all computerised systems within their responsibility are properly registered and operated in accordance with requirements of applicable data protection legislation.

**18.51 What are the Council’s arrangements in respect of insurance?**

18.51.1 The Chief Finance Officer shall ensure that adequate insurance protection is maintained for the Council’s assets and operations where it is considered to be cost-effective and appropriate. Such protection may, on advice, be arranged by way of external insurance cover, or by way of an internal ‘Insurance Fund’ established for that purpose, or a combination of such measures.

18.51.2 The Chief Finance Officer shall be responsible for the negotiation of all the Council’s insurance contracts, and Chief Officers shall provide all such information and assistance as is required to facilitate such negotiations. No insurance contracts may be entered into by Chief Officers other than through the Chief Finance Officer.

18.51.3 Each Chief Officer shall give prompt notification to the Chief Finance Officer of all new insurable risks and all changes in operations, responsibilities, contractual arrangements, indemnities, or ownership or occupation of properties in which the Council has an interest whenever such changes may have a bearing on any of the Council’s insurance arrangements.

18.51.4 Each Chief Officer shall be responsible for providing prompt notification to the Chief Finance Officer of all incidents likely to give rise to an insurance claim by or against

the Council. In the case of accidents involving death or serious injury to any party, such notification shall in the first instance be by way of an immediate oral report.

18.51.5 Each Chief Officer shall ensure full and prompt co-operation of their Service and individual staff in the investigation, defence and negotiation of claims.

18.51.6 Chief Officers may arrange with the Chief Finance Officer for the provision of insurance cover additional to those arranged generally for the Council when they judge such additional cover to be appropriate based on the risk involved.

18.51.7 Fortuitous accidents and losses, which arise in a wide variety of ways, may have a very significant impact both in humanitarian terms, and in terms of financial cost to the Council. It is the responsibility of every Chief Officer to manage the operations of their Directorate in such a way as to reduce, as much as reasonably practicable, both the humanitarian and financial costs of risks. To this end, all Chief Officers must consider the risk and insurance implications of all existing and new operations undertaken, and contracts and indemnities entered into; where appropriate consulting with specialist Health and Safety, Risk Management, Insurance, Legal or other technical staff within the Council in order to minimise the attendant risks.

## **18.52 What are the Council's arrangements for risk management?**

18.52.1 The Chief Finance Officer is responsible for risk management.

18.52.2 The Council has a [Risk and Opportunity Management Policy](#), agreed by the Executive, which articulates the Council's risk appetite and how it manages risks and opportunities.

18.52.3 The Head of Policy, Governance and Information shall, in consultation with the Chief Finance Officer, provide advice on risk management and the risks facing the Council in relation to the development and operation of the Council's Risk and Opportunity Management Policy. Each Chief Officer has a responsibility to support these initiatives with the aim of improving risk management throughout the organisation.

## **INTERNAL AUDIT**

### **18.53 What is Internal Audit?**

18.53.1 Internal Audit systematically monitors the Council's objectives and, through an examination of system and management controls, attempts to ensure that those objectives are being met in the most efficient, economic and effective manner.

18.53.2 Every local authority is required to maintain adequate and effective Internal Audit<sup>54</sup>. The Council has delegated this statutory responsibility to the Chief Finance Officer.

### **18.54 What is the scope of the Internal Audit Service's role?**

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<sup>54</sup> [Accounts and Audit Regulations 1996](#)

18.54.1 As a service to management, the Internal Audit Service shall provide an independent appraisal of all the Council's activities, reporting on the adequacy and effectiveness of the systems of internal control, including management controls and arrangements.

18.54.2 The Internal Audit Section's appraisal has the following objectives:

- (a) to review the soundness, adequacy and application of accounting, financial and other internal controls;
- (b) to ascertain the extent to which systems of control ensure compliance with established policies and procedures;
- (c) to ascertain the extent to which assets and interests entrusted to or funded by the Council are properly controlled and safeguarded from losses of all kinds;
- (d) to ascertain that accounting and other information is reliable as a basis for the production of accounts and other returns;
- (e) to ascertain the integrity and reliability of financial and other information provided to management, including that used in decision making; and
- (f) to ascertain that systems of control are laid down and operate to promote the most economic, efficient and effective use of resources.

18.54.3 The Chief Finance Officer shall ensure that Internal Audit is adequately resourced to perform its role effectively.

**18.55 What is the Chief Finance Officer authorised to do in connection with Internal Audit?**

18.55.1 For the purposes of Internal Audit, the Chief Finance Officer or their authorised representative(s) shall have authority on production of identification to:

- (a) enter any Council property or land at all reasonable times;
- (b) have access to all assets, staff, records, computer files, documents and correspondence relating to any financial and other transactions;
- (c) require and receive such explanations as are necessary concerning any matter under examination;
- (d) require any employee holding or controlling cash, stores or any other Council property to produce such items;
- (e) access records belonging to third parties, such as contractors and partners, when required; and
- (f) have direct access to the Head of Paid Service and the Executive.

18.55.2 In relation to these rights of access, the Internal Audit Service is regarded as having a personal responsibility to observe the highest standards of confidentiality and personal integrity.

**18.56 What happens if there is irregularity or suspected irregularity?**

18.56.1 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 Council, the Chief Officer concerned shall immediately notify the Chief Finance Officer or Internal Audit (as appropriate), who shall investigate and report as necessary. Pending any investigation and reporting, the appropriate Chief Officer should take all necessary steps to prevent further loss and secure records and documentation against removal or alteration.

18.56.2 Individuals may also report any matter of concern under the [Whistleblowing Policy and Procedure](#).

18.56.3 Chief Officers shall ensure that any agreed actions arising from audit recommendations are carried out in a timely and efficient fashion.

**18.57 What is the role of the Audit Committee in relation to Internal Audit?**

The role of the Audit Committee in relation to Internal Audit is set out in section 9.6.3 of the Constitution.

**TAXATION**

**18.58 What is the role of the Chief Finance Officer in relation to taxation?**

18.58.1 The Chief Finance Officer is responsible for ensuring compliance with all relevant taxation regulations and guidance that affects the Council either directly, as a consequence of its own activities, or indirectly, as a result of service delivery through external partners.

18.58.2 The Chief Finance Officer will maintain the Council's tax records, make all tax payments, receive tax credits and submit tax returns by their due date, as appropriate.

**18.59 What is the role of Chief Officers in relation to taxation?**

To enable the Chief Finance Officer to fulfil the requirements of this role, Chief Officers will:

- (a) Ensure that the Chief Finance Officer is consulted on all proposals that may alter or affect the Council's tax liability.
- (b) Ensure that the VAT guidance issued by the Chief Finance Officer is complied with (i.e., to ensure that the correct liability is attached to all income due and that all amounts recoverable on purchases can be claimed).

- (c) Ensure that, where construction and maintenance works are undertaken, the sub-contractor fulfils the necessary construction industry tax scheme requirements (as advised by the Chief Finance Officer).
- (d) Ensure that the Head of Strategic Commissioning & Procurement's guidance on fee payments to consultants, individuals or partners is complied with.

## **PREVENTING FRAUD AND CORRUPTION**

### **18.60 What are the Council's Anti-Money Laundering Policy and Procedures?**

18.60.1 The Council has an effective Anti-Money Laundering Policy and Procedures and maintains a culture that will not tolerate fraud or corruption. It is the responsibility of the Chief Finance Officer to maintain the Council's Anti-Money Laundering Policy and Procedures.

18.60.2 Chief Officers must ensure that this policy and associated procedures that sit behind it are adhered to and that all appropriate action is taken to prevent money laundering. This includes reporting all suspected irregularities to the Chief Internal Auditor (see section 18.56).

### **18.61 When must Officers declare an interest?**

To avoid giving rise to suspicion about the honesty and integrity of the Council or its employees, or giving the impression of corruption or improper behaviour, all interests of a personal and/or financial nature with external bodies or persons who have dealings with the Council, or any other interests which could conflict with an officer's duties, must be declared in accordance with the Officer Code of Conduct.

### **18.62 When may gifts and hospitality be accepted?**

18.62.1 Officers must be cautious regarding offers of gifts and hospitality as acceptance can easily give the impression of improper behaviour or favour.

18.62.2 The Council's Gifts and Hospitality Policy explains how offers of gifts and hospitality are to be dealt with, including what can be accepted, what cannot be accepted, and what must be declared.

### **18.63 How does the Council deal with its anti-money laundering obligations?**

18.63.1 Money laundering is defined as:

- (a) Concealing, disguising, converting, transferring or removing criminal property from the Country.
- (b) Being concerned in an arrangement which a person knows of, suspects or facilitates the acquisition, retention, use or control of criminal property.

18.63.2 In accordance with the Council's Anti Money Laundering Policy, all suspected attempts to use the Council to launder money must be reported to the Chief Internal Auditor who is the Council's Money Laundering Reporting Officer.



18.63.3 Chief Officers must ensure that their staff understand what money laundering is and their obligations under the anti-money laundering legislation, so that they can recognise situations that might lead to suspicions of money laundering.

18.63.4 When a person knows or suspects that money laundering activity is taking place (or has taken place) or becomes concerned that their involvement in a matter may amount to a prohibited act under the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2011, they must disclose this as soon as practicable or risk prosecution.

18.63.5 To mitigate the risks of the Council being used to launder money:

- (a) cash receipts exceeding £1,000 will not be accepted other than with the prior approval of the Section 151 Officer; and
- (b) receipts and payments unrelated to the Council's own activities will not be paid into or from a Council bank account without the prior approval of the Section 151 Officer.

#### **18.64 How does the Council deal with its anti-bribery obligations?**

18.64.1 Bribery is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage. The Bribery Act has been enacted to enable robust action against such activity.

18.64.2 In accordance with the Council's Anti-bribery Policy, the detection, prevention and reporting of bribery and other forms of corruption are the responsibility of all those working for the Council or under its control.

## **F – FINANCIAL SYSTEMS, PROCESSES AND PROCEDURES**

Sound financial systems and procedures are essential to providing an effective framework of accountability and control for the Council's financial governance.

The main accounting system should provide data that is accurate and adequate for the published final accounts and management in the conduct of their business. Secure and reliable systems are essential to ensure that individual transactions are processed and recorded accurately.

### **FINANCIAL SYSTEMS**

#### **18.65 What are the Chief Finance Officer's responsibilities in relation to financial systems?**

18.65.1 The Chief Finance Officer is responsible for the provision of a corporate system for the preparation of the Council's accounts and for recording managing and reporting expenditure and income. This is currently provided by means of the Council's financial system.

18.65.2 The Chief Finance Officer is responsible for the operation of the Council's accounting systems, the form of accounts and the supporting financial records. Any changes made by Chief Officers to existing financial systems, or the establishment of new systems, must be approved by the Chief Finance Officer. Any changes to agreed financial procedures by Chief Officers to meet their own specific Directorate needs should be approved by the Chief Finance Officer.

#### **18.66 What are Chief Officers' responsibilities in relation to financial systems?**

18.66.1 Chief Officers are responsible for the proper operation of financial processes in their own directorates.

18.66.2 Chief Officers are responsible for ensuring that the financial system accurately records the financial transactions of their functions, and for complying with guidance issued by the Chief Finance Officer on the uses of such systems and the information to be recorded.

18.66.3 Chief Officers shall ensure that all income and expenditure, regardless of its source, is processed through the financial system and that all transactions are recorded in a manner that complies with proper accounting practices, enables returns to be made to taxation authorities, and complies with other legal requirements. The Chief Finance Officer shall give guidance and training as necessary to enable Chief Officers to fulfil this obligation.

18.66.4 Chief Officers shall use the financial system as the main method of monitoring expenditure and income in their Directorates and for comparing spending against Directorate Budget. Chief Officers shall keep such subsidiary information and records as are necessary to monitor effectively expenditure, income and commitments, and to support any required returns.

18.66.5 Chief Officers shall provide all relevant information deemed necessary to compile the Council's annual accounts in accordance with guidance issued by the Chief Finance Officer.

**18.67 When should Chief Officers discuss changes to systems and procedures with Internal Audit?**

Chief Officers shall ensure that new systems and procedures for maintaining financial and non-financial records or records of assets, or changes to such arrangements, are discussed with the Head of Internal Audit prior to implementation.

**FINANCIAL PROCEDURES**

**18.68 What are Chief Officers' responsibilities in relation to financial procedures?**

Chief Officers are responsible for promoting the financial management standards set by the Chief Finance Officer in their service areas and monitoring adherence to the standards and practices, liaising as necessary with the Chief Finance Officer. All Chief Officers shall promote sound financial practices in relation to the standards, performance and development of staff in their Directorates.

**18.69 What are the Chief Finance Officer's responsibilities in relation to financial administration?**

18.69.1 The Chief Finance Officer shall be responsible for keeping the principal accounting records for all Directorates of the Council.

18.69.2 The Chief Finance Officer shall ensure that the accounts and accompanying reconciliations are properly prepared and presented for audit in accordance with relevant guidelines and statutes.

18.69.3 All accounts, financial records, including computerised records and financial administration procedures shall be kept in a form approved by the Chief Finance Officer.

18.69.4 After conferring with relevant Chief Officers, the Chief Finance Officer shall issue instructions as are deemed necessary to carry out the day-to-day financial work of the Council.

18.69.5 Prior to introducing, amending or discontinuing any record or procedure relating to financial transactions or accounting in their Directorate, Chief Officers shall consult the Chief Finance Officer.

**18.70 What are Officers' responsibilities in relation to financial administration?**

Chief Officers and Budget Holders shall comply with accounting guidance provided by the Chief Finance Officer and will supply them with information when required to support proper financial administration.

**UNOFFICIAL (TRUST) FUNDS**

**18.71 What is an 'unofficial fund'?**

An 'unofficial fund' is any fund where the income and expenditure does not form part of the Council's accounts, but which is controlled wholly or in part by an Officer due to their employment by the Council or by, for instance, the Governors of a school or other semi-autonomous body.

## **18.72 How are unofficial funds managed?**

18.72.1 Relevant Chief Officers shall be responsible for the immediate control of unofficial funds within or relating to their Directorate.

18.72.2 The Chief Finance Officer shall be informed of the existence of all unofficial funds and shall issue and update accounting instructions for them where necessary.

## **BANKING, INCOME AND TREASURY MANAGEMENT**

Proper administration of bank accounts is fundamental for financial control. All income collection systems must provide for prompt recording of both cash and credit and the prompt banking of all receipts. Income is vulnerable if not adequately and effectively controlled.

### **BANKING**

#### **18.73 What are the Council's banking arrangements?**

18.73.1 All arrangements concerning the opening, closing and operation of the Council's bank accounts shall be notified to the Chief Finance Officer. All bank Mandates shall be signed by the Chief Finance Officer or their nominated representative.

18.73.2 All banking arrangements, including automatic debiting or payments, and additional banking services (for example, credit/debit cards) will be under the control of the Chief Finance Officer and their Directorate.

18.73.3 Each bank account operated by the Council shall bear an official title and in no circumstances shall an account be opened in the name of an individual except in respect of an account in the name of the Returning Officer for the Middlesbrough Constituency.

### **TREASURY MANAGEMENT**

Treasury management involves the management of the Council's cash flows, borrowings and treasury investments, and the effective control of the risks associated with those activities.

#### **18.74 What are the treasury management requirements for the Council?**

18.74.1 The Council is required to have regard to CIPFA's Treasury Management Code ('TM Code'). Accordingly:

- (a) The Council will create and maintain, as the cornerstones for effective treasury and investment management:
  - (i) a treasury management policy statement stating the policies, objectives and approach to risk management of its treasury management activities;
  - (ii) suitable treasury management practices (TMPs) setting out the manner in which the Council will seek to achieve those policies and

objectives, and prescribing how it will manage and control those activities;

- (iii) investment management practices (IMPs) for investments that are not for treasury management purposes.

The content of the policy statement, TMPs and IMPs will follow the recommendations contained in sections 6, 7 and 8 of the TM Code, subject only to amendment where necessary to reflect the Council's particular circumstances. Such amendments will not result in the Council materially deviating from the TM Code's key principles.

- (b) The Executive and the Audit Committee will receive reports on the Council's treasury and investment management policies, practices and activities, including 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 the TMPs and IMPs.
- (c) 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, TMPs and IMPs, and if they are a CIPFA member, CIPFA's Standard of Professional Practice on treasury management.
- (d) The Council nominates the Audit Committee to be responsible for ensuring effective scrutiny of the treasury management strategy and policies. Audit Committee will review and comment on the Council's Treasury Management Strategy before it is submitted to Full Council for approval.

18.74.2 All money received by the Council shall be aggregated for the purpose of treasury management and shall be under the control of the Chief Finance Officer.

**18.75 In what name are the Council's borrowings to be effected?**

All borrowings and investments shall be effected in the name of Middlesbrough Borough Council.

**18.76 Who is the registrar for stocks, bonds and mortgages?**

The Chief Finance Officer shall be the registrar for all stocks, bonds and mortgages of the Council and shall maintain records of all transactions relating thereto, and of all borrowings of money by the Council.

**INCOME**

**18.77 What are the Council's arrangements for income collection?**

18.77.1 Notwithstanding that income may be collected by another Officer, all arrangements for the collection of income due to the Council shall be agreed with the Chief Finance

Officer. Chief Officers shall maintain records of all income transactions in a form agreed by the Chief Finance Officer.

- 18.77.2 The Chief Finance Officer shall set out the arrangements necessary to ensure that all monies due to, and received by, the Council are banked promptly.
- 18.77.3 The Chief Finance Officer will set the requirement for all receipt forms, books, tickets and other such items, with which Officers must comply. Every issue of any such document shall be acknowledged by the signature of the Officer to whom the issue is made. No Officer shall give a receipt for any money received on behalf of the Council on any form other than an official receipt form or ticket.
- 18.77.4 All sums received by Officers shall be paid over promptly to the Chief Finance Officer, or by arrangement, to the Council's bankers. No deduction should be made from such money, unless specifically authorised by the Chief Finance Officer. Personal cheques must not be cashed out of collections.
- 18.77.5 The Chief Finance Officer shall be notified as early as possible of all money due to the Council under contracts, or any other arrangements which would involve the receipt of money by the Council and shall have access to the original documents or relevant particulars.

## **DEBT MANAGEMENT**

### **18.78 What is the Council's process for managing debts?**

- 18.78.1 Where the Council is delivering works, goods or services, Chief Officers should, in the first instance, seek payment in advance or at the point of delivery. Only where this is not possible should an invoice be raised.
- 18.78.2 Where income is due to the Council in respect of work done, goods supplied, or services rendered but not paid for in advance or at the point of service provision, Chief Officers must ensure that invoices are issued promptly and accurately in respect of any amount due. Chief Officers should ensure that full details of the debtor and the work, goods or services are recorded accurately.
- 18.78.3 The Chief Finance Officer will establish performance management systems to monitor the recovery of income and flag instances of delayed or non-recovery.
- 18.78.4 Evidence of any debt shall be retained by Chief Officers for an appropriate period in accordance with the Council's document retention policies.
- 18.78.5 All Chief Officers have a responsibility to collect debts which they have originated by providing any further information requested by the debtor and pursuing the debt on the Council's behalf.
- 18.78.6 Where Chief Officers are unable to collect debts as set out above, the Chief Finance Officer and the Monitoring Officer shall take all reasonable steps to obtain recovery of debts (involving debt collection agencies and / or Court proceedings as appropriate).

#### **18.79 When will bad debts be written off?**

If, in the course of collecting debt, it becomes apparent that:

- (a) full payment or repayment is unlikely to be made;
- (b) continued recovery action is ineffective or not economic; and/or
- (c) any possible arrangement will not lead to the debt being settled within a realistic and reasonable timeframe,

the Council will write off the debt to reflect income prudently within its accounts. This does not necessarily mean that the Council will stop pursuing the debt. In the event that a written off debt is subsequently recovered, it will be written back as income into the Council's accounts upon receipt.

#### **18.80 Who has authority to write off a debt?**

18.80.1 The Chief Finance Officer (or their nominated deputy) has the authority to approve write offs of unpaid debts up to the limit set out in the Financial Limits Annex per individual debt subject to agreement from the relevant Budget Manager, Legal Services and the relevant Finance Business Partner that:

- (a) there is no realistic chance of recovering the debt; or
- (b) it is considered uneconomical to attempt debt recovery.

The Chief Finance Officer has the overriding authority to approve or reject write offs if agreement cannot be reached between the various parties.

18.80.2 Any individual debts over the limit set out in the Financial Limits Annex must be approved by the Executive, subject to the recommendation of the Chief Finance Officer.

#### **18.81 Where are bad debts allocated?**

Write off of irrecoverable debts will be charged to the relevant budget code where the debt was first raised, unless otherwise agreed by the Chief Finance Officer or their delegated representatives.

#### **18.82 What happens if a debt is not recovered within three (3) years?**

Credit balances, which are over three (3) years old, and which cannot be substantiated or justified, will be released to the relevant fund after the closure of accounts of each year, subject to formal approval by the Chief Finance Officer.

#### **18.83 How are bad debts accounted for?**

18.83.1 The Chief Finance Officer will determine the criteria for calculating how much to provide for outstanding debts in relation to their age and type in consultation with the

relevant Budget Holders and Legal Services, and in line with relevant accounting standards.

18.83.2 Bad debt provisions will be recalculated based on the latest debt levels and types on at least a quarterly basis. The impact of increases or decreases required to the general bad debt provision will be charged to the General Fund.

18.83.3 Each year, consideration will be given as to whether any budget provision should be made to account for the potential impact of bad debt on the Council's Revenue Budget in the coming year. This will be approved as part of the annual Budget setting process. Any savings realised against this budget provision will be transferred to reserves.

#### **18.84 How are bad debts reported?**

The year-end financial outturn report will provide a summary of all irrecoverable debt written off during the year.

### **CLOSING OF ACCOUNTS**

#### **18.85 What is the process for closing the Council's accounts?**

18.85.1 The Chief Finance Officer shall be responsible for the production and publication of the Council's year-end accounts and financial statements in the form, and according to the timetable, required by applicable legislation and guidance.

18.85.2 The Chief Finance Officer shall provide all relevant Officers with guidance on the production of year-end accounts and financial statements. This guidance shall detail the timetable for production of the final accounts, the information and action required from each Directorate and any other details necessary to ensure that Officers are able to discharge their responsibilities under this section 18.85.

18.85.3 The Chief Finance Officer shall present the Statement of Accounts for the year in question to the Audit Committee and the Council's External Auditors as early as possible.

18.85.4 Chief Officers and Budget Holders must comply with accounting guidance provided by the Chief Finance Officer and supply information when required in relation to the closing of accounts.

18.85.5 The Chief Finance Officer shall retain, in safe custody, copies of the audited Statement of Accounts including the External Auditor's signed certificate and opinion. The Statement of Accounts will be published as soon as possible on the Council's website, following certification by the Chief Finance Officer, and then made available for public inspection in line with applicable legislation.



## **CONTRACTS AND PURCHASING**

Officers authorised to commit the Council to current or future expenditure are expected to act responsibly and demonstrate that the arrangements and procedures followed comply with the Council's instructions.

### **18.86 What are the rules that apply to contracts and purchasing?**

18.86.1 All contracts, agreements and purchases are subject to the requirements of the Contract Procedure Rules in section 19 of the Constitution, and the procedures and financial limits which they prescribe.

18.86.2 Before entering into purchasing commitments, Chief Officers and Budget Holders shall ensure that the estimated cost is covered by financial provision in the budget to which it relates.

18.86.3 Official orders and official purchasing/procurement cards must not be raised for any personal or private purchases, nor must personal or private use be made of Council contracts.

## **ORDERS FOR WORK, GOODS AND SERVICES**

### **18.87 What form should orders for work, goods and services take?**

Official orders shall be in a form approved by the Chief Finance Officer and released only by Officers authorised by the appropriate Chief Officer. All official orders issued by a Directorate shall be the responsibility of that Chief Officer. An up to date list of authorised Officers shall be maintained by Chief Officers and a copy sent to the Chief Finance Officer. Any changes to the list of authorised officers shall be notified to the Chief Finance Officer immediately.

### **18.88 When are official orders required?**

18.88.1 Official orders shall be issued for all goods, work and services except where the Council enters into a formal contract with a supplier made for supplies of utility services, periodic payments such as rents or rates, for petty cash purchases or such other exceptions as the Chief Finance Officer may approve.

18.88.2 All goods, equipment etc. ordered on official order forms should be for the Council's own use.

### **18.89 How may official orders be amended?**

Any subsequent variations or amendments to official orders shall be approved by an authorised Officer, linked to the original record.

## **CONTRACTS**

These regulations with regard to contracts shall be read in conjunction with the Contract Procedure Rules in section 19 of the Constitution.

All Chief Officers should ensure that adequate and effective systems and procedures are operated for arranging and managing contracts and agreements having regard to advice and guidance from the Chief Finance Officer on financial aspects. This includes the financial vetting of contracts where appropriate.

**18.90 What specific issues relate to contracts for the provision of social care by independent providers?**

Contractual agreements for the provision of social care between the Council and independent sector providers shall take into account the following specific issues:

- (a) the need to reflect a high degree of client, carer and client's family's involvement in contracting arrangements;
- (b) The need for a long term service relationship avoiding regular changes in service provider, particularly in the case of long term residential care; and
- (c) the involvement of potential providers, such as small charities or voluntary organisations, who may have limited experience and resources to cope with complex contracting and tendering arrangements.

**18.91 What are the requirements for contracts in relation to borrowing, leasing and property etc.?**

18.91.1 Any contract or agreement involving a charge upon assets or property must be forwarded to the Monitoring Officer for signature on behalf of the Council.

18.91.2 Except on the instruction of the Chief Finance Officer, no other Officer shall enter into any agreement or contract involving the borrowing of funds, leasing of equipment, credit arrangement, hire purchase agreement, insurance contract, or the investment of Council monies; nor the authorising of any direct debit to be charged against the Council's bank accounts (except as agreed and authorised by the Chief Finance Officer).

18.91.3 Except as agreed by the Executive, no officer may raise money by securing any legal charge or claim upon the buildings, property or any other asset or interest of the Council.

**18.92 What form should contracts take?**

The content and form of contracts and agreements are to be agreed by the Monitoring Officer before finalising by any Director on behalf of the Council.

**18.93 What are the insurance and risk management requirements for contracts?**

Prior to entering into any contract, Directors will fully consider all Insurance and risk management implications, and where necessary seek appropriate advice from the Chief Finance Officer.

**PAYMENT OF ACCOUNTS**

**18.94 Who is authorised to make payments on account?**

18.94.1 The Chief Finance Officer has authority to pay all amounts to which the Council is legally committed out of the Council's bank account, after authorisation of invoices for payment by the appropriate Budget Holder in accordance with these Financial Regulations.

18.94.2 Payments on account to contractors shall be made only on a certificate issued by the appropriate Chief Officer (or private architect, engineer or consultant where they are engaged by the Council) or other Officer nominated in writing for the purpose.

18.94.3 Before the appropriate Chief Officer or duly authorised person issues a final certificate of payment under a contract, the Chief Finance Officer shall be notified and have the right to examine the contractor's final account, together with other such documents as the Chief Finance Officer may consider necessary. The appropriate Chief Officer shall notify the Chief Finance Officer in writing on the satisfactory completion of the maintenance period under a contract so that any performance bonds may be released.

#### **18.95 Who should authorise invoices?**

Unless alternative arrangements have been agreed and approved by the Chief Finance Officer, the appropriate Chief Officer responsible for issuing an order, or an Officer nominated by them, shall authorise all invoices.

#### **18.96 When may the Council make payments in advance?**

18.96.1 As a general rule, the Council will not make payment in advance of works, goods or services being delivered and/or received. The only circumstances where payment in advance may be appropriate are as follows:

- (a) for software licenses or IT arrangements;
- (b) for bonds or rent payable in advance;
- (c) where specifically advised by Legal Services or Strategic Commissioning & Procurement as part of the contractual arrangements.

18.96.2 If there is any uncertainty as to whether a payment may be made in advance, the advice of the Chief Finance Officer must be sought. If payments in advance cover multiple financial years, then a financial appraisal of the relevant supplier should be undertaken and kept under periodic review as part of contract management arrangements.

### **PURCHASE CARDS**

#### **18.97 How and when are purchase cards used by the Council?**

18.97.1 Purchase cards allow goods and services to be purchased and charges made to the Council electronically. These must be minor in nature. Any purchase of over £100 should be made via the normal purchasing route in accordance with the Contract

Procedure Rules, unless there is a pre-determined reason otherwise which has been agreed with the Chief Finance Officer or their nominated representatives.

- 18.97.2 Purchase cards are for business use only and must not be used by staff for personal purchases. Officers and Members must arrange the use of a purchase card with Strategic Commissioning & Procurement and must comply with the Purchase Cards Scheme, as determined by Chief Finance Officer, in relation to its use.
- 18.97.3 All purchases made with a Council purchase card must demonstrate Value for Money and should be supported by a VAT receipt, where relevant. If there is any doubt about whether a VAT receipt is required, clarification should be sought from the Council's VAT Officer.
- 18.97.4 Any purchases made using a purchase card will be reviewed by relevant Finance Business Partners and any items purchased with a purchase card that do not comply with the Purchase Cards Scheme, will be raised with the appropriate Budget Holder.

## **G – EMPLOYEE AND PERSONNEL MATTERS**

The largest element of Council expenditure is the cost of staff. Reliable and timely information is required to ensure that only genuine employees are paid in accordance with their proper entitlement. Failure to apply taxation and national insurance regulations correctly to all payments could incur significant financial penalties.

### **18.98 Who is responsible for making arrangements for paying employees?**

18.98.1 The payment of salaries, wages, pensions, compensation and other emoluments to all employees or former employees of the Council and allowances to Members shall be made by the Chief Finance Officer or under arrangements approved and controlled by the Chief Finance Officer.

18.98.2 For the avoidance of doubt, the Chief Officer with responsibility for HR is responsible for operational matters in relation to employees and is responsible for the Council's payroll function.

### **18.99 What are Chief Officers' responsibilities in relation to employees?**

18.99.1 All Chief Officers shall ensure appointments are made in accordance with the regulations of the Council and approved establishments, grades and scale of pay and that adequate budget provision is available.

18.99.2 All Chief Officers shall ensure that salaries, wages, pensions etc. are processed only through the payroll system. Careful consideration should be given to the employment status of individuals employed on a self-employed, consultant or sub-contract basis. The Inland Revenue applies a tight definition for employee status, and in cases of doubt, advice should be sought from the Chief Officer with responsibility for HR and the Chief Finance Officer.

18.99.3 All timesheets and other pay documents shall be submitted through the Council's HR team and will be approved by the relevant Chief Officer, or their representative Budget Holder.

18.99.4 All Chief Officers shall determine which Officers from within their Directorate are authorised to certify salaries and wages documents. These will be in line with the Council's budget management arrangements and will be verified by the HR team.

18.99.5 All relevant records and other pay documents shall be submitted to HR in accordance with timetables and deadlines determined by the Council.

### **18.100 What is the process for approving expenses and allowances?**

18.100.1 The Chief Finance Officer shall be responsible for making arrangements for the administration and regulation of claims for expenses and allowances to employees and members of the Council and its committees and other approved bodies. The Monitoring Officer shall be responsible for monitoring the budget for Member's expenses.

18.100.2 Certification of Officers' travel and subsistence claims, by or on behalf of a Directorate, shall be taken to mean that the certifying officer is satisfied that the

journeys were authorised, expenses properly incurred and that the allowances are payable by the Council.

## **H – EXTERNAL ARRANGEMENTS**

### **PARTNERSHIPS AND EXTERNAL BODIES**

Partnerships and other external bodies are likely to play a key role in delivering community strategies and in helping to promote and improve the well-being of the area. The Council works in partnership with others: public agencies, private companies, community groups and voluntary organisations. It still delivers some services, but its distinctive leadership role is to bring together the contributions of the various stakeholders.

#### **18.101 How are Council functions delegated to external bodies?**

18.101.1 The Executive is responsible for approving delegations of Executive Functions, including frameworks for partnerships. The Executive is the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.

18.101.2 The Executive can delegate functions, including those relating to partnerships, to Officers. These delegations are set out in the Scheme of Delegation. Where functions are delegated, the Executive remains accountable for them to Full Council.

#### **18.102 Who represents the Council on external bodies?**

Save as otherwise set out in this Constitution, the Head of Paid Service represents the Council on partnership and external bodies, in accordance with the Scheme of Delegation.

#### **18.103 What are the financial governance arrangements for external bodies?**

18.103.1 The Monitoring Officer is responsible for promoting and maintaining the same high standards of conduct with regard to financial administration in partnerships that apply throughout the Council.

18.103.2 The Chief Finance Officer must ensure that the accounting arrangements to be adopted for partnerships and joint ventures are satisfactory. They must also consider the overall corporate governance arrangements and legal issues when arranging contracts with external bodies. The Chief Finance Officer must ensure that the risks have been fully appraised before agreements are entered into with external bodies.

18.103.3 Chief Officers are responsible for ensuring that appropriate approvals are obtained before any negotiations are concluded in relation to work with external bodies.

### **COUNCIL-OWNED COMPANIES**

The Council recognises that a mix of different service delivery and business models are necessary to improve services and maximise value for money. Different service delivery models are available to the Council including the establishment of trading companies.

Further information in relation to Council-owned companies is contained in section 20 of the Constitution.

#### **18.104 When may the Council establish a Council-owned company?**

18.104.1 The Council will not establish a Council-owned company without the approval of the Executive. Any proposal to the Executive in support of establishing a Council-owned company must set out:

- (a) the short- and long-term financial implications of setting up the company;
- (b) a comprehensive risk assessment;
- (c) an explanation of how setting up the company contributes to the Council's strategic aims and objectives;
- (d) the legal basis for establishing the company;
- (e) the proposed governance arrangements for the company, including how the Council will manage the client-side arrangements;
- (f) a business plan for the company; and
- (g) the exit strategy for the arrangement.

18.104.2 Regard must always be had in relation to such proposals to any State Aid implications that might arise as a result of the provision of such benefits.

#### **18.105 What are the financial arrangements for Council-owned companies?**

18.105.1 The Chief Finance Officer is ultimately responsible for the financial management of all Council-owned companies, and will set the financial governance and accounting procedures for Council-owned companies.

18.105.2 Where the Council owns shares, or in some cases the share, in an external entity a shareholder representative will ordinarily be appointed. Currently the power to appoint the shareholder representative rests with the Mayor.

18.105.3 Council Officers, **with the exception of the Chief Finance Officer, the Monitoring Officer, and their deputies**, may serve as directors on the board, or as company secretary of a Council-owned company.

18.105.4 The principal responsibility for the financial management of Council owned and controlled entities is of the finance director, board of directors and other staff and officers of the entities. However, given the requirement for the Council to prepare and publish consolidated accounts referencing such entities and the responsibilities of the Chief Finance Officer as to proper accounting practices and protection of the Council's financial position, the Chief Finance Officer is authorised to exercise such control as is appropriate and lawful in relation to the proper financial management of such entities. This includes recommending to such entities the embedding of and compliance with appropriate accounting arrangements and the adoption

18.105.5 of appropriate Financial Regulations.



18.105.6 No grant, loan, credit or other form of assistance, financial or otherwise, shall be provided to any owned or controlled entities outside the approved business plan other than with the prior agreement of the Chief Finance Officer and, where the transaction represents a key decision, Executive approval.

18.105.7 The Council will comply with all applicable legislation and guidance in relation to any Council-owned company, including the CIPFA local authority owned companies good practice guide.

## **PENSION FUND**

### **18.106 What is the Pension Fund?**

18.106.1 The Local Government Pension Fund is the pension scheme for local government employees. It is administered locally by 86 local pension funds in England and Wales. The Council is an 'Administering Authority' for the Pension Fund.

18.106.2 As an Administering Authority, the Council is responsible for managing and administering the Pension Fund in relation to those people for whom it is the Administering Authority.

### **18.107 What are the Chief Finance Officer's delegated powers in relation to the Pension Fund?**

The Chief Finance Officer is authorised to manage the Pension Fund on a day-to-day basis, including the exercise of the Council's functions as Administering Authority, the power to seek advice from professional advisers, and to devolve the handing of the Pension Fund's investment to appropriate fund managers.

### **18.108 What is the role of the Teesside Pension Fund Committee?**

The role of the Teesside Pension Fund Committee is set out in section 23 of the Constitution.

## 19 CONTRACT PROCEDURE RULES

This section sets out the Council's Contract Procedure Rules, which govern how the Council purchases goods and services.

Capitalised terms used in this section are as defined in section 2.2 of the Constitution and, where applicable, in the Financial Procedure Rules in section 18.

### 19.1 What are the Contract Procedure Rules?

19.1.1 The Contract Procedure Rules outline the process to be followed to promote good purchasing practices within the Council, ensure public accountability, secure value for money, and deter corruption. Following the Contract Procedure Rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently and the best way to demonstrate cost-effectiveness.

19.1.2 A Responsible Officer must comply with these Contract Procedure Rules when making any purchase. These Contract Procedure Rules lay down the minimum requirements applicable to a purchase and Responsible Officers should note that a more thorough procurement procedure may be appropriate for a particular purchase. Strategic Commissioning & Procurement will provide advice on when this is the case.

19.1.3 These Contract Procedure Rules form an essential part of the Council's Constitution, and where these Contract Procedure Rules apply, compliance is mandatory. All Responsible Officers should ensure that they are familiar with these Contract Procedure Rules. Non-compliance with these Contract Procedure Rules is a disciplinary matter.

19.1.4 Where reference is made in these Contract Procedure Rules to the Procurement Regulations<sup>55</sup>, those regulations should be referenced and complied with. The Procurement Regulations are not explicitly written into the Constitution. Responsible Officers should seek further guidance from Strategic Commissioning & Procurement and/or Legal Services if they are unsure about the application of the Procurement Regulations.

19.1.5 **These Contract Procedure Rules apply to all purchases (i.e., all spend) made by the Council, whether a formal contract is entered into or not.**

### 19.2 How are the Contract Procedure Rules organised?

The Contract Procedure Rules are organised into the following sections:

#### **A – Introduction**

Purpose of Contract Procedure Rules

Breach of Contract Procedure Rules

Emergency Situations

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<sup>55</sup> [The Public Contracts Regulations 2015](#)

Amendment and Further Information

**B – Defined Terms**

**C – Roles and Responsibilities**

Officer Responsibilities

Responsibilities of Specific Members and Officers

**D – Application of Contract Procedure Rules**

Relevant Contracts

Exemptions

**E – Procurement Thresholds**

**F – Preparing for Procurement**

Procurement Pipeline

Pre-procurement Process

Make or Buy

Market Research and Consultation

Equality Impact Assessments

Choice of Procurement Route

**G – Procurement Process**

Approved Lists

Selective Tendering

Open Tendering

Frameworks

Direct Award

Route to Market

Light Touch Regime

Standards and Award Criteria

**H – Mechanisms for Formal Tendering**

Open Procedure

Restrictive Procedure

Competitive Procedure with Negotiation

Competitive Dialogue

Innovation Partnership

## **I – Tenders and Quotations**

Invitations to Tender

Invitations to Quote

Submission of Tenders and Quotations (Electronic Tendering)

Clarification of Tenders and Quotations

Evaluation of Tenders

Contract Award

Contract Records

Withdrawal of Tender

Nominated Sub-contractors

## **J – Contract and Other Formalities**

Contract Documents

Execution of Contracts

Liquidated Damages

Bonds

Parent Company Guarantees

Prevention of Corruption

Declaration of Interests

## **K – The Life of the Contract**

Contract Management

Contract Extensions and Variations

Termination of Contracts

## **L – Other Types of Contracts**

Commissioning a Consultant

Procurement of Agency Staff

Concession Contracts

**ANNEX 1 – Roles and Responsibilities of Officers and Members**

**ANNEX 2 – Letting of School Based Contracts**

## **A – INTRODUCTION**

### **PURPOSE OF CONTRACT PROCEDURE RULES**

#### **19.3 What is the purpose of these Contract Procedure Rules?**

19.3.1 The Council is required to set out Contract Procedure Rules that govern how they procure contracts for the supply of goods and services and for the execution of works, which provide for a mechanism by which the Council will ensure that contracts are tendered competitively, and that the Procurement Regulations, and other applicable legislation, is complied with.

19.3.2 The intention of these Contract Procedure Rules is to ensure that the Council:

- (a) obtains Value for Money and Best Value;
- (b) avoids and prevents corruption or the suspicion of it;
- (c) is fair and equitable in the treatment of all suppliers;
- (d) is transparent in how it conducts its procurement activities in accordance with the Procurement Regulations;
- (e) seeks to reduce disadvantage, advance equality and promote community cohesion as defined in the Equality Act 2010;
- (f) makes every effort to promote local businesses, including small and medium-sized enterprises (SME);
- (g) promotes Social Value<sup>56</sup>; and
- (h) supports the Council's corporate and service aims and policies (to the extent compatible with the above).

19.3.3 Where a person who is not an Officer is required to make purchasing decisions or manage contracts on behalf of the Council (for example, agency staff), the contract engaging that person should include a condition that these Contract Procedure Rules apply to that person as if they were an Officer.

19.3.4 Unless specific grant terms require otherwise, these Contract Procedure Rules apply to any procurement made using funds received from external sources. Where grant conditions prescribe a particular procurement route, that route will be followed (provided that it is compliant with the Procurement Regulations and other applicable legislation).

19.3.5 Any breach or non-compliance with these Contract Procedure Rules should be dealt with in accordance with section 19.4.

### **BREACH OF CONTRACT PROCEDURE RULES**

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<sup>56</sup> [Public Services \(Social Value\) Act 2012](#)

#### **19.4 What are the consequences of breaching these Contract Procedure Rules?**

- 19.4.1 Breach of these Contract Procedure Rules is very serious and will constitute a disciplinary matter. Save where a valid waiver or exemption has been applied, any failure to comply with these Contract Procedure Rules will be treated as a breach.
- 19.4.2 It will be the responsibility of all Officers to address non-compliance swiftly and in the most appropriate way according to the circumstances.
- 19.4.3 Any breach of, or non-compliance with, these Contract Procedure Rules must, on discovery, be reported immediately to the Internal Audit Manager acting on behalf of the Chief Finance Officer. The Internal Audit Manager shall, after taking legal advice and consulting Strategic Commissioning & Procurement, decide whether each reported breach or non-compliance presents a significant risk of harm to the Council's interests and, if satisfied that such risk exists, shall undertake any necessary investigation and report the findings to the Chief Finance Officer.
- 19.4.4 Officers may also raise concerns relating to breach or suspected breach of, and non-compliance with, these Contract Procedure Rules anonymously in line with the Council's [Whistleblowing Policy and Procedure](#).
- 19.4.5 Officers should remain alert to fraud throughout the procurement life cycle and any concerns of fraud or corruption must be reported at the earliest opportunity to the Head of Strategic Commissioning & Procurement by emailing [procurement@middlesbrough.gov.uk](mailto:procurement@middlesbrough.gov.uk). They will decide whether the matter should be escalated to the Internal Audit Manager, acting on behalf of the Chief Finance Officer.
- 19.4.6 Officers must follow the Officer Code of Conduct in respect of any procurement activity. Failure to comply with the Officer Code of Conduct or these Contract Procedure Rules may constitute a disciplinary matter that may be pursued, as appropriate, in accordance with the Council's disciplinary policy.

#### **19.5 What is the role of Councillors in procurement activities?**

- 19.5.1 Councillors are not permitted to take part in the procurement process, and they must ensure that their actions do not compromise or impact on due process in relation to any Council procurement.
- 19.5.2 Concerns related to Councillor intervention in procurement activities may be subject to Standards Committee investigation.

#### **19.6 How are breaches of these Contract Procedure Rules reported?**

Reports on the number of confirmed breaches of these Contract Procedure Rules are to be sent by the Head of Strategic Commissioning & Procurement to the Chief Finance Officer on a quarterly basis.

### **EMERGENCY SITUATIONS**

#### **19.7 How do these Contract Procedure Rules apply in emergency situations?**

- 19.7.1 Where the Chief Executive exercises their power under section 6.40.1 of the Constitution in an emergency, and a contract cannot be awarded under a competitive process pursuant to these Contract Procedure Rules, **and the emergency has not arisen due to an act or omission of the Council**, the emergency process set out in this section 19.7 may be applied.
- 19.7.2 This section 19.7 also applies where, in the opinion of the Chief Executive, there is an immediate and extreme risk which could not have reasonably been foreseen, including (but not limited to):
- (a) a major disaster involving immediate risks to persons or property; and/or
  - (b) an event or occurrence which is creating serious disruption to Council services; and/or
  - (c) an event or occurrence resulting in significant financial loss to the Council.
- 19.7.3 In an emergency, the Contract Procedure Rules will be temporarily disapplied for a proportionate period of time (to be determined by the Chief Executive in consultation with the Mayor) so that the Council may respond to the immediate risk. Once the immediate risk has been mitigated, these Contract Procedure Rules will apply to any follow-up actions.
- 19.7.4 A report must be prepared for the Chief Finance Officer setting out the justification for the action taken. If they consider it necessary, the Chief Finance Officer may require that report to be submitted to the next meeting of the Executive for approval.

## **AMENDMENT AND MORE INFORMATION**

### **19.8 How are these Contract Procedure Rules amended to reflect changes in legislation?**

The Chief Finance Officer shall have the power to make technical amendments from time to time to make these Contract Procedure Rules consistent with legal requirements, changes in Council structures and personnel, and best practice, after consultation with the Head of Paid Service, the Monitoring Officer, and the Chair of the Council.

### **19.9 Where can I find more information and guidance about the Council's procurement procedures?**

In addition to these Contract Procedure Rules, the Council has in place further information and guidance about its procurement procedures.



## **B - DEFINED TERMS**

Where capitalised terms are used in this section, they will have the meanings set out below. For the avoidance of doubt, terms defined in section 2.2 of this Constitution also apply to this section.

|  |  |
|--|--|
| “Above Threshold Procurement”            | a procurement that is above the relevant Procurement Threshold;  |
| “Award Criteria”                         | the criteria by which the successful Quotation or Tender is to be selected (see section 19.49);  |
| “Award Procedure”                        | the procedure for awarding a contract;   |
| “Best Value”                             | the duty placed on the Council to obtain a competitive price for goods, services and works of appropriate quality, in line with statutory duties <sup>57</sup> ;   |
| “Bidder”                                 | any person who asks or is invited to submit a Quotation or Tender;   |
| “Bond”                                   | an insurance policy. If the Contractor does not do what is has promised under 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; |
| “Competitive Dialogue”                   | a procurement process that allows the Council to enter into a dialogue with Bidders until a solution is found to the Council’s requirement <sup>58</sup> ;   |
| “Competitive Procedure With Negotiation” | a procurement process that allows the Council to negotiate with Bidders after an Invitation to Tender is issued, which also allows the Council to reserve the right not to negotiate where a Bidder meets its requirement <sup>59</sup> ;  |
| “Concession Contract”                    | as defined in section 19.93;   |
| “Contracting Decision”                   | any of the following decisions: <ul style="list-style-type: none"><li>• composition of Approved Lists;</li><li>• withdrawal of Invitation to Tender;</li><li>• whom to invite to submit a Quotation or Tender;</li><li>• Shortlisting;</li><li>• Contract Award; or</li></ul>  |

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<sup>57</sup> [Local Government Act 1999](#)

<sup>58</sup> [The Public Contracts Regulations 2015, Regulation 30](#)

<sup>59</sup> [The Public Contracts Regulations 2015, Regulation 29](#)

- any decision to terminate a contract;

|                                    |           |   |
|------------------------------------|-----------|---|
| “Contractor”                       |           | a successful Bidder with whom the Council has or intends to enter into a contract;  |
| “E-tendering Portal”               |           | the Council’s electronic tendering system used for publishing Invitations to Tender and Invitations to Quote and for submission of bids by suppliers;   |
| “Exemptions Annex”                 |           | the Annex held by Strategic Commissioning & Procurement which sets out the application of exemptions to these Contract Procedure Rules;   |
| “Framework”                        |           | an agreement under which a long-term relationship is established between local authorities (or other public sector bodies) and approved suppliers;  |
| “Government Procurement Agreement” |           | the successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area are: USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore;   |
| “In-house Test”                    | Preferred | the Council’s internal measure for determining if the Council’s requirement would be best delivered by an internal mechanism, e.g., internal Service area or Council owned company, rather than through a competitive process;  |
| “Innovation Partnership”           |           | a procurement process that allows the Council to procure research and development and a product or service in a single procurement <sup>60</sup> ;  |
| “Invitation to Quote”              |           | invitation to submit a Quotation in the form required by these Contract Procedure Rules;  |
| “Invitation to Tender”             |           | invitation to submit a Tender in the form required by these Contract Procedure Rules;   |
| “Low Value Contracts Threshold”    |           | the threshold specified in Regulation 109(2)(c)(ii) of the Procurement Regulations <sup>61</sup>  |
| “M.E.A.T.”                         |           | award criteria that considers more than just price; which could 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 service, technical assistance and any other relevant matters; |
| “Sub-contractor”                   |           | a person engaged by a Contractor to discharge any part of a contract with the Council;  |

<sup>60</sup> [The Public Contracts Regulations 2015, Regulation 31](#)

<sup>61</sup> [The Public Contracts Regulations 2015, Regulation 109](#)

|                                 |   |
|---------------------------------|---|
| “NEPRO Solution”                | a managed service solution that provides a cost-effective and compliant route for the procurement of professional services by the public sector;  |
| “Non-Commercial Considerations” | <ol style="list-style-type: none"><li>1. The terms and conditions of employment of a Bidder’s workers or the composition of, arrangements for the promotion, transfer or training of, or other opportunities afforded to, their workforce;</li><li>2. Whether the terms on which Bidders 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>3. Any involvement of the business activities or interests of Bidders with irrelevant fields of Government policy;</li><li>4. The conduct of Bidders or their workers in industrial disputes between them or any involvement of the business activities of Bidders in industrial disputes between other persons;</li><li>5. The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, Bidders;</li><li>6. Any political, industrial or sectarian affiliations or interests of Bidders or their directors, partners or employees</li><li>7. Financial support or lack of financial support by Bidders for any institution to or from which the Council gives or withholds support;</li><li>8. Use or non-use by Bidders of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959;</li></ol> |
| “Responsible Officer”           | the Officer designated by the relevant Head of Service to deal with a particular contract and/or spend;   |
| “Open Procedure”                | a procurement process where any Bidder may submit a Tender and there is no pre-qualification process <sup>62</sup> ;  |
| “Parent Company Guarantee”      | a contract which binds the parent company of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the Council, it can require the parent company to do so instead;   |
| “Procurement Regulations”       | The Public Contracts Regulations 2015 <sup>63</sup> as supplemented and amended from time to time;  |

<sup>62</sup> [The Public Contracts Regulations 2015, Regulation 27](#)

<sup>63</sup> [The Public Contracts Regulations 2015, Regulation 5](#)

|                         |  |
|-------------------------|--|
| “Procurement Threshold” | the thresholds set out in the Procurement Thresholds Annex;  |
| “Prospective Bidder”    | any persons who asks or is invited to submit a Quotation or Tender;  |
| “Quotation”             | an indication by any person of a price for the execution of work or the supply of goods, materials or services (without the formal issue of an Invitation to Tender);  |
| “Quotation System”      | the E-tendering Portal quotation system;   |
| “Relevant Contract”     | contracts to which these Contract Procedure Rules apply (see section 19.12);   |
| “Restricted Procedure”  | a procurement process where any Bidder that meets the pre-qualification criteria may submit a Tender <sup>64</sup> ;   |
| “Shortlisting”          | where Bidders are selected: <ul style="list-style-type: none"><li>• to submit a Quotation or Tender; or</li><li>• to proceed to final evaluation;</li></ul>  |
| “Social Value”          | the duty on the Council to consider economic, social and environmental well-being when commissioning a public service <sup>65</sup> ;  |
| “Standing List”         | a list of approved suppliers able to perform contracts to supply goods or services of particular types;  |
| “Tender”                | a written offer made by any person (following an invitation from the Council) which can be accepted by the Council to form a binding contract;   |
| “Total Value”           | The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal, whether or not it comprises several lots or stages, to be paid or received by the Council or a Service within the Council. The Total Value shall be calculated as follows: <ul style="list-style-type: none"><li>• 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;</li><li>• where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;</li><li>• for feasibility studies: the value of the scheme or contracts which may be awarded as a result;</li></ul> |

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<sup>64</sup>64 [The Public Contracts Regulations 2015, Regulation 28](#)

<sup>65</sup>65 [Public Services \(Social Value\) Act 2012](#)

- for Sub-contractors: the Total Value shall be the value of that part of the main contract to be fulfilled by the Sub-contractor;

The Total Value shall be calculated as inclusive of VAT.

“Value for Money”

the optimal use of resources to achieve the intended outcomes based on economy, efficiency and effectiveness.

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## **C – ROLES AND RESPONSIBILITIES**

This section sets out the specific roles and responsibilities of Officers and Members in relation to procurement.

### **OFFICER RESPONSIBILITIES**

#### **19.10 What are the responsibilities of Officers in relation to purchasing?**

19.10.1 Officers must ensure that:

- (a) they comply with:
  - (i) these Contract Procedure Rules;
  - (ii) the Financial Procedure Rules;
  - (iii) the Officer Code of Conduct; and
  - (iv) all applicable legal requirements in force from time to time.
- (b) any purchasing activity they undertake supports the Council's strategic aims and objectives;
- (c) appropriate records of procurement activities are kept as required by section 19.70.
- (d) advice is sought from Strategic Commissioning & Procurement;
- (e) appropriate supplier due diligence is completed;
- (f) proper Tender processes are followed in accordance with procedures set out in Invitations to Tender;
- (g) they have declared any relevant conflict of interest in relation to a purchase;
- (h) the correct authorisation and approvals are obtained in accordance with the Scheme of Delegations and the Council's formal decision-making processes; and
- (i) where appropriate, any agent, consultant or contractual partner acting on behalf of the Council complies with the above.
- (j) Chief Officers must ensure that their staff comply with section 19.10.
- (k) Chief Officers must ensure that their staff complete the Council's Corporate Contract Register for all contracts entered into by their Service Area. Heads of Service must ensure that their staff notify Strategic Commissioning & Procurement of all contracts progressed by their Service to enable Strategic Commissioning & Procurement to enter the relevant information on the Council's contracts register.

## **RESPONSIBILITIES OF SPECIFIC MEMBERS AND OFFICERS**

### **19.11 What are the specific responsibilities of Officers and Members?**

The specific responsibilities of Officers and Members in relation to these Contract Procedure Rules are set out in Annex 1 to this section 19.

## **D – APPLICATION OF CONTRACT PROCEDURE RULES**

### **RELEVANT CONTRACTS**

#### **19.12 To which Council contracts do these Contract Procedure Rules apply?**

19.12.1 **These Contract Procedure Rules apply to every Relevant Contract entered into by or on behalf of the Council** (e.g., by agency staff, agents or consultants), which includes contracts for:

- (a) the purchase of all goods or materials;
- (b) the purchase of services, including professional services, interim and agency staff;
- (c) the purchase/order of works; and
- (d) contract management of third party spend.

19.12.2 Where a contract or sub-contract covers works and the supply of goods, services and/or material, it will be treated as a works contract if more than 50% of its total value relates to works.

#### **19.13 When do these Contract Procedure Rules not apply?**

19.13.1 These Contract Procedure Rules do not apply to the following:

- (a) procurement activity carried out by Council maintained school under their own delegated budget and/or a school's own formal procurement and contractual rules;
- (b) legal charges, awards and disbursements (including all associated costs and fees) in connection with any and all legal proceedings government by Civil Procedure rules;
- (c) contract offers of employment which make an individual an employee of the Council;
- (d) settlement of insurance claim compensation;
- (e) treasury transactions as outlined in the Council's Treasury Management Strategy;
- (f) non-contractual funding arrangements (including grant agreements under which the Council makes a grant to a third party, provided that the terms of the funding arrangements do not constitute a contract, and a direct award can be made following approved Council grant processes). For the avoidance of doubt, where the Council is using grant monies itself or passing them onto a third party, these Contract Procedure Rules will apply (along with any applicable grant conditions);



- (g) specific licensing requirements (for example, a television licence or public entertainment licence) or subscriptions to national organisations (for example, the Local Government Association);
- (h) contracts for the execution of either works (or provision of goods, services or material) where the Council has no discretion whether the works are required or who must deliver them (for example, works to be provide by a statutory undertaker);
- (i) services with a national remit where there are requirements to comply with purchasing arrangements set out by a funding body;
- (j) appointment of external auditors outside the Council's control;
- (k) appointment of barristers or legal firms where, in the opinion of the Monitoring Officer, urgent advice is required to protect the interests of the Council;
- (l) disposal goods and/or materials deemed surplus to the Council's needs.

19.13.2 The above list is not exhaustive. If an Officer is unsure whether these Contract Procedure Rules apply in any specific circumstances, they should seek advice from Strategic Commissioning & Procurement.

19.13.3 Officers should seek advice from Strategic Commissioning & Procurement on the application of these Contract Procedure Rules to any proposed direct award of a contract to a Council-owned Company.

## **EXEMPTIONS**

### **19.14 When may the provisions of these Contract Procedure Rules be waived?**

19.14.1 Chief Officers may request authorisation from the Chief Finance Officer to waive, suspend or change any provision of these Contract Procedure Rules in accordance with this section 19.14. Where an exemption applies, section 19.44 will not apply, and the Council will be permitted to negotiate directly with one or more suppliers.

19.14.2 Full details of how exemptions apply are contained in the Exemptions Annex.

### **19.15 What is the process for requesting an exemption?**

19.15.1 The relevant Chief Officer must complete a Request for Exemption from Procurement Procedures Form, which must be signed by the relevant Head of Service, the Chief Finance Officer and the Monitoring Officer, and then submitted to the Head of Strategic Commissioning and Procurement.

19.15.2 Before completing a Request for Exemption from Procurement Procedures Form, Chief Officers / Heads of Service should agree with Strategic Commissioning & Procurement the basis on which they are applying for an exemption.

19.15.3 The Chief Finance Officer and the Head of Strategic Commissioning & Procurement reserve the right to refuse any application for an exemption. Where an exemption relies on an exception in the Procurement Regulations, it will be rejected unless evidence is provided to demonstrate that the exception applies.

#### **19.16 How are exemptions recorded?**

The Head of Strategic Commissioning & Procurement will maintain a register of all approved exemptions and will monitor and report the use of exemptions for management control purposes.

#### **19.17 When may an exemption not be used?**

19.17.1 An exemption may not be used for Above Threshold Procurements.

19.17.2 **Any attempt to seek retrospective approval of an exemption will be rejected and will be treated as a potential breach of these Contract Procedure Rules.**

19.17.3 **Exemptions should not be used to circumvent these Contract Procedure Rules.**

#### **19.18 What action must be taken in respect of an approved exemption?**

If an exemption is approved, Chief Officers must:

- (a) ensure that a formal contract is entered into;
- (b) undertake appropriate due diligence on the relevant supplier and proportionate contract management during the life of the contract;
- (c) ensure that appropriate approval to award the contract has been given in accordance with the Scheme of Delegations;
- (d) ensure that the value of the contract does not exceed the financial threshold for an Above Threshold Procurement and that no contract extension is sought.

## **E – PROCUREMENT THRESHOLDS**

This section sets out how Procurement Thresholds apply in relation to the Council's procurement activities.

### **19.19 What are Procurement Thresholds?**

19.19.1 The Procurement Regulations set out certain legislative financial thresholds, above which specific procurement rules apply.

19.19.2 Procurement Thresholds are calculated based on the estimated Total Value of a contract over the contract term.

19.19.3 The Procurement Thresholds in force from time to time are set out in the Procurement Thresholds Annex.

### **19.20 How are estimated contract values calculated?**

19.20.1 Estimated contract values should be calculated on the basis of the whole life value (or estimated whole life value) for any purchase, including any anticipated contract extension. This value should be calculated as follows:

- (a) Fixed term contract – the total price to be paid, or which could be paid, during the fixed term period.
- (b) Contract for recurring transactions of the same type – aggregated total value of those transactions over the expected life of the contract.
- (c) Contracts for an uncertain duration – monthly payment multiplied by 48.

19.20.2 Any estimated contract value must be a genuine pre-estimate that factors in all associated costs (for example, any repair and maintenance required).

19.20.3 Similar contracts with the same supplier should be aggregated across the Council. There must be no artificial disaggregation to avoid meeting a Procurement Threshold.

19.20.4 Where a contract is being awarded as lots under a Framework, the Total Value of the contract is the Framework value and not the value of the individual lot. **Contracts must not be sub-divided into smaller lots so as to avoid the requirements of these Contract Procedure Rules.**

## **F – PREPARING FOR PROCUREMENT**

### **PROCUREMENT PIPELINE**

#### **19.21 What is the procurement pipeline?**

19.21.1 The Council requires all upcoming procurements that meet Key Decision thresholds to be recorded in a procurement pipeline, which forms part of the Forward Plan. At the start of each financial year, the procurement pipeline is presented to the Executive for approval.

19.21.2 Chief Officers and Responsible Officers should be mindful of the need to plan their procurements in advance and take reasonable steps to ensure that their required procurement activities are included in the Forward Plan.

#### **19.22 When can a procurement not in the Forward Plan be added?**

19.22.1 If a procurement has not been approved by the Executive for inclusion in the Forward Plan, it will require separate in-year approval from the Executive to proceed.

19.22.2 Responsible Officers should factor the timeframe for gaining such approval into their procurement planning.

### **PRE-PROCUREMENT STAGE**

#### **19.23 What steps must be taken before the Council makes a purchase?**

Before beginning a purchase, the Responsible Officer must:

- (a) in a manner commensurate with the complexity and value of the purchase a Procurement Request Form should be completed, which includes the following considerations:
  - (i) ensure there is a service specification that clearly articulates the outcomes to be achieved;
  - (ii) take into account the requirements from any review;
  - (iii) appraise the need for the expenditure and its priority;
  - (iv) ensure there are no existing contract arrangements already in place that cover the requirement;
  - (v) define the objectives of the purchase;
  - (vi) assess the risks associated with the purchase and how to manage them;
  - (vii) consider what procurement method is most likely to achieve the purchasing objectives, including external or internal sourcing or accessing an existing contract, collaboration with other purchasers, partnering and long term relationships;

- (viii) consider any data protection implications to the proposed purchase;
  - (ix) adhere to the provisions of the Social Values Act 2012 for eligible contracts and/or any associated charters; and
  - (x) consult users as appropriate about the proposed procurement method, contract standards, and performance and user satisfaction monitoring; and
- (b) confirm that:
- (i) there is Member or delegated approval for the expenditure (and the Responsible Officer must ensure that a copy of that approval is retained on file);
  - (ii) there is Executive approval for significant new proposals as required by the Financial Procedure Rules; and
  - (iii) prior information notices, if required, have been sent<sup>66</sup>.

## **MAKE OR BUY**

### **19.24 What is “make or buy”?**

19.24.1 A “make or buy” decision relates to a choice of whether to manufacture or produce something in-house, or to procure it from an external third party.

19.24.2 Before undertaking a new procurement, the following should be explored, and used as first choice where fit for purpose, available for use and able to demonstrate Best Value, in relation to the procurement:

- (a) Use of internal Council Service(s) or establishment of such Service(s) where they don’t currently exist.
- (b) Use of an existing compliant Council Framework.
- (c) Award of a contract to a Council-owned Company with Teckal status, establishing or implementing a public contract with another public sector entity or using another public sector body’s Framework or contract.

19.24.3 Responsible Officers should only instigate a procurement process (Invitation to Tender or Invitation to Quote) if the following conditions are met:

- (a) The “make or buy” process outlined above should have been followed to ensure that the In-house Preferred Test does not apply.
- (b) It can be demonstrated that Best Value can be achieved through a competitive procurement process.

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<sup>66</sup> [The Public Contracts Regulations 2015, Regulation 48](#)

- (c) Sufficient time has been allowed to ensure required outcomes are achieved via a competitive procurement.

For the avoidance of doubt, where sufficient time has not been allowed due to the actions or omissions of Officers, this will not be a valid reason for disapplication of these Contract Procedure Rules.

## **MARKET RESEARCH AND CONSULTATION**

### **19.25 When should the Council carry out pre-market research?**

19.25.1 Preliminary market research is permitted where relevant and proportionate. Market research is encouraged in order to inform the procurement process and potential suppliers. Where market research or consultation takes place, this should be in accordance with the Procurement Regulations.

19.25.2 Responsible Officers should seek advice from Strategic Commissioning & Procurement if they are unsure about whether to carry out market research and/or how this should be done.

### **19.26 What pre-Tender market research and consultation is permitted?**

Responsible Officers:

- (a) may consult potential suppliers prior to the issue of an Invitation to Tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided that this does not prejudice any potential Bidder; and
- (b) must not seek or accept technical advice on the preparation of an Invitation to Tender or Invitation to Quote from anyone who may have a commercial interest in it, if this may prejudice the equal treatment of all potential Bidders or distort competition.

## **EQUALITY IMPACT ASSESSMENT**

### **19.27 What is an Equality Impact Assessment?**

An "Equality Impact Assessment" is a tool that helps the Council to consider equality, diversity, cohesion and integration in its strategies, policies, services and functions. An Equality Impact Assessment involves assessing the likely (or actual) effects of policies on people in respect of protected equality characteristics including age, disability, race and sexual orientation.

### **19.28 When must an Equality Impact Assessment be carried out?**

19.28.1 An Equality Impact Assessment should be carried out before commencing any procurement activity, where appropriate.

19.28.2 Responsible Officers must complete an Equality Impact Assessment form setting out the impact of the procurement on equality, diversity, cohesion and integration. Further guidance on Equality Impact Assessments can be obtained from Strategic Commissioning & Procurement.

## **CHOICE OF PROCUREMENT ROUTE**

### **19.29 What procurement routes are available to the Council?**

Depending on the nature and value of a contract, the Council has the following options for procuring works, goods, services and materials:

- (a) Direct award – a contract is awarded directly to a supplier without a competition stage.
- (b) Approved List – suppliers on a list previously compiled by the Council are invited to bid for contracts within a specific category, value or amount.
- (c) Quotations – only suppliers invited by the Council may bid for the contract.
- (d) Open tendering (Above Threshold Procurements) – a contract opportunity is published, and all interested suppliers are invited to bid.
- (e) Framework – a contract is awarded to a supplier who has pre-qualified to provide services under a framework agreement.

## **G – PROCUREMENT PROCESS**

This section sets out the procurement routes open to the Council and how they are used. The Procurement Thresholds Annex sets out the applicable thresholds at which each procedure may be used.

### **DIRECT AWARD**

#### **19.30 What is a direct award?**

Direct award allows the Council to award a contract to a contractor without a competition, or to make a material change to an existing contract without carrying out a new procurement.

#### **19.31 How is direct award used?**

19.31.1 Direct award can be used for all types of contracts and is particularly relevant for minor projects and the procurement of professional services.

19.31.2 The following criteria apply to direct awards:

- (a) all the terms governing the provision of the works, services and supplies concerned must be set out in the Framework; and
- (b) the objective conditions for determining which of the suppliers on the Framework shall perform them must be set out in the procurement documents.

### **APPROVED LISTS**

#### **19.32 What is an Approved List?**

An Approved List is a list of approved suppliers that has been compiled by the Council for specified categories of work, or for the supply of specified categories of goods, materials or services within specific contract values or amounts.

#### **19.33 When can an Approved List be used?**

19.33.1 Approved Lists should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise.

19.33.2 An Approve List may not be used where the value of the contract exceeds the relevant Procurement Threshold.

#### **19.34 How are Approved Lists compiled?**

19.34.1 When compiling Approved Lists, the Council shall:

- (a) follow the procedure stipulated in this section 219.34;
- (b) include in the Approved List the names and addresses of all suppliers whose requests to be included have been approved by the relevant Head of Service in consultation with the Strategic Commissioning & Procurement Team;



- (c) not enter suppliers on an Approved List until there has been an adequate investigation into both their financial and technical ability to perform the contract, unless such matters will be investigated each time Tenders are invited from that Approved List;
- (d) not preclude suppliers from inclusion on an Approved List other than for good reasons;
- (e) indicate whether a supplier whose name is included in an Approved List is approved for contracts of all, or only some of, the specified categories, values or amounts;
- (f) ensure that the relevant Head of Service is responsible for their Approved List(s) and will co-ordinate all enquiries in respect of those Approved List(s).

19.34.2 Opportunities to join an Approved List must be advertised, and suppliers should be invited to apply for inclusion on the relevant Approved List. The advertisement must be placed to secure widest publicity amongst relevant suppliers and not less than four (4) weeks before the Approved List is first compiled.

### **19.35 What are the review requirements for Approved Lists?**

19.35.1 Approved Lists and their Shortlisting criteria must be reviewed at least annually and re-advertised at least every three (3) years. Review means:

- (a) the reassessment of the financial, technical ability and performance of those suppliers on the Approved List unless such matters will be investigated each time Bidders are invited from that list; and
- (b) the deletion of those suppliers no longer qualified, with a written record kept justifying the deletion.

19.35.2 Suppliers may be entered on an Approved List between the initial advertisement and any re-advertisement provided that the requirements of section 19.34.1 are met.

19.35.3 When an Approved List is re-advertised, a copy of the advertisement must be sent to each supplier on the Approved List, inviting them to confirm that they wish to remain on the Approved List at least four (4) weeks before the advertisement is published. If they wish to remain on the Approved List, they will be reviewed as described in section 19.35.1 above.

19.35.4 All Approved Lists must be open to public inspection.

### **19.36 How are Approved Lists used?**

Where an Invitation to Tender for a contract is limited to suppliers whose names appear on an Approved List maintained, the Invitation to Tender for that contract shall be sent to at least four (4) suppliers on the Approved List. Each supplier invited to Tender must be approved for a contract for the category, value or amount selected. If there are insufficient suitably qualified suppliers to meet the competition requirement, all suitably qualified suppliers must be invited.

## **QUOTATIONS**

### **19.37 What is the Quotation process?**

The Council will issue Invitations to Quote for procurements within the relevant Procurement Thresholds set out in the Procurement Thresholds Annex.

### **19.38 How are Quotations used?**

The process for issuing and evaluating a Quotation is set out in sections 19.57 to 19.63.

## **OPEN TENDERING**

### **19.39 What is open tendering?**

Open tendering applies in accordance with the requirements of the Procurement Regulations.

### **19.40 How is open tendering used?**

All open Tender opportunities will be advertised via Contracts Finder and the advert shall:

- (a) Set out the nature and purpose of the contract;
- (b) indicate how tender documents may be obtained;
- (c) invite tenders;
- (d) state the closing date and time by which valid tenders must be returned via the E-tendering Portal; and
- (e) evaluate the Tender and award the contract in compliance with the Procurement Regulations.

## **FRAMEWORKS**

### **19.41 How are Frameworks established?**

19.41.1 The Council may establish its own Frameworks, which may be single-supplier or multi-supplier.

19.41.2 Any Framework must be established in accordance with the Procurement Regulations.

19.41.3 When setting up a framework, consideration should be given to whether the contract can be sub-divided into lots. The reasoning should be recorded by Strategic Commissioning & Procurement where a contract is not sub-divided in this way.

### **19.42 How are frameworks used?**

1.1.1 The Council may call off from its own Frameworks, or from those established by other public bodies and Crown Commercial Service.

- 19.42.1 The Council may call off from a Framework directly or hold a call off competition among suppliers on the Framework.
- 19.42.2 Where a Framework has been validly approved and established by the Council. Chief Officer's may (in accordance with the Scheme of Delegations and the Procurement Thresholds Annex) issue orders under that Framework, provided that they comply with the scope of the Framework and any conditions applicable to the Framework.
- 19.42.3 The Framework will set out the terms of any call off competition, and the terms on which a successful supplier will be engaged.
- 19.42.4 Frameworks should be monitored by Strategic Commissioning & Procurement to ensure that the total spend under any Framework does not exceed the total permitted.
- 19.42.5 Contracts to be concluded by a call off from a Framework established by another public body shall be carried out in accordance with the rules for the operation of that Framework. Responsible Officers should ensure that the Council is eligible to participate in the Framework, taking advice from Strategic Commissioning & Procurement as necessary.

## **ROUTE TO MARKET**

### **19.43 What are the pre-requisites for a procurement process to start?**

- 19.43.1 A procurement process should not be commenced unless:
- (a) a genuine and timely pre-estimate of the Contract value has been completed in accordance with section 19.20;
  - (b) in the case of a contract for the execution of any works, a business case has been prepared, or Executive approval has been given;
  - (c) there is an approved budget, or relevant approval by the relevant Chief Officer;
  - (d) a strategy report (where applicable) has been approved;
  - (e) a contract manager has been identified for the contract; and
  - (f) a Procurement Request Form has been completed.
- 19.43.2 Consideration of the appropriate route to market shall include options for the Council to undertake its own procurement process or consider awarding contracts in line with the conditions of a compliant Framework available to the Council to use. Before considering the route to market, Responsible Officers should ensure that "make or buy" has been considered, as appropriate, in accordance with section 19.24.
- 19.43.3 Responsible Officers shall, in conjunction with Strategic Commissioning & Procurement, consider the procurement procedures available to the Council with due regard to the Procurement Regulations. For an Above Threshold Procurement, the requirements set out in the Procurement Regulations must be followed strictly when selecting a route to market.

19.43.4 For audit and transparency purposes, proportional details and records on justification of the chosen route to market should be kept by Strategic Commissioning & Procurement.

**19.44 What are the competition requirements for purchases made by the Council?**

19.44.1 The competition requirements for any contract are determined by the Procurement Thresholds set out in the Procurement Thresholds Annex. The procurement route for any contract will be as described in the Procurement Thresholds Annex.

19.44.2 All Relevant Contracts must be subject to competition, unless an exemption applies in accordance with the Exemptions Annex or in an emergency situation, as described in section 19.7.

**19.44.3 An Officer must not enter into separate contracts, nor select a method of calculating the Total Value of a contract in order to minimise the application of these Contract Procedure Rules.**

19.44.4 Where services are currently purchased internally, i.e., from within the Council, for internal provision, the requirement to obtain other Quotations or Tenders does not apply. However, Services may choose to seek alternative Quotations / Tenders for the purpose of market testing.

19.44.5 The sale of goods and materials to staff must be approached with caution and the tendering procedures set out in these Contract Procedure Rules must be used. Advice should be sought from Strategic Commissioning & Procurement to ensure that any such sale is compliant with these Contract Procedure Rules and relevant legislation.

**19.45 What are the requirements for services provided by the Council to external purchasers?**

Any provision of services by the Council to external purchasers must comply with the Local Authority (Goods and Services) Act 1970<sup>67</sup>. Advice should be sought from Strategic Commissioning & Procurement on any such provision of services.

**19.46 What are the requirements for Partnership Arrangements entered into by the Council?**

Partnership Arrangements must comply with these Contract Procedure Rules and applicable legislation. If in doubt, Officers must seek the formal written advice of the Chief Finance Officer and Strategic Commissioning & Procurement before entering into any Partnership Arrangement.

**LIGHT TOUCH REGIME**

**19.47 What is the Light Touch Regime?**

The Procurement Regulations allow the Council to apply the Light Touch Regime, which gives greater flexibility in the procedure the Council must use, to procure certain services<sup>68</sup>.

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<sup>67</sup> [Local Authority \(Goods and Services\) Act 1970](#)

<sup>68</sup> [Public Contracts Regulations, Schedule 3](#)

#### **19.48 When does the Light Touch Regime apply?**

19.48.1 The Light Touch Regime only applies to Above Threshold Procurements.

19.48.2 Although the use of the flexibility permitted by the Light Touch Regime is encouraged, the principles in relation to public procurement, as outlined in these Contract Procedure Rules, still apply. Application of the Light Touch Regime does not negate requirements to comply with these Contract Procedure Rules and follow the Council's formal decision-making process.

### **STANDARDS AND AWARD CRITERIA**

#### **19.49 What standards and award criteria apply to the award of contracts by the Council?**

19.49.1 A Responsible Officer must ascertain which standards (UK and/or international) apply to the subject matter of the contract they are seeking to procure. The Responsible Officer must include in the award criteria for a purchase those standards that are necessary to properly describe the required quality of the subject matter of the contract, and with which the supplier will be expected to comply.

19.49.2 The Responsible Officer must define the Award Criteria for a purchase so as to ensure that M.E.A.T. is secured.

19.49.3 Award Criteria must not include:

- (a) Non-Commercial Considerations<sup>69</sup>;
- (b) matters which are contrary to the terms of the UK-EU Trade and Co-operation Agreement or the Government Procurement Agreement; or
- (c) matters which are anti-competitive within the meaning of the Local Government Act 1988.

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<sup>69</sup> [Local Government Act 1988, section 17](#)

## **H – MECHANISMS FOR FORMAL TENDERS**

The Procurement Regulations set out five options for the procurement of Above Threshold Procurements. This section sets out, in brief, the requirements of each route. When choosing a procurement route, Responsible Officers should always discuss this with Strategic Commissioning & Procurement and Legal Services to ensure that an appropriate and compliant option is used.

### **OPEN PROCEDURE**

#### **19.50 What is the Open Procedure and when is it used?**

19.50.1 The Open Procedure<sup>70</sup> allows any interested Bidder to submit a response to a contract notice issued by the Council.

19.50.2 This procedure is suitable for simple procurements where the requirement is straightforward, for example, the purchase of goods where the requirement can be clearly defined, and the Council is seeking the lowest price for those goods.

19.50.3 There is no pre-qualification stage for Bidders, and Responsible Officers should be aware that this could lead to a large number of responses being received.

### **RESTRICTED PROCEDURE**

#### **19.51 What is the Restricted Procedure and when is it used?**

19.51.1 The Restricted Procedure<sup>71</sup> allows the Council to set pre-qualification criteria which must be met by Bidders before they can submit a response.

19.51.2 The Council may wish to use the Restricted Procedure to ensure that only Bidders of a particular financial standing and/or with specific technical or professional capability are able to respond.

19.51.3 The Restricted Procedure requires that the Council has a fully defined requirement so that Bidders can submit a fully priced Tender without the need for subsequent negotiation.

### **COMPETITIVE PROCEDURE WITH NEGOTIATION**

#### **19.52 What is the Competitive Procedure with Negotiation and when is it used?**

19.52.1 The Competitive Procedure with Negotiation<sup>72</sup> allows the Council to negotiate with Bidders after they have submitted a Tender. This procedure includes a pre-qualification stage to ensure that appropriate Bidders respond.

19.52.2 This procedure may be used where it is not possible for the Council to fully define its requirement. The following conditions apply to the use of the Competitive Procedure with Negotiation<sup>73</sup>:

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<sup>70</sup> [Public Contracts Regulations 2015, Regulation 27](#)

<sup>71</sup> [Public Contracts Regulations 2015, Regulation 28](#)

<sup>72</sup> [Public Contracts Regulations 2015, Regulation 29](#)

<sup>73</sup> [Public Contracts Regulations 2015, Regulation 26\(4\)](#)

- (a) the Council's needs cannot be met without adaptation of readily available solutions; or
- (b) the Council's requirement includes design or innovative solutions; or
- (c) the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity, or the legal and financial make-up of the requirement, or because of risks attaching to them; or
- (d) the technical specifications cannot be established with sufficient precision by the Council with reference to a standard, common technical specification or technical reference; or
- (e) an Open or Restrictive Procedure procurement has been run but only irregular or unacceptable Tenders have been submitted.

19.52.3 The Invitation to Tender should set out the requirement in sufficient detail so that Bidders are clear about the subject matter of the contract, the minimum requirements, and the Award Criteria.

19.52.4 The use of this procedure should be justified, and the Responsible Officer should ensure that the reasons for its use are recorded.

19.52.5 Under the Competitive Procedure with Negotiation, the Council does not have to negotiate with Bidders. If an appropriate Tender is received, the Council may award the contract on the basis of that Tender.

## **COMPETITIVE DIALOGUE**

### **19.53 What is a Competitive Dialogue and when is it used?**

19.53.1 A Competitive Dialogue<sup>74</sup> is similar to the Competitive Procedure with Negotiation. It includes a pre-qualification stage and allows the Council to negotiate with Bidders. The requirements set out in section 19.52.2 to 19.52.4 above will also apply to a Competitive Dialogue.

19.53.2 A Competitive Dialogue allows more flexibility around negotiation with Bidders and negotiation can take place without submission of initial Tenders. The Council can use dialogue with suppliers to define the best way of meeting its requirement.

## **INNOVATION PARTNERSHIP**

### **19.54 What is an Innovation Partnership and when is it used?**

19.54.1 An Innovation Partnership<sup>75</sup> allows the Council to procure the research and development and product / service aspects of a contract in a single procurement. This procedure can be used where there is no appropriate solution already available on the market.

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<sup>74</sup> [Public Contracts Regulations 2015, Regulation 30](#)

<sup>75</sup> [Public Contracts Regulations 2015, Regulation 31](#)

19.54.2 An Innovation Partnership has a pre-qualification stage to ensure that appropriate Bidders respond. It requires the Council to set out the need for innovation and the Award Criteria for the contract in the Invitation to Tender.



## **I – TENDERS AND QUOTATIONS**

### **INVITATIONS TO TENDER**

The Council is required, in certain circumstances, to issue an Invitation to Tender to potential Bidders for a contract. The Council may also wish to issue an Invitations to Tender in other circumstances. This section sets out the requirements for an Invitation to Tender and the process the Council must follow when inviting Tenders.

#### **19.55 When will the Council use an Invitation to Tender?**

Invitations to Tender are used when the Council wishes, or is required, to invite Tenders from suppliers. The Procurement Thresholds Annex sets out when Tenders must be invited for contracts at specified values.

#### **19.56 What information should an Invitation to Tender contain?**

19.56.1 An Invitation to Tender should state that a Tender will not be considered unless it is received by the date and time stipulated. Tenders delivered after the deadline will not be considered.

19.56.2 All Invitations to Tender must include the following:

- (a) a specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- (b) a requirement for Bidders to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the Bidder to any other party (except where such disclosure is made in confidence for a necessary purpose);
- (c) a requirement for Bidders to complete fully and sign all Tender documents including a form of Tender and certificates relating to canvassing and non-collusion;
- (d) a notification that Tenders are to be prepared at the Bidders expense;
- (e) a description of the Award Procedure and, unless defined in a prior advertisement, a definition of the Award Criteria;
- (f) details of how Bidders should submit their Tender;
- (g) a stipulation that any Tenders submitted by fax or e-mail are not allowed; and
- (h) the method by which arithmetical errors discovered in the submitted Tenders are to be dealt with. In particular, whether the overall price prevails over the rates in the Tender or vice versa.

19.56.3 All Invitations to Tender must specify the goods, services or works that are required, together with the terms and conditions of contract that will apply (see section 19.76)

19.56.4 The Invitation to Tender must state that the Council is not bound to accept any Tender and can stop the Tender process at any time.

19.56.5 All Bidders invited to Tender 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.

## **INVITATIONS TO QUOTE**

For lower value contracts where an Invitation to Tender is not required, the Council will issue an Invitation to Quote to potential Bidders for a contract. An Invitation to Quote is a simpler process than an Invitation to Tender. This section sets out the requirements for an Invitation to Quote and the process the Council must follow when inviting Quotations.

### **19.57 When will the Council use an Invitation to Quote?**

Invitations to Quote are used when the Council wishes, or is required, to invite Quotes from suppliers. The Procurement Thresholds Annex sets out when Quotes must be invited for contracts at specified values.

### **19.58 What information should an invitation to Quote contain?**

19.58.1 An Invitation to Quote should state that a Quote will be considered unless it is received by the date and time stipulated. Quotes delivered after the deadline will not be considered. A minimum of two (2) weeks must be given for the return of Quotations except in exceptional circumstances to be agreed with Corporate Procurement.

19.58.2 All Invitations to Quote must include the following:

- (a) a specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- (b) a requirement for Bidders to declare that the Quotation content, price or any other figure or particulars concerning the Quotation have not been disclosed by the Bidder to any other party (except where such disclosure is made in confidence for a necessary purpose);
- (c) a requirement for Bidders to complete fully and sign all Quotation documents including a form of Quotation and certificates relating to canvassing and non-collusion;
- (d) a notification that Quotations are to be prepared at the Bidders expense;
- (e) a description of the Award Procedure and, unless defined in a prior advertisement, a definition of the Award Criteria; and
- (f) details of how Bidders should submit their Quotation;
- (g) a stipulation that any Quotation submitted by fax or e-mail will be rejected unless it has been specifically requested by the Council (see section 19.61.2 below).

19.58.3 All Invitations to Quote must specify the goods, services or works that are required, together with the terms and conditions of contract that will apply (see section 19.76).

19.58.4 The Invitation to Quote must state that the Council is not bound to accept any Quotation and can stop the Quotation process at any time.

## **SUBMISSION OF TENDERS AND QUOTATIONS (ELECTRONIC TENDERING)**

### **19.59 How should Tenders be submitted?**

19.59.1 All Tenders must be submitted using the Council's electronic tendering system, i.e., the E-tendering Portal.

19.59.2 Tenders submitted by electronic means shall ensure that:

- (a) evidence that the transmission was successfully completed is obtained and recorded through the system; and
- (b) Tenders are not opened until the deadline for submission has passed.

19.59.3 Tenders received by fax or e-mail will be rejected.

### **19.60 What are the time periods allowed for submission of a Tender?**

19.60.1 The time periods applicable to submission of Tenders will be as set out in the Procurement Regulations.

### **19.61 How should Quotations be submitted?**

19.61.1 Where Invitations to Quote are published on the E-tendering Portal, the provisions of section 19.59.2 shall apply.

19.61.2 Where the E-tendering Portal is not used for an Invitation to Quote:

- (a) Bidders are permitted to submit their Quotation via email to the email address provided in the Invitation to Quote;
- (b) an audit trail shall be put in place in order to uphold the principles set out in these Contract Procedure Rules; and
- (c) a record shall be made of the Quotations received, including names and addresses of Bidders and the date and time of opening.

## **CLARIFICATION OF TENDERS AND QUOTATIONS**

### **19.62 When may Bidders and the Council seek clarification in relation to a Tender?**

19.62.1 The Council is permitted to provide clarification to an Invitation to Tender to potential and actual Bidders. Clarification questions should be submitted through the E-tendering Portal.

19.62.2 The Council may seek clarification from a Bidder in relation to a Tender in writing or in a meeting.

### **19.63 When may the Council seek clarification in relation to a Quotation?**

The Council may seek clarification from a Bidder in relation to a Quotation in writing.

## **EVALUATION OF TENDERS**

**19.64 How are Tenders evaluated and awarded?**

Tenders must be evaluated and awarded in accordance with the Award Criteria.

**19.65 What happens if there are arithmetical errors in a Tender?**

19.65.1 The arithmetic in compliant Tenders must be checked. If arithmetical errors are found they should be notified to the Bidder, who should be requested to confirm the correct arithmetic, or withdraw their Tender.

19.65.2 Alternatively, if the Bidder has provided contract rates in their Tender and these are stated to prevail over the overall contract price, the Council may request that the Bidder submits an amended Tender with a contract price based on the rates in the Tender.

**19.66 How are Tenders based solely on price evaluated?**

19.66.1 If the Award Criteria for a Tender are solely based on contract price, the Council may only select the lowest price (if payment is to be made **by** the Council) or the highest price (if payment is **to** be made to the Council), unless otherwise approved by:

- (a) the Executive, after considering a report from the appropriate Head of Service; or
- (b) a duly authorised Officer, following consultation with the appropriate Executive Member.

A record of the reason for accepting a different Tender must be made, as appropriate.

**19.67 With whom may information be shared in relation to Tenders?**

19.67.1 Save as otherwise set out in this section 19.67:

- (a) confidentiality of Tenders and the identity of Bidders must be preserved at all times; and
- (b) information about one Bidder's response must not be given to another Bidder.

19.67.2 The Responsible Officer should debrief in writing all those Bidders who submitted a Tender about the reasons why they were unsuccessful and the characteristics and relative advantages of the successful Bidder. This debrief should normally include:

- (a) how the Award Criteria were applied; and
- (b) the prices or range of prices submitted, in either case not correlated to Bidders' names.

19.67.3 The same information may be given to those who responded in any pre-Tender selection process. No other information should be given without taking the advice of the Chief Finance Officer and the Head of Strategic Commissioning & Procurement.

**CONTRACT AWARD**

## **19.68 What are the formalities for publishing information about a Contract Award?**

19.68.1 Where a contract with a value above the Low Value Contracts Threshold (as defined in the Procurement Thresholds Annex) is awarded, the following information shall be published on Contracts Finder:

- (a) name of contractor;
- (b) date on which the contract is entered into;
- (c) value of the contract; and
- (d) whether the Contractor is a SME or voluntary and community vector enterprise (VCSE).

19.68.2 For all contracts subject to the Procurement Regulations, Contract Award Notices shall take into account any requirements and conditions around standstill period<sup>76</sup>, and an individual contract report is to be completed<sup>77</sup>.

## **19.69 When and how should Bidders be notified of a Contracting Decision?**

Prospective Bidders must be notified in writing at the same time, and as soon as possible, of any Contracting Decision. If a Bidder requests, in writing, the reasons for a Contracting Decision, the Responsible Officer must give the reasons in writing as soon as possible.

## **CONTRACT RECORDS**

### **19.70 What records must be kept in relation to contracts?**

19.70.1 Where the Total Value of a contract is below the Procurement Threshold (as set out in the Procurement Threshold Annex) for supplies of goods, materials, consultants or services the Responsible Officer must ensure that the following documents are kept:

19.70.2 Invitations to Quote and any Quotations received;

- (a) a written record of:
- (b) any exemption and reasons for it; and
- (c) if the lowest price is not accepted, the reasons for this; and
- (d) written records of any communication with the successful Contractor.

19.70.3 Where the Total Value of a contract is above the Procurement Threshold (as set out in the Procurement Threshold Annex) the Responsible Officer must record and retain records of:

- (a) any pre-Tender market research undertaken;
- (b) the method for obtaining bids;

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<sup>76</sup> [Public Contracts Regulations 2015, Regulation 87](#)

<sup>77</sup> [Public Contracts Regulations 2015, Regulation 84](#)

- (c) any Contracting Decision and the reason for it;
- (d) any exemption that has been applied, together with the reasons for it;
- (e) the Award Criteria;

19.70.4 Tender documents sent to and received from Bidders;

- (a) the contract documents;
- (b) clarification questions submitted and answers provided to Bidders
- (c) any post-Tender negotiation (to include minutes of meetings);
- (d) written records of any communication with Bidders during the Tender process;
- (e) written records of any communication with the successful Contractor throughout the life of the contract; and
- (f) post-contract evaluation and monitoring.

19.70.5 Written records required by this section 19.70 must be kept for six (6) years (twelve years if the contract is under seal) after the final settlement of the contract. However, documents which relate to unsuccessful Bidders may be electronically scanned or stored by some other suitable method after twelve months from award of contract, provided there is no dispute about the award.

**19.71 What are the Freedom of Information requirements in relation to contracts?**

The Freedom of Information Act 2000 gives a general right of public access to all types of 'recorded' information held by public authorities, sets out exemptions from that general right, and places a number of obligations on public authorities with regard to the disclosures of information. The Council will, as a general rule, allow public access to recorded information where possible and the Contractor shall agree to the Council making any disclosures in accordance with the Act.

**WITHDRAWAL OF TENDER**

**19.72 What happens if a successful Bidder withdraws their Tender?**

If a Bidder withdraws their Tender after being awarded the contract, the Council will not (unless the Executive resolves otherwise) accept future Tenders from that Bidder for a period of two (2) years from the date of withdrawal.

**NOMINATED SUB-CONTRACTORS**

**19.73 What is the process for the Council to nominate a Sub-contractor?**

19.73.1 The following provisions shall have effect where the Council proposes to enter into a contract for the execution of work with a person (the "Main Contractor") and also proposes to nominate to the Main Contractor one or more Sub-contractors for the

execution of work or the supply of goods, materials or services within the contract with the Main Contractor.

19.73.2 The Council will issue an Invitation to Tender to potential Sub-contractors in accordance with the relevant provisions of this section I, and:

- (a) the terms of the Invitation to Tender shall include a requirement that the successful Bidder will enter into a contract with the Main Contractor, under which the Main Contractor will be indemnified by the Sub-contractor in respect of its obligations to the Council which relate to the delivery / discharge of the work or goods, materials or services to be provided by the Sub-contractor; and
- (b) the relevant Head of Service (or their authorised representative) shall nominate to the Main Contractor the most appropriate Bidder as Sub-contractor. Provided that, where the successful Tender is other than the lowest price received by the Council, the circumstances shall be reported appropriately.

19.73.3 Tenders received under this section 19.73 must comply with the relevant provisions of this section I.

## **J – CONTRACT AND OTHER FORMALITIES**

This section sets out the contract requirements for purchases made by the Council, including provisions that must be included in certain contracts, signing formalities, and the role of Legal Services.

### **CONTRACT DOCUMENTS**

#### **19.74 What is the role of Legal Services in relation to contracts?**

All contracts should be sent to Legal Services for preparation and registration. Legal Services will be responsible for ensuring that contracts are appropriately executed by the Council.

#### **19.75 When must a contract be entered into?**

19.75.1 With the exception of minor cash transactions made in accordance with the Financial Procedure Rules, every contract for the execution of work or the supply of goods, materials or services shall be created only by:

- (a) the issue of an official order raised via the Council's financial system; or
- (b) where an Invitation to Tender has been issued, the completion of a formal written contract.

19.75.2 Section 19.75.1(b) above does not apply if the relevant Head of Service or their authorised representative) certifies that, owing to the nature of the proposed contract, the interests of the Council will be adequately protected by the issue of an official order form as in section 19.75.1(a) above.

19.75.3 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances (as agreed in writing by the Chief Finance Officer) the Chief Finance Officer.

#### **19.76 What are the requirements for contracts entered into by or on behalf of the Council?**

19.76.1 Every Relevant Contract over the Low Value Procurement Threshold purchases, for works, supplies of goods, materials, consultants or services must also as a minimum state clearly:

- (a) that the Contractor may not assign or sub-contract without the prior written consent of the Council;
- (b) any insurance(s) the Contractor is required to have;
- (c) any health and safety requirements the Contractor is required to follow;
- (d) any relevant ombudsman requirements;
- (e) the requirements for ensuring compliance with data protection legislation;
- (f) that charter standards are to be met, if relevant;



- (g) the Council's requirements in respect of Freedom of Information and Human Rights;
- (h) if relevant, that agents used to let contracts must comply with these Contract Procedure Rules;
- (i) a right of access for the Council to relevant documentation and records of the Contractor for monitoring and audit purposes; and
- (j) whistleblowing arrangements.

19.76.2 All contracts must include the following paragraph:

***“The Contractor recognises that the Council is under a duty to act in a manner which is compatible with the Convention rights as defined by Section 1(1) of the Human Rights Act 1998 (“Convention Rights”). This duty includes a positive obligation on the Council to ensure that contractors providing services on the Council’s behalf act in a way which is compatible with the Convention Rights. The Contractor therefore agrees to provide the Services and comply with its other obligations under this contract in a manner which is compatible with the Convention Rights.”***

19.76.3 Where payment in advance is required under a contract, the formal written approval of the Head of Strategic Commissioning & Procurement, following due diligence of the organisation, is required. In the event of industry standards leading to a common accepted practice of advance payments (e.g., software licences) this would only need to be sought once.

#### **19.77 When must the advice of Legal Services be sought in relation to a contract?**

Notwithstanding that all contracts should be sent to Legal Services for review, the formal advice of Legal Services must be sought for a Contract that includes one or more of the following features:

- (a) the Total Value of the procurement is above the Key Decision threshold set out in the Financial Limits Annex;
- (b) it involves financial lease arrangements;
- (c) it is proposed to use a contractor’s own terms; or
- (d) it is particularly complex or high risk.

### **EXECUTION OF CONTRACTS**

#### **19.78 What are the execution formalities for Council contracts?**

19.78.1 All Contracts shall be executed by an Officer with authority to do so under the Council’s Scheme of Delegations.

19.78.2 The use of electronic signatures is permitted provided a process has been established and approved by Legal Services.

19.78.3 The Officer responsible for securing the signature of the Contractor must ensure that the person signing for the Contractor has authority to bind it. If the Officer is uncertain, this must be referred to Legal Services.

19.78.4 Where contracts are completed by each side adding their formal seal, the fixing of the Council's seal must be witnessed by an Officer on behalf of the Monitoring Officer. Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal.

19.78.5 The Council's seal must not be affixed without the authority of the Council, the Executive or a Chief Officer / Head of Service acting under delegated powers.

#### **19.79 When must a contract be sealed?**

19.79.1 A contract must be sealed where;

- (a) the Council wishes to enforce the contract for more than six years after it ends;
- (b) the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services;
- (c) there is any doubt about the authority of the person signing for the Contractor;  
or
- (d) the Total Value of the contract is expected to exceed the Procurement Threshold for works, goods, services or materials, consultancy, or a Concession Contract as set out in the Procurement Thresholds Annex.

19.79.2 Notwithstanding the above, there is no requirement for a contract to be sealed if the Monitoring Officer has determined that this is not required.

### **LIQUIDATED DAMAGES**

#### **19.80 When should a liquidated damages provision be included in a contract?**

Every formal written contract, which exceeds the Low Value Contract Threshold set out in the Procurement Thresholds Annex and is for the execution of works shall provide for liquidated damages to be paid by the Contractor in case the terms of the contract are not duly performed.

### **BONDS**

#### **19.81 When is a Bond required?**

The Responsible Officer must consult the Chief Finance Officer about whether a Bond is needed where:

- (a) the Total Value of a contract exceeds the threshold set out in the Financial Limits Annex ; or
- (b) it is proposed to make stage payments or other payments in advance of receiving the whole of the subject matter of the contract.

## PARENT COMPANY GUARANTEES

### 19.82 When is a parent company guarantee required?

The Responsible Officer must consult the Chief Finance Officer about whether a parent company guarantee is required where a Bidder is a subsidiary of a parent company and:

- (a) the Total Value of the contract exceeds the threshold set out in the Financial Limits Annex;
- (b) the Contract Award is based on evaluation of the parent company; or
- (c) there is concern about the financial stability of the Bidder.

## PREVENTION OF CORRUPTION

### 19.83 What measures must be taken to prevent corruption?

19.83.1 High standards of conduct are obligatory for all Officers. A Responsible Officer must comply with the Officer Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the Responsible Officer to prove that anything received from a Bidder or Contractor was not received corruptly. Corrupt behaviour will lead to dismissal and is a crime under statutes referred to in section 19.83.2.

19.83.2 The following clause must be included in every written contract entered into by the Council:

***“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 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 Members, Contractors or employees.”***

Any clause limiting the Contractor’s liability shall not apply to this clause.

### 19.84 How is suspected corruption investigated?

Any suspected irregularity shall be referred to the Internal Audit Manager who shall notify the Chief Finance Officer and Monitoring Officer where necessary. Any examination of Contractors’ or Bidders’ books and records undertaken because of any such suspected irregularity shall be conducted by the Internal Audit Manager. If, in the investigation of any irregularity, the Chief Finance Officer considers that disciplinary procedures may need to be invoked, the appropriate Head of Service,

Head of Legal & Democratic Services and Head of HR Client Services shall also be notified.

## **DECLARATION OF INTERESTS**

### **19.85 When must Members and Officers declare in interest in relation to a contract?**

19.85.1 If it comes to the knowledge of a Member or an Officer that a contract in which he or she has a pecuniary interest has been, or is proposed to be, entered into by the Council, they shall immediately give written notice to the Monitoring Officer.

19.85.2 Such written notice is required irrespective of whether the pecuniary interest is direct or indirect. An indirect pecuniary interest arises in respect of a contract to which the member or employee is not directly a party.

19.85.3 A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of issued share capital (whichever is the less) is not a pecuniary interest for the purposes of this section 19.85.

19.85.4 The Monitoring Officer shall maintain a record of all declarations of interests notified by Members and Officers.

19.85.5 The Monitoring Officer shall ensure that the attention of all Members is drawn to the national code of local government conduct.

19.85.6 For the avoidance of doubt, the Member Code of Conduct, the Officer Code of Conduct and relevant provisions in the Constitution relating to declarations of interests shall apply to Members and Officers, as applicable.

## **K – THE LIFE OF THE CONTRACT**

### **CONTRACT MANAGEMENT**

#### **19.86 What are the Council's contract management requirements?**

19.86.1 Proportionate contract management, taking into account the risks to the Council in relation to a contract, must be an integral part of considerations when planning a procurement. Responsible Officers should ensure that there is a dedicated contract manager who is suitably qualified and experienced, and who will have detailed knowledge of the contract, and that appropriate contract management systems that are aligned to contract and corporate objectives, Value for Money / Best Value and performance improvement are in place.

19.86.2 Payments should be made in accordance with relevant contract terms and the Procurement Regulations and in a timely manner to avoid the payment of any interest charges.

19.86.3 The Council has a Contract Monitoring Framework, which sets out how contracts should be monitored during their life. Responsible Officers must comply with the Contract Monitoring Framework in respect of contracts for which they are responsible.

19.86.4 Strategic Commissioning & Procurement will ensure that:

- (a) there is compliance with the specification, pricing and contract terms for any procurement;
- (b) contract performance and key performance indicators (where applied) are monitored and enforced on a regular basis with any reduction in performance addressed;
- (c) regular budget monitoring and cost reconciliation of payments takes place to ensure that the contract sum is not exceeded; and
- (d) contract risk assessments are conducted at regular intervals.

#### **19.87 What happens if a Contractor fails to comply with the contract?**

19.87.1 If a Contractor fails to comply with any of the provisions of a contract, the contract manager must try to secure compliance in accordance with the terms of the contract. Proper records must be kept regarding contract failings and any corrective measures put forward.

19.87.2 If this is not successful, the matter should be referred promptly to Strategic Commissioning & Procurement and their advice should be sought as to what action should be taken to protect the Council's interests.

#### **19.88 How are disputes with Contractors managed?**

Where practicable, all Contracts should contain a dispute resolution procedure. If there is a contract dispute, the contract manager must follow the dispute resolution provisions contained in the contract and seek legal advice from Legal Services where necessary. Advice should also be sought from the Chief Finance Officer regarding the financial implications of any dispute.

## **CONTRACT EXTENSIONS AND VARIATIONS**

### **19.89 When and how may contracts be extended and/or varied?**

19.89.1 Contracts may only be extended or varied where:

- (a) the contract permits the extension or variation;
- (b) the extension or variation complies with the Procurement Regulations and any other applicable legislation;
- (c) the extension or variation is approved by Chief Finance Officer and the Monitoring Officer.

19.89.2 Guidance should be sought from Strategic Commissioning & Procurement, with confirmation sought from Legal Services (where required) in relation to any proposed extension or variation of a contract to ensure that it is compliant. Crown Commercial Service also provides guidance on this<sup>78</sup>.

19.89.3 Any extension or variation of an Above Threshold Procurement must be made in accordance with the Procurement Regulations.

19.89.4 Any approval of an extension or variation to a contract must be notified to Strategic Commissioning & Procurement to be recorded in the Contracts Register .

19.89.5 Any contract extension entered into that is not envisaged by the original contract for the relevant procurement will be considered a breach of these Contract Procedure Rules and section 19.4 will apply. Where such an extension is deemed to be required, advice should be sought from Strategic Commissioning & Procurement on how to procure the required services in a compliant way.

## **TERMINATION OF CONTRACTS**

### **19.90 What termination provisions should contracts include?**

19.90.1 Every contract entered into should include appropriate provisions for its termination. Responsible Officers should seek advice from Legal Services on the termination clause(s) that should be included in a particular contract.

19.90.2 Termination provisions should include:

- (a) the circumstances in which the Council and the Contractor may terminate the contract;
- (b) any notice requirements for termination; and
- (c) the consequences of termination, including (where appropriate), the exit provisions that will apply.

19.90.3 In any event, every contract in respect of an Above Threshold Procurement should include a provision that allows the Council to terminate the contract if:

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<sup>78</sup> [Guidance on Amendments to Contracts During their Term](#)

- (a) the contract is subject to a modification that would have required a new procurement under the Procurement Regulations; or
- (b) at the time of the Contract Award, the Contractor should have been excluded from the procurement for one of the reasons set out in the Procurement Regulations<sup>79</sup>.

19.90.4 Legal Services will provide advice to Responsible Officers on the appropriate wording to be included in relevant contracts.

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<sup>79</sup> [Public Contracts Regulations, Regulation 73](#)

## **L – OTHER TYPES OF PROCUREMENT**

### **COMMISSIONING A CONSULTANT**

#### **19.91 What is the process for commissioning a Consultant?**

19.91.1 The engagement of consultant architects, engineers and surveyors or other professional consultants shall be subject to the process outlined in the Commissioning a Consultant Policy.

19.91.2 In summary, the following process shall apply:

- (a) a business case must be produced evidencing:
  - (i) the need for the consultant;
  - (ii) the outcome to be achieved;
  - (iii) how the work will be managed; and
  - (iv) the mechanism for funding the work; and
- (b) the engagement will, in the first instance, be undertaken through the NEPRO Solution.

### **PROCUREMENT OF AGENCY STAFF**

#### **19.92 How are agency staff procured?**

19.92.1 Approval to appoint short-term agency staff must be obtained through a Vacancy Control Form.

19.92.2 Once approval has been obtained, confirmation of the approval and a job description must be sent to [agencyprocurement@middlesbrough.gov.uk](mailto:agencyprocurement@middlesbrough.gov.uk).

19.92.3 The vacancy will, in the first instance be posted to agencies through the Neutral Vendor Framework. Only in circumstances where recruitment is unsuccessful via the Neutral Vendor Network will an alternative procurement solution be undertaken.

19.92.4 Candidates will be identified and interviewed. The recruiting manager will appoint and manage the successful agency staff member and be the Responsible Officer for timesheet approval and recording.

19.92.5 Senior or specialist roles will be sought from the Local Government Resourcing Partnership or other associated frameworks. In these circumstances, the Responsible Officer should seek the advice of Strategic Commissioning & Procurement on the procurement of such agency staff after a Vacancy Control Form has been approved.

19.92.6 In all cases, agency positions will be considered to be inside IR35, unless specifically determined otherwise by HR and/or Legal Services.

### **CONCESSION CONTRACTS**

#### **19.93 What is a Concession Contract?**



19.93.1 A “Concession Contract” is one under which the Council provides an opportunity to a supplier to exploit the delivery of works, goods or services and the supplier receives benefit or payment for those directly from a third party rather than the Council paying for them directly.

19.93.2 A Concession Contract must involve the transfer of an operating risk to the supplier, the risk transferred must involve real exposure to the market, and the services must be for the benefit of the Council or its residents.

19.93.3 The advice of Legal Services and Strategic Commissioning & Procurement should be sought to confirm whether a contract is a Concession Contract.

**19.94 How is the value of a Concession Contract determined?**

The value of a Concession Contract is the estimated total turnover that the supplier can generate in consideration for the works, goods or services over the duration of the contract, net of VAT, as estimated by the Council.

**19.95 What are the rules that apply to procurement of Concession Contracts?**

There are specific requirements for the procurement of Concession Contracts that are Above Threshold Procurements<sup>80</sup>. Advice should be sought from Strategic Commissioning & Procurement in relation to any such Concession Contract.

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<sup>80</sup> [Concession Contracts Regulations 2016, Regulation 9](#)

**ANNEX 1 – ROLES AND RESPONSIBILITIES OF OFFICERS AND MEMBERS**

| Role   | Responsibility   |
|--|--|
| <b>Chief Officer</b>   | <ul style="list-style-type: none"> <li>• Ensuring own compliance with these Contract Procedure Rules and applicable legislation and guidance.</li> <li>• Ensuring compliance of staff for which responsible for compliance with these Contract Procedure Rules and applicable legislation and guidance.</li> <li>• Approval of commercial business case, route to market strategy and contract management arrangements in accordance with these Contract Procedure Rules.</li> <li>• Ensuring that Contract Award decisions are made in accordance with the Council's Constitution and the Scheme of Delegations.</li> <li>• Engaging in a timely manner with Strategic Commissioning &amp; Procurement to develop a procurement pipeline, maintain the contracts register and identify a named contract manager for each contract awarded.</li> </ul>   |
| <b>Head of Service (Strategic Commissioning &amp; Procurement)</b> | <ul style="list-style-type: none"> <li>• Ownership of these Contract Procedure Rules.</li> <li>• Ensuring that the governance and assurance framework for commercial considerations is complied with robustly and effectively across the Council.</li> </ul>   |
| <b>Responsible Officers</b>  | <ul style="list-style-type: none"> <li>• Ensuring that projects involving procurement are managed effectively to ensure compliance with these Contract Procedure Rules.</li> <li>• Ensuring there is a genuine and legitimate business requirement for the spend and an approved budget.</li> <li>• Ensuring that appropriate governance is exercised over decisions to approve expenditure.</li> <li>• Drafting a fit for purpose specification that includes appropriate contract management arrangements.</li> <li>• Supporting the definition of an appropriate route to market for each contract and ensuring that it is followed and that any deviation from the approved approach is justified.</li> <li>• Making a genuine estimate of total contract value over the contract term before commencing any procurement activity.</li> <li>• Conducting procurement activities and contract modifications and extensions for contracts under the financial threshold set out in the Procurement Thresholds Annex.</li> <li>• Engaging with Strategic Commissioning &amp; Procurement for any Above Threshold Procurement.</li> <li>• Seeking guidance from Strategic Commissioning &amp; Procurement on the application of these Contract Procedure Rules and applicable legislation to contracts.</li> </ul> |

|   |   |
|---|---|
|   | <ul style="list-style-type: none"> <li>• Where appropriate, applying exemptions to these Contract Procedure Rules.</li> </ul>   |
| <p><b>Executive Members</b></p>                         | <ul style="list-style-type: none"> <li>• Making strategic decisions in line with the Constitution, including the Budget and Policy Framework within which procurement plans are developed and implemented.</li> <li>• Complying with these Contract Procedure Rules to the extent that they have specific procedural responsibilities.</li> <li>• Ensuring compliance with the Member Code of Conduct, including in relation any interest they may have.</li> <li>• Ensuring that they are not involved in the commissioning and/or procurement processes that operate in the Officer domain.</li> </ul>  |
| <p><b>Strategic Commissioning &amp; Procurement</b></p> | <ul style="list-style-type: none"> <li>• Overall strategic ownership of procurement and commercial activity on behalf of the Council.</li> <li>• Engaging proactively with Service Areas to determine the procurement pipeline and how this is facilitated in a proportional and timely manner.</li> <li>• Supporting Service Areas in assessing the commercial considerations of planned procurements at the design stage, including drafting of the route to market strategy and contract management arrangements.</li> <li>• Working with Service Areas to develop proportional and informed category strategies.</li> <li>• Exploring options for using pre-existing public sector compliant contractual arrangements where this represents Best Value, including available Frameworks</li> <li>• Exploring opportunities for collaboration with other public sector bodies where appropriate.</li> <li>• Ensuring compliance with all applicable procurement processes, including under the Procurement Regulations.</li> <li>• Seeking to develop strategic opportunities for synergy between contracts to enable the Council to meet its Best Value duty.</li> </ul> |

## **ANNEX 2 – LETTING OF SCHOOL BASED CONTRACTS**

This section outlines the Department for Education & Skills (DfES) regulations ensuring compliance with the requirements of the Fair Funding Scheme when letting contracts. The Fair Funding Scheme has been drawn up in consultation with schools and is approved by the Secretary of State. The Scheme sets out the financial relationship of schools under delegation with the Council and the areas it covers are required by regulations made under the School Standards and Framework Act 1988.

### **1. What are the considerations for letting school-based contracts?**

- 1.1 Section 2.9 of the Fair Funding Scheme requires that Governing Bodies maintain a register of business interests of governors and Head teachers. This does not preclude participation in discussions about the relative merits of Quotations and Tenders but does mean those with a declared interest cannot vote on the final decision on the award of a contract. Those with declared interests must not be given any information about the Quotations or Tenders of other Contractors until after the deadline for submission of all Quotations and Tenders has passed.
- 1.2 Governing Bodies are acting as agents of Middlesbrough Council when they enter into contracts using funds delegated by the Authority. This means that Governing Bodies enter into contracts on behalf of Middlesbrough Council. Schools must adhere to the terms and conditions within the contract. Section 6.2.3 of the Fair Funding Scheme enables the Authority to charge any costs to a school's delegated budget awarded against it by a court for breach of contract by a school where they have failed to heed LEA advice.
- 1.3 The status of Governing Bodies of aided and foundation schools gives them additional responsibilities. Governing Bodies of these schools are not acting as agents of the LEA and are not bound by the Financial Scheme when exercising their additional powers or discharging additional responsibilities.
- 1.4 The provision of services and facilities by the LEA are covered by Section 8 of the Fair Funding Scheme. Although not a legally binding contract the terms and conditions of the Service Level Agreement set out the respective responsibilities of schools and the LEA. The Executive Director of Children Families & Learning will act as arbiter should a dispute arise.
- 1.5 Section 1.5 of the Fair Funding Scheme suggests the appropriate delegation to Head teachers. This includes delegation to enter into contracts. Governing Bodies are free to determine their own levels of delegation to Head teachers. In exercising delegated powers Head teachers must abide by the contracting processes referred to in this document.
- 1.6 Section 2.10 of the Fair Funding Scheme does not restrict schools to selecting Contractors from Approved Lists. However, where schools choose Contractors who are not on Middlesbrough Council's approved list they must satisfy themselves as to the health and safety competence and insurance cover of the Contractor. Schools should also have regard to Child Protection legislation and satisfy themselves that Contractors have made adequate arrangements to monitor the activities of employees where they will have access to children during the course of their work. It is essential that schools record their reasons for assessing and selecting a Contractor when they let a contract. This is not only considered good practice but also provides essential evidence to safeguard schools and the LEA from litigation claims.

- 1.7 Schools are advised that selecting Contractors from Middlesbrough Council's approved list is the preferred method of obtaining quotes and Tenders. Details of Contractors on the approved list are available, including the type and value of work for which each Contractor is approved and their status for tax deduction under the Construction Industry Taxation Scheme (CITS) (see section 7.2 of the Finance Scheme and Annex 5 of the Fair Funding Scheme).
- 1.8 Schools are required to seek at least three written Quotations for any contract for goods, materials, services & consultants valued between £16,000 and £53,099. For works at least three written Quotations are required for any contract valued between £16,000 and £106,099.
- 1.9 Schools are required to seek Tenders for any goods, materials, services or consultants valued over £53,100 and works valued over £106,100.
- 1.10 In all cases where Quotations or Tenders are sought schools should accept the bid that is most economically advantageous Tender. The reasons for accepting a Quotation or Tender must always be recorded in the minutes of Governing Body meetings where Head teachers have used delegated powers referred to above.
- 1.11 All Tenders should be accepted by the full Governing Body (subject to the withdrawal from the decision-making process by those with business interests (see above) and delegation to the Head teacher by the Governing Body (see above)). In exceptional circumstances where the lowest Tender is not accepted the Governing Body must record its decision in the minutes of the meeting.

Governing Bodies (or Head teachers with delegated powers) must ensure that Bidders have adequate public liability insurance cover of at least £5m for the work or goods and services covered by the contract before Contractors are appointed.

## **20 COUNCIL COMPANIES**

The Council has various statutory powers to enable it to set up a company which may take various forms, including either by partly or wholly owning that company.

The Council must effectively manage the relationship between the Council and the company to ensure the company has the freedom to manage its activities and ensuring that its arrangements provide the Council with assurance that the company is required to achieve the Council's ambitions, the arrangement is providing value for money from activities and there are appropriate corporate governance arrangements in place. The Council has in place a policy which sets out how any company will be governed.

### **20.1 Principles of Governance of Partly and Wholly Owned Council Companies**

20.1.1 Any decisions or recommendations in relation to the creation, review or cessation of a partly or wholly owned Council Company shall be formed with clear reference to the principles outlined within the Partly and Wholly Owned Council Companies policy.

20.1.2 The Council's governance arrangements will seek to ensure that any companies established that it either partly or wholly owns:

- (a) Are only established following completion of the business case process as set out in the Council's Project and Programme Management Framework which identifies that there is a compelling business case that meets the standards set out in the supporting Minimum Standard
- (b) Have appropriate controls and freedoms, with sufficient control for the Council, to ensure that its investment is protected, appropriate returns on investment can be obtained and that the activities of the entity are aligned with the values and strategic objectives of the Council
- (c) Have clear understanding of roles and responsibilities between the Council and any wholly or partly owned council companies. Roles involved in the oversight and operation of the company are occupied by those with the skills and experience to deliver them
- (d) Have in place arrangements that ensure regular assurance is provided and that the entity continues to be relevant and required.

20.1.3 All formal wholly or partly owned council company agreements and structures proposals (incorporated partnerships or other) will only be established where a robust business case, as required by the Partly and Wholly Owned Council Companies Policy, has been completed, along with due diligence to ensure the financial, legal, taxation and operational implications of the proposed company are understood and the assumptions for its creation are robust. The decision to establish a partly or wholly owned Council company will be taken by the Executive, unless it relates to a matter reserved to another body within the Council.

### **20.2 Access to Information**

- 20.2.1 Reserved matters which require Shareholder/ Owner consent must be defined in the Articles of Association or Shareholder Agreement for each Company. The process for approving and recording decisions relating to reserved matter will be defined within the Shareholder Agreement. Such decisions are Executive Decisions and are also captures by the Council's Access to information Procedure Rules.
- 20.2.2 The following documents must be in place prior to a member decision on the principle of establishing a company:
- (a) A business case
  - (b) A business plan
  - (c) Proposed articles of association
  - (d) A shareholder/member or governance agreement that covers issues such as expected standards in relation to corporate governance, including the expected risk appetite of the company and how it will be managed
  - (e) Commissioner clarity – where a local authority company is contracted to provide services to the local authority (the shareholder) it is advisable to establish a client/contractor split
  - (f) Agreements providing for the council's provision of services and (if relevant) provision or transfer of assets and liabilities to the company
  - (g) Policy on secondments and / or employment by the Company
  - (h) Additional agreements as required, including data protection, records management and information-sharing protocols
  - (i) Policy on conflicts of interest
  - (j) Documents concerning funding flows – loans and advance payments
  - (k) Authority internal policy documents that may apply to the company, such as Standing Orders and financial and contract regulations
  - (l) A clear exit strategy
  - (m) Documentation setting out any reserved matters that can only be done in agreement with the shareholders.

### **20.3 Council scrutiny**

- 20.3.1 The LMT lead should ensure the Council's Overview and Scrutiny Board (OSB) is able to exercise its power in relation to scrutiny of the operation of local authority companies as part of its work programme.

20.3.2 The Council's Annual Governance statement, considered by Corporate Affairs and Audit Committee, should include reference to how the Council monitors and evaluates the effectiveness of the governance arrangements set out in this minimum standard.

#### **20.4 Keeping a record**

Minutes must be taken for all board meetings that provide a complete record of those present, declarations of interest, discussion, decision, and the rationale for it. They must be kept for 10 years.

#### **20.5 Council performance monitoring of the Company**

Quarterly reports on the performance of the Company, finance reporting, delivery of the company against its objectives as set by the Council, and its risk management arrangements should be considered by the appointing Council body, usually Executive, on a quarterly basis. This report should set out progress against an annual business plan that clearly articulates planned activity to achieve the aims of the company, address any internal or external audit recommendations.



## **21 SCHEMES OF DELEGATION**

### **OFFICER SCHEME OF DELEGATION**

#### **21.1 What is the Officer Scheme of Delegation?**

21.1.1 The Officer Scheme of Delegation sets out the powers and authorisations that have been delegated by the Council to individual Officers and Directorates / teams within the Council.

21.1.2 The Officer Scheme of Delegation can be found here.

### **EXECUTIVE SCHEME OF DELEGATION**

#### **21.2 What is the Executive Scheme of Delegation?**

21.2.1 The Executive Scheme of Delegation sets out the Executive Functions that have been delegated to individual Executive Members in relation to their Portfolio.

21.2.2 The Executive Scheme of Delegation can be found here.

## **22 MEMBERS' SCHEME OF ALLOWANCES<sup>81</sup>**

The Members' Scheme of Allowance sets out what the Council pays to Councillors and Co-Opted Members by way of basic and special responsibilities allowances, pensions, carers' allowances, and travelling and subsistence allowances.

### **MEMBERS SCHEMES OF ALLOWANCE 2022/23**

(As agreed at the Council AGM on 25 May 2022)

Middlesbrough Borough Council, in exercise of the powers conferred by the Local Authorities (Members' Allowances) (England) Regulations 2003 hereby makes the following Scheme:

This Scheme may be cited as the Middlesbrough Borough Council Members' Scheme of Allowances', and shall have effect for the year commencing on 1st April 2022 and subsequent years, unless amended by the Council.

In this Scheme: "Year" means the 12 months ending with 31st March.

#### **22.1 Basic Allowance**

- 22.1.1 All Elected members including the Mayor of Middlesbrough Council receive a basic allowance to recognise the time devoted to carry out their work as Members. It is also intended to cover incidental costs such as use of members' homes, attendance at meetings with officers, community meetings, and ward activities.
- 22.1.2 The Local Authorities (Members' Allowances) (England) Regulations 2003 provide for the payment of a basic allowance in respect of each year to each member of an authority, and the amount of such an allowance shall be the same for each such member. Subject to paragraphs, 10 and 11 the allowance will be paid to each elected Councillor for the year 1st April 2022 to 31st March 2023.
- 22.1.3 For 2022/23 the basic allowance of £7,608 will be paid in equal monthly instalments.
- 22.1.4 The Basic Allowance will not be increased in line with staff pay rises.

#### **22.2 Special Responsibility Allowances**

- 22.2.1 Special Responsibility Allowances (SRAs) are paid in addition to the basic allowance to members who hold positions with significant responsibilities over and above the general duties of a councillor and are also paid in equal monthly instalments.
- 22.2.2 For each year a special responsibility allowance shall also be paid to those Members who hold the special responsibilities in relation to the Authority that are specified in Schedule 1, PROVIDED THAT no Member shall be entitled to receive more than one Special Responsibility Allowance. SRA allowances will remain static and shall not be increased in line with any subsequent annual staff pay award.

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<sup>81</sup> [The Local Authorities \(Members' Allowances\) \(England\) Regulations 2003](#)

- 22.2.3 Special Responsibility Allowances were originally arrived at by an agreed multiple of the basic allowance. This process has been suspended from 1 April 2019 and will be further reviewed in 2023.
- 22.2.4 Subject to paragraphs 10 & 11.1 the amount of each such allowances shall be the amount specified against that special responsibility in Schedule 1.
- 22.2.5 A special responsibility allowance relating to the duties of a Political Group Leader shall be payable to the leader of the overall majority group and to the leaders of the two largest minority Groups, where each of the minority Groups comprise at least 10% of the total number of Members of the Council.
- 22.2.6 Where there is no over-all majority group, the two largest political group leaders will receive a minority special responsibility allowance. Where only one of the two largest minority Groups comprise at least 10% of the total number of Members of the Council, a special responsibility allowance relating to the duties of Political Group Leader shall be payable to the leader of the next largest minority Group.

### **22.3 Travelling and Subsistence Allowance – Councillors**

- 22.3.1 A Councillor shall be entitled to receive appropriate travel and subsistence allowances where he/she necessarily incurs expenditure on travel or subsistence in order to perform an approved duty.
- 22.3.2 The amount of the allowance payable to a Member in respect of subsistence shall be the same as that approved by the Authority in respect of officers of the Council who are paid officer rates.
- 22.3.3 The subsistence allowance payable shall be increased or decreased to the same extent as determined by the Authority in respect of officers.
- 22.3.4 The allowance payable to a Member in respect of travel mileage shall be paid at the Inland Revenue rate (45p per mile).
- 22.3.5 For the purposes of this paragraph, approved duties shall include all those duties, which are specified in Part I of Schedule 2 to this Scheme.

### **22.4 Travelling and Subsistence – Co-opted Members**

A Co-opted Member shall be entitled to receive appropriate travel and subsistence allowances as specified in Part II of Schedule 2 to this Scheme.

### **22.5 Dependent Carers Allowance**

- 22.5.1 A Councillor or Co-opted Member shall be entitled to receive a dependent carers allowance to provide for children or adult care, where he/she has necessarily incurred that expenditure in respect of a dependent who is looked after by a registered provider whilst the Councillor or Co-opted Member is carrying out an approved duty.
- 22.5.2 The dependent carers allowance referred to in paragraph 7.2 above shall be paid per hour and be in line with the national living wage and limited to 7 hours per week.

22.5.3 The allowance will not be payable to a member of the claimant's own household.

22.5.4 For the purposes of this paragraph, an approved duty is any duty listed in Part I of Schedule 2 to this Scheme.

## **22.6 Telephone / Broadband Allowance**

A member is entitled to a communications allowance of a £15 contribution towards their telephone connections and a £10 contribution towards broadband connections. One claim per household, subject to annual proof of service.

## **22.7 Pensions**

No councillor shall be entitled to pensions in accordance with this scheme.

## **22.8 Renunciation**

A Member may by giving notice in writing to the Director of Legal and Governance elect to forego all or part of their entitlement to an allowance under this Scheme. Where such a declaration is made, it remains in force until a further notice in writing is given to the Director of Legal and Governance to withdraw it.

## **22.9 Part-year Entitlements**

22.9.1 The provision of this paragraph shall have effect to regulate the entitlements of a Councillor to basic and special responsibility where, in the course of a year, this Scheme is amended or that Councillor becomes, or ceases to be, a Councillor, or accepts or relinquishes a special responsibility in respect of which a special responsibility allowance is payable.

22.9.2 If an amendment to this Scheme changes the amount to which a Councillor is entitled by way of a basic allowances or a special responsibility allowance, then in relation to each of the periods:

- (a) beginning with the year and ending with the day before that on which the first amendment in that year takes effect, or
- (b) beginning with the day on which an amendment takes effect and ending with the day that on which the next amendment takes effect, or (if none) with the year.

The entitlement to such an allowance shall be to the payment of such part of the amount of the allowance under this Scheme as it has effect during the relevant period as bears to the whole the same proportion as the number of the days in the period bears to the number of days in the year.

22.9.3 Where the term of office of a Councillor begins or ends otherwise than at the beginning or end of a year, the entitlement of that Councillor to a basic allowance shall be to the payment to such part of the basic allowance as bears to the whole the same proportion

as the number of days during which his/her term of office subsists bears to the number of days in that year.

- 22.9.4 Where this Scheme is amended as mentioned in sub-paragraph 11.2, and the term of office of a Councillor does not subsist throughout the period mentioned in subparagraph 11.2a, the entitlement of any such Councillor to a basic allowance shall be to the payment of such part of the basic allowance referable to each such period (ascertained in accordance with that sub-paragraph) as bears to the whole the same proportion as the number of days during which his term of office as a Councillor subsists bears to the number of days in that period.
- 22.9.5 Where a Councillor has during part of, but not throughout, a year such special responsibilities as entitle him or her to a special responsibility allowance, that Councillor's entitlement shall be to payment of such part of that allowance as bears to the whole the same proportion as the number of days during which he has such special responsibilities bears to the number of days in that year.
- 22.9.6 Where a remunerated person has been absent due to exceptional circumstances, and another Member acts as Chair for more than 50% of the meetings in any Municipal Year or the Chair is absent for more than two consecutive months, then the person who has acted as Chair shall be remunerated in place of the appointed Chair (on a pro rata basis).
- 22.9.7 Where payment of any allowance has already been made to the initially appointed person, the authority may require that such part of the allowances paid to the appointed person for any such period to be repaid to the authority (determined by the Monitoring Officer).
- 22.9.8 Where this Scheme is amended as mentioned in sub-paragraph 11.2 and a Councillor has during part, but does not have throughout the whole, of any period mentioned in sub-paragraph 11.2a of that paragraph any such responsibilities as entitle him or her to a special responsibility allowance, that Councillor's entitlement shall be to payment of such part of the allowance referable to each such period (ascertained in accordance with that sub-paragraph) as bears to the whole the same proportion as the number of days in that period during which he or she has such special responsibilities bears to the number of days in that period.
- 22.9.9 Where a scheme of allowances is amended, the Council can choose to apply any amendment retrospectively to the beginning of the financial year in which the amendment is made.

## **22.10 Claims and Payments**

22.10.1 Payments of allowances shall be made as follows:

- (a) Basic Allowances: Automatically Paid Monthly
- (b) Special Responsibility Allowances: Automatically Paid Monthly
- (c) Travel and Subsistence Allowance: Monthly (Claim)

(d) Dependent Carers Allowance: Monthly (Claim)

(e) Co-optees Allowance: Monthly (Claim)

22.10.2 All payments shall be made direct to a Bank or Building Society.

22.10.3 A claim for expenses/subsistence under this scheme shall be made within two months of the date of the meeting in respect of which the claim is made.

22.10.4 Claims for travel and subsistence (other than mileage for approved duties) shall only be approved where receipts of expenditure have been provided and have been incurred in relation to an approved duty or with the approval of the Head of Democratic Services.

22.10.5 For each claim, Members shall submit an electronic claim acknowledging that they are entitled to claim the expenses and where appropriate that they hold the appropriate valid driving documentation.

22.10.6 Members should submit their claims by the 7th day of the month.

22.10.7 The Director of Legal & Governance Services shall have authority to agree a different frequency of payment with an individual Member on request.

**SCHEDULE 1****BASIC 2022/23 - £7608 x 47 Members (including Mayor)**

These allowances are not subject to the inflationary increase in line with staff pay awards.

**SPECIAL RESPONSIBILTY ALLOWANCES (SRAs)**

The following roles are specified as those designated as receiving a special responsibility allowances, and the amounts of those allowances. These allowances are not subject to the inflationary increase in line with staff pay awards.

| <b><u>OFFICE</u></b>  | <b>No of Positions</b> | <b>ALLOWANCE</b> | <b><u>Total</u></b> |
|---|------------------------|------------------|---------------------|
| Mayor   | 1                      | £55,952          | £55,952             |
| Deputy Mayor and Executive Member   | 1                      | £19,518          | £19,518             |
| Executive Members   | 8                      | £11,190          | £89,520             |
| Chair of Overview and Scrutiny Board  | 1                      | £11,190          | £11,190             |
| Chair of Licensing Committee  | 1                      | £8,393           | £8,393              |
| Chair of Planning and Development Committee   | 1                      | £8,393           | £8,393              |
| Chair of the Council  | 1                      | £5,595           | £5,595              |
| Chair of Corporate Affairs Committee  | 1                      | £TBD             | TBD                 |
| Chair of Audit Committee  | 1                      | TBD              | TBD                 |
| Chair of Scrutiny Panels  | 6                      | £5,595           | £33,570             |
| Chair of Standards Committee  | 1                      | £2,798           | £2,798              |
| Chair of Staff Appeals Committee  | 1                      | £2,798           | £2,798              |
| Chair of Teesside Pension Fund Committee  | 1                      | £2,798           | £2,798              |
| <b>Political Group Leaders:</b>   |                        |                  |                     |
| Majority Group (currently not claimed)  | 1                      | £8,393           | £8,393              |
| Largest Minority Groups – maximum x 2 providing they have 10% of Council membership | 2                      | £2,798           | £2,798              |
| <b>Total cost of SRA</b>  | <b>25</b>              |                  | <b>£260,109</b>     |

***Banding Scheme Index*** – The Council’s “Multiplier” System of calculating Special Responsibility Allowances has been suspended for a period of 4 years (2022-23, or until it is next reviewed).

## SCHEDULE 2

### TRAVEL & SUBSISTENCE ALLOWANCES

#### **Part 1 Duties that may qualify for Travelling & Subsistence Allowances**

- (a) the attendance at a meeting of the Authority or of any Committee or Sub Committee of the Authority, or of any other body to which a member has been appointed to by the authority, or of any Committee or Sub Committee of such a body;
- (b) the attendance at any other meeting, the holding of which is authorised by the Authority, or a Committee or Sub Committee of the Authority, or a Joint Committee of the Authority and one or more Local Authority within the meaning of Section 270(1) of the Local Government Act 1972, or a Sub Committee of such a Joint Committee provided that:
  - (i) where the Authority is divided into two or more political groups it is a meeting to which Members of at least two such groups have been invited, or
  - (ii) if the Authority is not so divided, it is a meeting to which at least two Members of the Authority have been invited;
- (c) the attendance at a meeting of any association of Authorities of which the Authority is a Member providing no other attendance / mileage allowance is paid;
- (d) the attendance at a meeting of the Executive or a meeting of any of its Committees, where the Authority is operating executive arrangements;
- (e) the performance of any duty in connection with the discharge of any function of the Authority conferred by or under any enactment and empowering or requiring the Authority to inspect or authorise the inspection of premises;
- (f) the carrying out of any other duty approved by the Authority, or any duty of a class so approved, for the purposes of, or in connection with, the discharge of the functions of the Authority or of any of its Committees or Sub Committees. For the purpose of this section approved duties shall include the following:
  - (i) travel in connection with Scrutiny site visits or investigations
  - (ii) authorised attendance at Seminars or Conferences
- (g) In cases of urgency, the Monitoring Officer is authorised to approve duties.

Travelling allowances may not be claimed for political group meetings;



## **Part 2 - Subsistence**

1. Subsistence allowances for meals and accommodation can be reimbursed to Middlesbrough Members' for duties undertaken outside the unitary authority. This allowance reflects the scheme in place for officers of Middlesbrough Council.
2. Members are entitled to claim subsistence if their duties mean that they are away from the authority for at least 5 hours, preventing them from following their normal meal arrangements AND they have to incur expenditure which is in addition to their normal outlay.
3. Any claims for subsistence costs must be for the actual amount paid (up to the maximum amount claimable) and supporting receipts of this cost must be kept by the Member. The reimbursement of costs associated with alcohol will not be paid under any circumstances.

## **Part 3. Telephone / Broadband Allowance**

1. A member is entitled to an annual communications allowance of a £15 contribution towards their telephone connections and a £10 contribution towards broadband connections. One claim per household, subject to annual proof of service.

## **Part 4. Co-opted Members Travelling & Subsistence Allowances**

- (a) Co-opted Members of the following Council bodies shall be entitled to receive a combined travel & subsistence allowance as specified in paragraph (b) following production of a signed declaration that expenses had been incurred:
  - (i) Scrutiny Committees (including Overview & Scrutiny Board, Scrutiny Panels and Scrutiny Working Groups);
  - (ii) Standards Committee (including Sub Committees and Panels)
  - (iii) The Independent Panel on Members' Remuneration,
  - (iv) Teesside Pension Fund Committee
  - (v) School Appeal Panels
- (b) The amount of the combined Travel & Subsistence Allowance shall be £10 per meeting.

## **23 TEESSIDE PENSION FUND COMMITTEE**

### **23.1 What is the role and delegated functions of the Teesside Pension Scheme?**

23.1.1 The Pension Fund Committee's principal aim is to carry out the functions of Middlesbrough Council as the Scheme Manager and Administering Authority for the Teesside Pension Fund in accordance with Local Government Pension Scheme and any other relevant legislation.

23.1.2 In its role as the administering authority, Middlesbrough Council owes fiduciary duties to the employers and members of the Teesside Pension Fund and must not compromise this with its own particular interests. Consequently this fiduciary duty is a responsibility of the Pension Fund Committee and its members must not compromise this with their own individual interests.

23.1.3 The Pension Fund Committee will have the following specific roles and functions, taking account of advice from the Chief Finance Officer and the Fund's professional advisers:

- (a) Ensuring the Teesside Pension Fund is managed and pension payments are made in compliance with the extant Local Government Pension Scheme Regulations, Her Majesty's Revenue & Customs requirements for UK registered pension schemes and all other relevant statutory provisions.
- (b) Ensuring robust risk management arrangements are in place.
- (c) Ensuring the Council operates with due regard and in the spirit of all relevant statutory and non-statutory best practice guidance in relation to its management of the Teesside Pension Fund.
- (d) Determining the Pension Fund's aims and objectives, strategies, statutory compliance statements, policies and procedures for the overall management of the Fund, including in relation to the following areas:
  - (i) Governance – approving the Fund's Governance Policy and Compliance Statement for the Fund within the framework as determined by Middlesbrough Council and making recommendations to Middlesbrough Council about any changes to that framework.
  - (ii) Funding Strategy – approving the Fund's Funding Strategy Statement including ongoing monitoring and management of the liabilities, ensuring appropriate funding plans are in place for all employers in the Fund, overseeing the triennial valuation and interim valuations, and working with the actuary in determining the appropriate level of employer contributions for each employer.
  - (iii) Investment strategy - approving the Fund's Investment Strategy Statement and Compliance Statement including setting investment targets and ensuring these are aligned with the Fund's specific liability profile and risk appetite.

- (iv) Administration Strategy – approving the Fund's Administration Strategy determining how the Council will the administer the Fund including collecting payments due, calculating and paying benefits, gathering information from and providing information to scheme members and employers.
  - (v) Communications Strategy – approving the Fund's Communication Strategy, determining the methods of communications with the various stakeholders including scheme members and employers.
  - (vi) Discretions – determining how the various administering authority discretions are operated for the Fund.
- (e) Monitoring the implementation of these policies and strategies on an ongoing basis.
- (f) In relation to the Border to Coast Pensions Partnership Limited ('Border to Coast'); the Asset Pooling Collaboration arrangements:
- (i) Monitoring of the performance of Border to Coast and recommending actions to the Joint Committee, The Mayor or his Nominee (in his role as the nominated person to exercise Shareholder rights and responsibilities), Officers Groups or Border to Coast, as appropriate.
  - (ii) Undertake the role of Authority in relation to the Inter Authority Agreement, including but not limited to:
    - Requesting variations to the Inter Authority Agreement
    - Withdrawing from the Inter Authority Agreement
    - Appointing Middlesbrough Council officers to the Officer Operations Group.
- (g) Considering the Fund's financial statements and the Fund's annual report.
- (h) Selection, appointment, dismissal and monitoring of the Fund's advisers, including actuary, benefits consultants, investment consultants, global custodian, fund managers, lawyers, pension funds administrator, independent professional advisers and AVC provider.
- (i) Liaison with internal and external audit, including providing recommendations in relation to areas to be covered in audit plans, considering audit reports and ensuring appropriate changes are made following receipt of audit findings
- (j) Making decisions relating to employers joining and leaving the Fund. This includes which employers are entitled to join the Fund, any requirements relating to their entry, ongoing monitoring and the basis for leaving the Fund.
- (k) Agreeing the terms and payment of bulk transfers into and out of the Fund.

- (l) Agreeing Pension Fund business plans and monitoring progress against them.
- (m) Agreeing the Fund's Knowledge and Skills Policy for all Pension Fund Committee members and for all officers of the Fund, including determining the Fund's knowledge and skills framework, identifying training requirements, developing training plans and monitoring compliance with the policy.
- (n) Agreeing the Administering Authority responses to consultations on LGPS matters and other matters where they may impact on the Fund or its stakeholders.
- (o) Receiving ongoing reports from the Chief Finance Officer, the Head of Investments and Treasury Management and other relevant officers in relation to delegated functions.

No matters relating to Middlesbrough Council's responsibilities as an employer participating within the Teesside Pension Fund are delegated to the Pension Fund Committee.

## **23.2 What is the composition of the Committee?**

### **23.2.1 Membership**

The Teesside Pension Fund Committee will be composed of 15 members. Its membership will include:

- (a) Nine Councillors of Middlesbrough Council, determined by the Council.
- (b) One Councillor from each of Hartlepool Borough Council, Stockton Borough Council and Redcar & Cleveland Borough Council.
- (c) One representative of the other Scheme Employers in the Teesside Pension Fund appointed in accordance with procedures agreed by the Chief Finance Officer and Monitoring Officer.
- (d) Two representatives of the scheme members of the Teesside Pension Fund, appointed in accordance with procedures agreed by the Chief Finance Officer and Monitoring Officer.

Named substitutes are permitted providing they satisfy the knowledge and skills policy of the pension fund.

### **23.2.2 Term of office**

- (a) The representative members (for other scheme employers and scheme members) are appointed for a period of no more than six years and may be reappointed for further terms.
- (b) Councillors of the participating Councils will have a term of office to the next ordinary local government election following their appointment. They may be reappointed for further terms.

### **23.2.3 Quorum**

A meeting of the Pension Fund Committee shall only be quorate when:

- (i) At least eight members are present, and
- (ii) At least five of the members present are Councillors of Middlesbrough Council.

#### 23.2.4 Voting

Voting Rights are held by all members including the scheme member representatives as long as they are not employees of Middlesbrough Council

#### 23.2.5 Chairing the Committee.

- (a) Only a Councillor of Middlesbrough Council may be the Chair.
- (b) The Chair will be elected annually by members of Middlesbrough Council.
- (c) The Vice Chair will be elected annually by members Middlesbrough Council.

#### 23.2.6 Procedure Rules

- (a) The Council's Rules of Procedure, Codes and Protocols will apply to this Committee in the same way as they apply to other Committees unless different provision is made in this article.
- (b) Members of the Teesside Pension Board shall be permitted to attend Pension Fund Committee meetings, including exempt items.

#### 23.2.7 Knowledge and Skills Requirements

Members of the Committee will be obliged to adhere to the Fund's Knowledge and Skills Policy, including attendance at training events.

#### 23.2.8 Location

The Pension Fund Committee may occasionally meet outside of Middlesbrough Council area.

### **23.3 When may Committee functions be delegated to officers?**

23.3.1 The Committee may delegate a limited range of its functions to one or more officers of the Authority.

23.3.2 The Pension Fund Committee will be responsible for outlining expectations in relation to reporting progress of delegated functions back to the Pension Fund Committee.

### **OFFICERS' DELEGATIONS**

|  |
|--|
| <b>Chief Finance Officer and Head of Investments and Treasury Management</b> |
|--|

The day to day management and administration of Teesside Pension Fund matters including ensuring arrangements for investments of assets and administration of contributions and benefits, excluding matters delegated to the Teesside Pension Fund Committee.

**OTHER DELEGATIONS RELATING TO BORDER TO COAST**

At its meeting on the 15th February 2017, Middlesbrough Council approved its participation, acting as the Administering Authority for the Teesside Pension Fund, in the Border to Coast Pensions Partnership Pooling Arrangement as the Council's approach to pooling investments in accordance with the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 and the Guidance on Preparing and Maintaining an Investment Strategy. The following are responsibilities delegated relating to this participation (in addition to those mentioned in part (f) of the Teesside Pension Fund Committee responsibilities above).

**The Mayor (or whomever he decides to nominate)**

The nominated person to exercise the Council's rights as a shareholder in Border to Coast and be its representative at shareholder meetings, on behalf of the Teesside Pension Fund. The responsibilities are as set out in the Shareholders Agreement, Articles, Inter Authority Agreement and any other agreements entered into and include, but are not limited to the following :

- a) to serve a written notice on the Board of the Company to cease to be a Shareholder in the Company
- b) to vote on matters, including the reserved matters in Schedule 1 of the Shareholder Agreement as replicated below:

**Reserved matters**

**PART A – Matters for approval by all of the Shareholders (unanimous consent required)**

- 1. subject to Financial Conduct Authority (FCA) rules, extend the activities of the Company outside the scope of the Business or close down any operation of the Business;
- 2. subject to FCA rules, give any guarantee or indemnity outside the ordinary course of the Business to secure the liabilities of any person or assume the obligations of any person (other than a wholly owned subsidiary) (e.g. guaranteeing a lease that does not relate to the Business of the Company);
- 3. subject to FCA rules, enter into or vary any contracts or arrangements with any of the Shareholders or directors (other than service agreements and letters of appointment as directors) or any person with whom any shareholder or director is connected (whether as director, consultant, shareholder or otherwise) (e.g. any contract which could give preferential rights to a specific shareholder);
- 4. enter into any agreement not in the ordinary course of the Business and/or which is not on an arm's length basis;
- 5. enter into or vary any agreement for the provision of consultancy, management or other services by any person which will, or is likely to result in, the Company being managed otherwise than by its directors;
- 6. change the name of the Company;

7. pass a resolution or present a petition to wind up the Company or apply for an administration order or any order having similar effect in a different jurisdiction in relation to the Company unless in any case the Company is at the relevant time unable to pay its debts within the meaning of section 123 Insolvency Act 1986;
8. reduce or cancel any share capital of the Company, purchase its own shares, hold any shares in treasury, allot or agree to allot, whether actually or contingently, any of the share capital of the Company or any security of the Company convertible into share capital, grant any options or other rights to subscribe for or to convert any security into shares of the Company or alter the classification of any part of the share capital of the Company (in each case other than as expressly permitted by this Agreement and/or the Articles where no prior consent shall be required including, without limitation, pursuant to either clause 4 (Finance & Regulatory Capital) and/or clause 15 (Consequences of Breach) and/or Article 26 of the Articles (Issue of Shares and Pre-Emption Rights));
9. other than as expressly permitted by this Agreement and/or the Articles, redeem or buy any existing Shares or otherwise reorganise the share capital of the Company;
10. admit any person as a member of the Company or an investor in Border to Coast;
11. enter into any partnership, joint venture or profit sharing arrangement with any person (excluding entering into any investment or investment vehicle);
12. alter any of the provisions of the Articles or any of the rights attaching to the Shares;
13. amalgamate or merge with any other company or business undertaking;
14. sell, lease (as lessor), licence (as licensor), transfer or otherwise dispose of any of its material assets otherwise than in the ordinary course of the Business;
15. the removal and replacement of any Interim Directors, but for the avoidance of doubt not including any subsequent or replacement appointments of any director which shall be made under Part B below;
16. commence, settle or defend any claim, proceedings or other litigation brought by or against Border to Coast, except (i) in relation to debt collection (not exceeding £500,000) in the ordinary course of the Business and (ii) in relation to any investment related claims or proceedings relevant to the ACS or other collective investment vehicles;
17. take out any third party loan(s) in respect of Border to Coast which (in aggregate) exceed the sum of £5,000,000;
18. form any subsidiary of Border to Coast, or acquire any shares in any other company, whether through subscription or transfer, such that the company concerned becomes a subsidiary of Border to Coast;
19. determine the composition, governance arrangements and limits of authority of any and all subsidiaries of Border to Coast;
20. approving and adopting a Subsequent Strategic Plan (including the Annual Budget) and/or amending any such Plan; and
21. make any capitalisation, repayment or other distribution of any amount standing to the credit of any reserve of the Company or pay or declare any dividend or other distribution to the Shareholders save that no consent will be required to pay the B Share Dividend.

**PART B – Matters for approval by a Shareholder Majority only**

1. enter into or materially vary any licence or other similar agreement relating to intellectual property to be licenced to or by the Company which is otherwise than in the ordinary course of the Business;
2. appoint or remove the auditors of the Company;
3. alter the Company's accounting reference date;
4. make any significant change to any of the Company's accounting or reporting practices other than conforming with any changes made to the accounting standards adopted by the Company;

5. approve the annual accounts of the Company;
6. determine the amount of, or any increase in, remuneration payable to any directors from time to time;
7. establish or amend any pension scheme (i.e. for employees of the Company);
8. subject to FCA rules, enter into any agency, distribution or similar agreement which confers or is expressed to confer any element of exclusivity as regards any goods or services the subject of such agreement or as to the area of the agreement or vary such an agreement to include any such exclusivity;
9. incur in any financial year any item or series of items of capital expenditure including finance leases (but excluding operating leases) of more than £5,000,000 (unless provided for in the Initial Strategic Plan or any Subsequent Strategic Plan);
10. enter into or vary any operating lease either as lessor or lessee, of any plant, property or equipment of a duration exceeding 5 years or involving aggregate premium and annual rental payments in excess of £100,000 (unless provided for in the Initial Strategic Plan or any Subsequent Strategic Plan);
11. adoption of (and any amendment of) any written conflicts policy;
12. approval of any conflict or potential conflict of interest any director may have which would preclude him or her from being included in the quorum of any meeting of the directors;
13. appointment of any subsequent director, any alternate director (who is not at the time a director of the Company) and including, for the avoidance of doubt any subsequent Chair in accordance with the Companies Act 2006 or otherwise; and
14. removal of any director and, for the avoidance of doubt, the Chair in accordance with the Companies Act 2006 or otherwise.

**Chairman (or Vice Chairman in their absence) of the Teesside Pension Fund Committee**

The nominated representative of the Council on behalf of Teesside Pension Fund on the Border to Coast Pensions Partnership Joint Committee, noting that the Joint Committee shall not making binding decisions on the matters in the Terms of Reference of the Joint Committee but may make recommendations to each Authority to individually determine.

**Chief Finance Officer (who is the Section 151 Officer)**

- a) The nominated officer to meet and resolve any Deadlock Situation as per Clause 10 of the Shareholder Agreement
- b) The nominated officer to consider and resolve any Dispute as per Clause 13 of the Inter Authority Agreement



## **24 CODES AND PROTOCOLS**

This section contains the following Council Codes and Protocols:

- (a) Member's Code of Conduct
- (b) Officers' Code of Conduct
- (c) Protocol for Member / Officer Relations
- (d) Protocol for Members and Officers on Gifts and Hospitality
- (e) Filming of Council Meetings

# MEMBER CODE OF CONDUCT

## MEMBER CODE OF CONDUCT

### 1.1 Introduction

- 1.1.1 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 behaviours 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.
- 1.1.2 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.
- 1.1.3 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.
- 1.1.4 This Code has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.
- 1.1.5 All councils are required to have a local Councillor Code of Conduct.

### 1.2 Definitions

- 1.2.1 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".
- 1.2.2 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.

### 1.3 Purpose of the Code of Conduct

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to

set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

#### **1.4 General principles of councillor conduct**

1.4.1 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, as set out at Appendix A.

1.4.2 Building on these principles, the following general principles have been developed specifically for the role of councillor.

1.4.3 In accordance with the public trust placed in me, on all occasions:

- (a) I act with integrity and honesty;
- (b) I act lawfully;
- (c) I treat all persons fairly and with respect; and
- (d) I lead by example and act in a way that secures public confidence in the role of councillor.

1.4.4 In undertaking my role:

- (a) I impartially exercise my responsibilities in the interests of the local community;
- (b) I do not improperly seek to confer an advantage, or disadvantage, on any person;
- (c) I avoid conflicts of interest;
- (d) I exercise reasonable care and diligence; and
- (e) I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

#### **1.5 Application of the Code of Conduct**

1.5.1 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.

1.5.2 This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- (a) you misuse your position as a councillor; or
- (b) 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.

1.5.3 The Code applies to all forms of communication and interaction, including:

- (a) at face-to-face meetings;
- (b) at online or telephone meetings;
- (c) in written communication;
- (d) in verbal communication;
- (e) in non-verbal communication; and
- (f) in electronic and social media communication, posts, statements and comments.

1.5.4 You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

1.5.5 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.

1.5.6 Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

## **1.6 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.

## **1.7 Respect**

### **1.7.1 As a councillor:**

- (a) **I treat other councillors and members of the public with respect.**
- (b) **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.**

1.7.2 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.

- 1.7.3 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.

## **1.8 Bullying, harassment and discrimination**

### **1.8.1 As a councillor:**

- (a) **I do not bully any person.**
- (b) **I do not harass any person.**
- (c) **I promote equalities and do not discriminate unlawfully against any person.**

- 1.8.2 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.

- 1.8.3 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.

- 1.8.4 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.

- 1.8.5 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.

## **1.9 Impartiality of officers of the council**

1.9.1 **As a councillor, I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.**

1.9.2 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.

## **1.10 Confidentiality and access to information**

1.10.1 **As a councillor, 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:**
    - **reasonable and in the public interest; and**
    - **made in good faith and in compliance with the reasonable requirements of the local authority; and**
    - **I have consulted the Monitoring Officer prior to its release.**
- (c) **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.**
- (d) **I do not prevent anyone from getting information that they are entitled to by law.**

1.10.2 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.

## **1.11 Disrepute**

**1.11.1 As a councillor, I do not bring my role or local authority into disrepute.**

1.11.2 As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

1.11.3 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.

## **1.12 Use of position**

**1.12.1 As a councillor, I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.**

1.12.2 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.

## **1.13 Use of local authority resources and facilities**

**1.13.1 As a councillor:**

(a) **I do not misuse council resources.**

(b) **I will, when using the resources of the local authority or authorising their use by others:**

(i) **act in accordance with the local authority's requirements; and**

(ii) **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.**

1.13.2 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:

(a) office support;

(b) stationery;



- (c) equipment such as phones, and computers;
- (d) transport; and
- (e) access and use of local authority buildings and rooms.

1.13.3 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.

## **1.14 Complying with the Code of Conduct**

### **1.14.1 As a Councillor:**

- (a) **I undertake Code of Conduct training provided by my local authority.**
- (b) **I cooperate with any Code of Conduct investigation and/or determination.**
- (c) **I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.**
- (d)
- (e) **I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.**

1.14.2 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**

### **1.15 Interests**

#### **1.15.1 As a councillor, I register and disclose my interests.**

1.15.2 Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority .

1.15.3 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.

1.15.4 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.

1.15.5 **Appendix B** sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

## **1.16 Gifts and hospitality**

### **1.16.1 As a councillor:**

- (a) **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.**
- (b) **I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt.**
- (c) **I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

1.16.2 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.

## **APPENDIX A – THE SEVEN PRINCIPLES OF PUBLIC LIFE**

The principles are:

### **1. Selflessness**

Holders of public office should act solely in terms of the public interest.

### **2. 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.

### **3. Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### **4. 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.

### **5. 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.

### **6. Honesty**

Holders of public office should be truthful.

### **7. 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<sup>82</sup>.

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.

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<sup>82</sup> [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#)

## 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 Registrable 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>   |
|---|--|
| Employment, office, trade, profession or vocation | Any employment, office, trade, profession or vocation carried on for profit or gain.   |
| Sponsorship                                       | <p>Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>   |
| Contracts   | <p>Any contract made between 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 (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>which has not been fully discharged</p> |
| Land and Property                                 | <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>   |
| Licences  | Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer   |
| Corporate tenancies                               | <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</p>  |

|                   |   |
|-------------------|---|
|                   | <p>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>   |
| <p>Securities</p> | <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 spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class</p> |

\* ‘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

**Other Registerable Interests**

You must register as an Other Registerable 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.

# **OFFICER CODE OF CONDUCT**



## **OFFICER CODE OF CONDUCT**

This Code of Conduct applies to Council employees and any other person working on behalf of the Council (for example, agency staff) and sets out the standards of conduct that are expected of them. For the avoidance of doubt, every Officer is an employee of the Council and is subject to this Code of Conduct.

The attention of all Council employees, whether permanent or temporary is drawn to the following provisions relating to private work undertaken by employees and other matters of conduct.

## **STANDARDS AND CONDUCT**

### **1.17 What standards apply to Council employees?**

- 1.17.1 Local government employees are expected to provide the highest possible standard of service to the public, and where it is part of their duties, to provide appropriate advice to Councillors and fellow employees with impartiality. Employees will be expected, through agreed procedures, and without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service, and any impropriety or breach of procedure.
- 1.17.2 Employees should always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the Council.
- 1.17.3 The Council expects good standards of behaviour from all of its employees towards fellow employees, Councillors, service users and members of the public. The Council recognises the importance of treating everyone with equal dignity and respect and will not tolerate harassment, discrimination or bullying.
- 1.17.4 This policy has been reviewed against the Bribery Act 2010<sup>83</sup>.

### **1.18 What are the general standards of conduct for employees?**

- 1.18.1 Subject to its rights under the conditions of appointment of employees not being prejudiced, the Council does not wish to limit unduly the activities of employees in their leisure time.
- 1.18.2 The Council does, however, require that efficiency and due performance of official duties shall not be impaired by private work in leisure time, and it requires at all times to be satisfied that its interests are not being detrimentally affected in this respect.
- 1.18.3 The Council must be in a position to rebut with confidence any allegation that the integrity of its administration is being impaired because of the leisure time activities of any of its employees. Implicit in this is the requirement that there must be no question of employees undertaking activities in circumstances which might lead to suspicion of undue or improper favour being granted to anyone, including Members or undue or improper influence being exercised, in relation to contracts of any kind, or in relation

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<sup>83</sup> [Bribery Act 2010](#)

to any consent, permission, licence, etc., which members of the public seek from the Council. Conduct outside of working hours which gives rise to criminal prosecution will be considered in accordance with the Council's disciplinary policy and may in exceptional cases lead to dismissal.

### **1.19 What are the Nolan Principles and how do they apply to employees?**

1.19.1 The Seven Principles of Public Life (also known as the Nolan Principles<sup>84</sup>) apply to anyone who works as a public office-holder, including those who are appointed to work in local government.

1.19.2 The Nolan Principles are as follows:

1. Selflessness – Holders of public office should act solely in terms of the public interest.
2. 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 declare and resolve any interests and relationships.
3. Objectivity – Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
4. 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.
5. 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.
6. Honesty – Holders of public office should be truthful.
7. Leadership – Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

1.19.3 Council employees should take the Nolan Principles into account when performing all of their duties for the Council.

### **1.20 What are the rules for employees in relation to disclosure of Information?**

1.20.1 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.

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<sup>84</sup> [The Nolan Principles](#)

- 1.20.2 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 law.

## **OTHER EMPLOYMENT AND DECLARATIONS OF INTEREST**

### **1.21 In what circumstances may employees undertake private paid work?**

The following conditions must be strictly observed by any employee who proposes to undertake, or who undertakes, private work for any person, firm or company:

- (a) Employees graded above Band I (i.e., above spinal column point 30) shall devote their whole-time service to the work of the Council and shall not engage in any other business or take up any other additional appointment without the consent of the employee's Strategic Directors / Directors, after consultation with the Monitoring Officer.
- (b) Private work must not be undertaken during working hours, and it must not be undertaken on official premises, even after working hours.
- (c) In addition to there being no impairment of the proper execution of the employee's official duties, there must not be any interference with any requirement to work overtime on such duties.
- (d) Private work that may be subject to the Council's statutory supervision or consent must not be undertaken.
- (e) Private work must not be undertaken for any person, firm or company who is known by the employee to be currently or periodically, an applicant to the Council for a statutory consent or permission, for a discretionary licence (excluding licences which are issued automatically subject to the application being in order), or for any other purpose, where the application is or would be dealt with by the department in which the employee is serving. Employees proposing to undertake private work for any person, firm or company are responsible for ascertaining from them whether they are an applicant to the Council for such a statutory consent or permission.
- (f) Private work must not be undertaken for any person, firm or company in a contractual relationship with, or commissioned by, the Council, or concerned in any property transaction with the Council, or for any person known or believed by the employee to be connected with such a firm or company, where the employee undertaking the private work is serving in a department materially concerned with such a contractual relationship, commission or property transaction. Employees proposing to undertake private work for any person, firm or company are responsible for ascertaining from them whether any contractual or commission relationship with the Council exists, or whether they are concerned in any property transaction with the Council.
- (g) Private work must not be undertaken by an employee for another employee responsible for supervising that employee or whom the employee supervises.

- (h) Private work must not be undertaken for any person, firm or company with whom an employee deals in the course of their official duty.
- (i) Council equipment, vehicles or goods must not be used to undertake private work.
- (j) An employee may undertake secondary employment in their own time where it does not create any conflict of interest. Employees proposing to undertake any such secondary employment are responsible for ensuring that the commitments of the job stayed below the level at which efficiency in their work for the Council could be impaired.
- (k) Teaching and lecturing may be acceptable but special safeguards need to be put in place. Where such activity would involve the use of special knowledge gained in the Council's employment, permission must be sought from the employee's Strategic / Assistant Directors; where any fee is received for such work it must be paid over to the Council unless prior arrangements have been agreed otherwise. Similarly, where the activity could have a significant public impact in relation to the Council or its functions, prior approval must be obtained from the employee's Strategic / Assistant Directors.

#### **1.22 In what circumstances may employees undertake unpaid private work?**

If an employee wishes to undertake private work for which no payment or other reward is made, but which would otherwise be prohibited under section 1.21 above, the employee must inform their Strategic Director / Director who may relax some of the conditions in section 1.21 above, as may be considered appropriate.

#### **1.23 When must an employee declare an interest in a contract<sup>85</sup>?**

- 1.23.1 The Contract Procedure Rules place the following requirements on employees in relation to a declaration of an interest in a contract:

***“The proper employee of the Council shall record in a book to be kept for the purpose, brief particulars of any notice given by an employee of the Council under Section 177 of the Local Government Act 1972, of a pecuniary interest in a contract and the book and such notices shall be open during office hours for the inspection of any member of the Council”.***

***Section 117 of the Local Government Act 1972 refers to the need for employees to declare their interest and the interest of spouses in contracts negotiated between the Council and third parties. This particular Section specifies as follows:***

***“If it comes to the knowledge of an employee employed, whether under this Act or any other enactment by a local authority that a contract in which he has any pecuniary interest, whether direct or indirect (not being a contract to which***

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<sup>85</sup> [Local Government Act 1972, section 117](#)

***he himself is a party), has been, or is proposed to be, entered into by the Authority or any Committee of the Authority, he shall as soon as practicable give notice in writing to the Authority of the fact that he is interested therein”.***

1.23.2 An employee shall be treated as having indirectly a pecuniary interest in a contract or proposed contract, if:

- (a) They, or any nominee of theirs, is a member of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- (b) they are a partner, or are in the employment, of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

In the case of married persons living together the interest of one spouse shall, if known to the other, also be deemed an interest of the other.

NOTE: Where the Act refers to “he” you should read “he” or “she”. Any employee affected by this Act should inform the Monitoring Officer through their Strategic / Assistant Directors.

#### **1.24 In what circumstances may employees write and publish books and articles?**

The writing of books or articles for payment on subjects relating to an employee’s work for the Council requires the permission of the Council.

- (a) No person employed by the Council in any capacity shall publish, or authorise the publication of, any book or article written by that person either wholly or in collaboration with any other person or persons, in which the title page, preface, or any other part thereof appears to be any indication that the writer is an employee of or is otherwise connected with the Council, unless a statement appears in a prominent position in such book or article to the effect that the opinions are those of the author and do not necessarily represent the opinions of the Council and that the Council accepts no responsibility for the author’s opinions or conclusions.
- (b) No such persons shall, without permission from their Strategic / Assistant Directors make available to a newspaper, solely or jointly with any other person or persons, any communication in which there is an indication that the person is an employee of, or otherwise connected with, the Council.
- (c) Sections (a) and (b) above shall not apply to books and articles on purely technical or scientific subjects, and persons employed by the Council shall be at liberty to write and publish books and articles on these subjects and, if they so wish, to indicate therein that they are Officers of, or otherwise connected with the Council, provided that it is clearly stated that the opinions are those of the author and do not necessarily represent the opinions of the Council.

#### **1.25 In what circumstances may employees broadcast on a subject connected with the Council?**

Any employee broadcasting on a subject connected with the work of the Council shall be required to obtain beforehand the permission of the appropriate Strategic / Assistant Directors.

## **RELATIONSHIPS AND NEUTRALITY**

### **1.26 Are there any restrictions on relationships which may exist between employees?**

The relationship of landlord and tenant shall neither directly nor indirectly be created or allowed between employees of the Council who are in any way responsible for each other's appointment, pay, promotion, discharge or dismissal.

### **1.27 What are the rules for employees in relation to appointments and other employment matters?**

1.27.1 Employees involved in appointments should ensure that these are made based on merit. It would be unlawful for an employee to make an appointment based on anything other than the ability of the candidate to undertake the work. 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 personal relationship outside work with them.

1.27.2 Similarly, employees should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner or close friend.

1.27.3 Employees who are subject to disciplinary proceedings, or who are the subject of review proposals or consultations, shall not canvass or otherwise seek the support of any Member. Contravention of this section 1.27.3 shall be subject to the Council's disciplinary policy and may lead to the employee's dismissal.

### **1.28 What is the policy for employees in relation to prevention of corruption?**

1.28.1 The Council's Gifts and Hospitality Policy provides guidance to employees on receiving gifts, invitations and hospitality as well as the provision of gifts and hospitality to those outside the Council.

1.28.2 The Gifts and Hospitality Policy applies to all Council employees and failure to adhere to the Gifts and Hospitality Policy may be dealt with under the Council's disciplinary procedure.

### **1.29 What are the rules for employees in relation to sponsorship?**

1.29.1 Where an outside organisation wishes to sponsor, or is sought to sponsor, a Council 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.

- (i) Where the Council wishes to sponsor an event or Service, neither an employee nor any partner, spouse or relative of an employee may 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 they give impartial advice and that they have no conflict of interest.

### **1.30 Should employees be politically neutral?**

- 1.30.1 Employees serve the Council as a whole. It follows that they must serve all Councillors and not just those of the Majority Group and must ensure that the individual rights of all Councillors are respected.
- 1.30.2 Subject to the Council's conventions, employees may also be required to advise political groups. They must do so in ways that do not compromise their political neutrality.
- 1.30.3 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.
- 1.30.4 Political Assistants appointed on fixed term contracts<sup>86</sup> are exempt from the standards set in paragraph 13 above.
- 1.30.5 Employees must at all times have regard to and act in accordance with the provisions of the Protocol on Member / Officer Relations in section 24 of this Constitution.

### **1.31 How should employees separate their client and contractor roles in the tendering process?**

- 1.31.1 Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the Council. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.
- 1.31.2 Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors, and sub-contractors.
- 1.31.3 Employees who are privy to confidential information on tenders or costs for either internal or external contractors should not disclose that information to any unauthorised party or organisation.
- 1.31.4 Employees contemplating a management buy-out should, as soon as they have formed a definite intent, inform the appropriate manager and withdraw from the contract awarding processes.
- 1.31.5 Employees should ensure that no special favour is shown to current or recent former employees or their partners, close relatives, or associates in awarding contracts to

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<sup>86</sup> [Local Government and Housing Act 1989, section 9](#)

businesses run by them or employing them in a senior or relevant managerial capacity.

## **GENERAL**

### **1.32 What are the rules for employees' use of technology platforms, websites and online tools?**

1.32.1 The Council's Social Media Policy covers the use of social networking applications, by Council employees, Members and partners or other third parties (including contractors) on behalf of the Council.

1.32.2 The requirements of the Social Media Policy apply to all uses of social networking applications for Council related purposes, regardless of whether the applications are hosted corporately or not. Consideration is also given in the Social Media Policy to Council representatives who are contributing in an official capacity to social networking applications provided by external organisations.

### **1.33 Who owns the inventions of employees devised in the course of their employment?**

Any employee who, in the course of their employment with the Council, produces an invention or design shall, at the request of the Council, assign the patent to the Council or, if the invention or design has not been patented, assist the Council in obtaining a patent in the name of the Council. It is not appropriate that patents should be taken out for the personal benefit of employees of the Council whose duty it is to devise improvements or to examine and report on the suggestions or inventions of others.

### **1.34 What should employees do with lost property?**

Any employee who either finds or has handed to them property which appears to be lost or abandoned on Council premises, must give that property to their manager. Thereafter the property should be dealt with in accordance with the procedures specified by audit. An Officer shall not, under colour of his office or employment, accept any fee or reward whatsoever other than their proper remuneration, which would include handing in any lost property<sup>87</sup>.

### **1.35 What is the Council's position of equality?**

This Code of Conduct applies fairly and equally to all employees irrespective of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, marriage and civil partnership.

### **1.36 How should employees treat exempt information?**

For a document that contains exempt information, any breach of confidentiality of its contents, or of any Committee discussions thereof, or unauthorised disclosure to a third party, by any means, may be a disciplinary offence for any employee involved.

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<sup>87</sup> [Local Government Act 1972, section 117](#)



### **1.37 How should an employee who is subject to a review behave?**

Employees who are within the scope of any review must not canvass or otherwise seek the support of any Councillor in relation to that review, or their personal circumstances, or those of their colleagues. Employees who canvass Councillors may be subject to disciplinary proceedings under the Council's Disciplinary Policy.

## **PROTOCOL ON MEMBER / OFFICER RELATIONS**

### **1.38 What is the role of Officers?**

- 1.38.1 Officers are employed by and serve the whole Council. They advise the Council, the Executive, Council Committees and other Council bodies. They are responsible for ensuring that decisions are taken within the law and in accordance with the Constitution, and that decisions are properly recorded and effectively implemented.
- 1.38.2 The Head of Paid Service is responsible for ensuring that Officers fully and effectively support Members. Officers are responsible to the Head of Paid Service and not to individual Members of the Council; no matter what office they hold.
- 1.38.3 All Officers are required by law to be politically neutral, and for Senior Officers this is enforced by law<sup>88</sup>.
- 1.38.4 There are statutory requirements in relation to the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer. These responsibilities are detailed in section 11 of this Constitution and in the Statutory Officer Role Profiles appended to the Constitution.
- 1.38.5 The Head of Legal and Governance Services will provide legal advice to the Council and to the Executive.
- 1.38.6 The Head of Democratic Services will ensure that meetings of the Executive are properly planned, serviced, and reported in accordance with legislative requirements and the Executive Procedure Rules.
- 1.38.7 The Head of Democratic Services will ensure that all other meetings of the Council, its Committees and all other Council bodies are properly planned, serviced, and reported in accordance with legislative requirements and the Council Procedure Rules.

### **1.39 How should Officers conduct themselves?**

- 1.39.1 Officers should always treat Members with respect and courtesy. Whenever conflict or disagreements arise between Officers and Members, the Officer's line manager must deal with these professionally.
- 1.39.2 It is not enough for Officers to avoid actual impropriety. They must at all times avoid any occasion for suspicion, and any appearance, of improper conduct. Officers must declare to the Head of Paid Service or the Monitoring Officer any relationship with a

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<sup>88</sup> [Local Government and Housing Act 1989](#)

Member. This includes any relationship, which might be seen as influencing their work as an Officer or influencing the work of the Member. In this context, 'relationship' includes any family business or close personal relationships. It is not possible to define the exact range of relationships that would be considered as close or personal. Examples include a family or sexual relationship and regular social mixing, such as holidays or evenings out together.

- 1.39.3 Close personal relationships between Officers and Members can damage the principles of mutual respect and professionalism. They can also, intentionally or accidentally, lead to the passing of confidential information. Such relationships can cause embarrassment to other Members and Officers and can give rise to suspicion of favouritism. For these reasons, personal relationships must be avoided, especially between Members and Officers who regularly, as part of their normal working role, offer advice or support to Members.
- 1.39.4 In their working relationships with Members, Officers will:
- (a) behave at all times in a professional manner;
  - (b) strive to develop mutual levels of trust with all Members;
  - (c) perform their duties efficiently and effectively with impartiality; and
  - (d) maintain the highest standards of confidentiality.

# **PROTOCOL ON MEMBER / OFFICER RELATIONS**

## PROTOCOL ON MEMBER / OFFICER RELATIONS

### 1.1 What is the Protocol on Member / Officer Relations?

- 1.1.1 The purpose of this protocol is to guide Members and Officers of the Council in their relationships with one another. It is not intended to be prescriptive or comprehensive and seeks simply to offer guidance on the issues which most commonly arise.
- 1.1.2 Together, Members and Officers make up ‘the Council’. They are indispensable to one another and mutual respect and communication between both is essential for good local government. By working together, they bring the critical skills, experience and knowledge required to manage an effective council. Members provide a democratic mandate to the Council, whereas Officers contribute the professional and managerial expertise needed to deliver the Policy Framework. The roles are very different but need to work in a complementary way.
- 1.1.3 This Protocol seeks to reflect the shared corporate values of the organisation and the principles underlying the respective Codes of Conduct, which apply to Members and Officers (the “Codes of Conduct”) and should be read in association with those Codes of Conduct. The shared objective of the Values and the Codes of Conduct is to enhance and maintain the integrity of local government.
- 1.1.4 This Protocol will be relevant in judging compliance with the Codes of Conduct. A breach of the provisions of this Protocol may also constitute a breach of the relevant Code of Conduct.
- 1.1.5 Members and Officers shared the following corporate values:

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|--|---|
| <p><b>Joint leadership and Collaboration</b></p> | <ul style="list-style-type: none"> <li>• Members and Officers have vital roles to play in providing joint leadership which is based on shared knowledge skills and experience.</li> <li>• They should demonstrate visible leadership and act as ambassadors for Middlesbrough Council, with both being committed to public service and making decisions in the public interest.</li> <li>• They should work together to face challenges and constraints i.e., with limited time and budget, difficult targets and deadlines etc., and with everyone working in a spirit of partnership, to turn the Council’s core values and priorities into practical policies for implementation.</li> </ul> |
| <p><b>Integrity and respect</b></p>              | <p>Members and Officers should;</p> <ul style="list-style-type: none"> <li>• champion mutual dignity, respect and inclusion;</li> <li>• promote open, honest communications allowing for two-way feedback and for issues to be addressed appropriately;</li> <li>• maintain Informal and collaborative two-way contact between with each other; and</li> <li>• ensure that their conduct is such as to instill mutual support, confidence, and trust. This should be reflected in the behaviour and attitude of each to the other, both publicly and privately, and respecting the roles and duties of each other in</li> </ul>   |

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|                              | all their dealings by observing reasonable standards of courtesy.  |
| <b>Focus on what matters</b> | <ul style="list-style-type: none"> <li>• Members and Officers should work towards the vision and priorities of the Council in delivering quality services to local people, and actively collaborate to deliver shared goals.</li> <li>• Officers should provide clear professional advice and should be in touch, well informed and focused on outcomes.</li> <li>• Members and Officers should work to eliminate poor behaviour and conduct that undermines focus, achievements, and efficiency.</li> </ul> |
| <b>Creativity</b>            | <ul style="list-style-type: none"> <li>• Members and Officers are encouraged to support new thinking by creating a safe environment for people to share opinions and ideas, using information and data effectively to make balanced decisions.</li> </ul>  |

## 1.2 What are the principles of Member / Officer relationships?

- 1.2.1 Both Members and Officers are servants of the public and are indispensable to one another, but their responsibilities are distinct. Members are responsible to the electorate and serve only as long as their term of office lasts. Officers are responsible to the Council as a whole; their job is to give advice and to carry out the Council's work under the direction and control of the Council and its Committees.
- 1.2.2 The importance of mutual respect, trust and confidence between Members and Officers of the Council is fundamental to this Protocol. This is essential to good local government and will generate an efficient and unified working organisation.
- 1.2.3 Dealings between Members and Officers should observe reasonable standards of courtesy. Neither party should seek to take unfair advantage of their position or exert undue influence on the other.
- 1.2.4 Whilst the duties and responsibilities of Members and Officers are different, both are bound by the same framework of statutory powers and duties. It is fundamental to the efficient and effective operation of the Council that both understand the boundaries of their respective roles and that neither asks the other to step beyond those limits.
- 1.2.5 It is not the role of Members to control the day-to-day management of the Council and they should not seek to give instructions to Officers other than in accordance with the terms of reference of their Committee.
- 1.2.6 Members are not authorised to initiate or certify financial transactions or to enter into a contract on behalf of the Council.
- 1.2.7 Members and Officers must avoid taking actions which are unlawful, financially improper or likely to amount to maladministration. Members have an obligation under their Code of Conduct, when reaching decisions, to have regard to advice given by the Chief Finance Officer or Monitoring Officer when they are discharging their statutory duties.

- 1.2.8 Members must respect the impartiality of Officers and do nothing to compromise it, e.g., by insisting that an Officer change their professional advice.
- 1.2.9 Members are not prevented from discussing issues with Officers or promoting a particular point of view. Whilst Officers will consider the views / advice of members they are not, in any way, compelled to provide advice which coincides with the Member's view or preferred position. Any unreasonable requests by a Member to an Officer to change their professional recommendation will constitute unacceptable undue pressure which is not permissible.
- 1.2.10 All Members and Officers have certain basic responsibilities and obligations. There are, however, some Members and Officers who, either because of statute, tradition or decisions of the Council, have extended roles and additional responsibilities. Some Members hold positions of responsibility such as the Mayor and Group Leaders, the Chair and Vice Chair of the Council, chairs and vice chairs of Committees/ working groups. The Statutory Officers are the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer. Their roles are defined by statute and within the Council's Constitution.
- 1.2.11 As a matter of general principle, Members and Officers will:
- (a) deal with one another without discrimination;
  - (b) observe normal standards of courtesy in their dealings with one another;
  - (c) not take unfair advantage of their position;
  - (d) promote a culture of mutual respect;
  - (e) communicate clearly and openly, avoiding ambiguity and opportunities for misunderstandings;
  - (f) work together to convert the Councils core values and priorities into practical policies for implementation for the benefit of the Borough;
  - (g) observe any advice relating to publicity during the pre-election period; and
  - (h) refer any observed instances of inappropriate behaviour as necessary.
- 1.2.12 Members must not be personally abusive to, or derogatory of Officers in any correspondence, on social media or during any meeting or discussion, in particular when this takes place in public, whether or not that individual is in attendance. Officers will likewise treat members with respect at all times.
- 1.2.13 Members should not criticise or raise matters relating to the alleged conduct or capability of an Officer at meetings of the Council, any Committee or any other public forum (including on Social Media). This is a long-standing tradition in public service as an Officer has no means of responding to criticism in public.

- 1.2.14 Officers should not raise with a Member matters relating to the conduct or capability of another Officer or to the internal management of a department in a manner which is incompatible with the overall objectives of this Protocol.
- 1.2.15 Nothing in this Protocol shall prevent an Officer from making a protected disclosure under the Whistleblowing Policy which is published on the Council's website.
- 1.2.16 If an Officer feels that they have been treated improperly or disrespectfully by a Member they should raise the matter with the relevant Chief Officer or the Chief Executive as appropriate. In these circumstances, the Chief Executive or Chief Officer will take appropriate action, including approaching the Member concerned, and raise the issue with the Group Leader (if applicable) or refer the matter to the Monitoring Officer where there is a potential breach of a Code of Conduct.
- 1.2.17 When a member feels that they have been treated improperly by an Officer, they should speak to the Officer's line manager in the first instance. If the matter is not addressed, then it can be escalated upwards to the relevant Chief Officer and/or the Chief Executive

### **1.3 How should Members and Officers conduct personal relationships with each other?**

- 1.3.1 Guidance on personal relationships is contained within the Codes of Conduct.
- 1.3.2 Provided these guidelines are observed there is no reason why there should not be an informal atmosphere between Members and Officers outside formal meetings and events.
- 1.3.3 It is clearly important that there should be a close working relationship between Executive Portfolio Holders, Group Leaders and representatives, Committee chairs and the Chief Officers. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the individual's ability to deal impartially with others.
- 1.3.4 Both Members and Officers must be aware of the potential for conflicts of interest and take steps to either avoid or mitigate any conflict situation. The Monitoring Officer should be consulted in these circumstances.
- 1.3.5 Group Leaders should promote a positive atmosphere of trust, respect and understanding between Members and Officers and must be prepared to deal with and resolve any reported incidents of breaches of this Protocol by their Group members. In the event of a complaint being made to them under this Protocol, a Group Leader will seek to actively consider the complaint and achieve a satisfactory outcome. The outcome must be reported to the Officer who notified them of the complaint.

### **1.4 What is the role of Members in the Council?**

- 1.4.1 Collectively, Members are the ultimate policy makers, providing strategic direction, determining the core values of the Council and approving the Policy Framework, strategic plans and Budget. Their role is complex, requiring them to act simultaneously in the following capacities:

- (a) As Council / Committee members – Members will provide leadership and take responsibility for the Council’s decisions and activities. Members have responsibility for the performance, development, continuity and overall wellbeing of the organisation as well as for overseeing governance.
- (b) As representatives – Members are community leaders who interpret and express the wishes of the electorate and are accountable to the electorate for service priorities, allocation of resources and ultimate performance. The Member represents the interests of their Ward and is an advocate for their constituents.
- (c) As politicians – Members may belong to a Group represented on the Council and, if so, may express political values and support the policies of the Group to which they belong.

1.4.2 Officers can expect Members to:

- (a) provide political leadership and direction;
- (b) initiate and develop policy to be put before the Council or its Committees;
- (c) work in partnership, understanding and supporting their respective roles, workloads and pressures;
- (d) take corporate responsibility for policies and other decisions made by the Council;
- (e) prepare for formal meetings by considering all written material provided in advance of the meeting;
- (f) leave day-to-day managerial and operational issues to Officers;
- (g) adopt a reasonable approach to awaiting Officers’ timely responses to calls and / or correspondence;
- (h) not send emails to multiple Officers regarding the same issue, instead utilising one point of contact where possible;
- (i) use their position with Officers appropriately and not seek to advance their personal interests or those of others to influence decisions improperly;
- (j) respect the dignity of Officers and not engage in behaviour which could be reasonably regarded as bullying or harassing in nature; and
- (k) have regard to the seniority and experience of Officers and, equally, have regard to the potential vulnerability of Officers at junior levels.

1.4.3 It is permissible and sensible for Members to seek straightforward factual information from Officers, and to seek the views of appropriately qualified Officers on technical or professional matters. However, if there is anything contentious or which relates to a



matter requiring a complex opinion or value judgement, this should be directed to the relevant Chief Officer or the Chief Executive.

- 1.4.4 When serving on the Council's Planning and Development Committee or the Licensing Committee, Members must also observe the protocols applicable to those Committees.
- 1.4.5 Whilst Members should always act in the public interest, there is nothing preventing them, as politicians, from expressing the values and aspirations of the Group to which they belong.
- 1.4.6 As a matter of courtesy, it is expected that Members involved in an issue in another Member's Ward will speak with the relevant Ward Member(s) to inform them of their involvement and have regard to the agreed Ward protocol.

## **1.5 What is the role of Officers in the Council?**

- 1.5.1 In broad terms Officers have the following main roles:
  - (a) Setting and implementing strategies to deliver Council policy and further the Council's priorities.
  - (b) Day-to-day operational management of the organisation.
  - (c) Implementing decisions of the Council which are lawful and which have been properly approved.
  - (d) Giving Members advice on issues and the business of the Council to enable them to fulfil their roles. In doing so, Officers will take into account all relevant factors and demonstrate political sensitivity.
  - (e) Managing the Services for which they have been given responsibility within the framework of responsibilities given to them under the Scheme of Delegation.
  - (f) Being accountable for the efficiency and effectiveness of the Services in which they work and demonstrating proper / professional practice in discharging their responsibilities.
  - (g) Providing advice on changes in government policy for which the Council is responsible.
  - (h) Providing professional advice on industry innovation and/or scientific development which may assist the Council in delivering Services.
  - (i) Providing professional advice on innovations by other councils which may be adopted by the Council to improve service delivery.
  - (j) Being professional advisers to the Council, its political structures and Members in respect of their Service. As such, their professionalism should be respected by Members and other Officers.

- (k) Initiating policy proposals in line with national government requirements or Council agreed priorities, as well as implementing the agreed policies of the Council.
- (l) Ensuring that the Council always acts in a lawful manner and does not engage in maladministration.
- (m) Supporting members in their role within the Council, save that Officers must not engage in actions incompatible with this Protocol. In particular, there is a statutory limitation on some Officers' involvement in political activities.

1.5.2 Members can expect Officers to:

- (a) undertake their role in line with their contractual and legal duty to be impartial;
- (b) exercise their professional judgement in giving advice and not be influenced by their own personal views;
- (c) have an appreciation of the political environment in which they work and demonstrate political sensitivity;
- (d) assist and advise all parts of the Council; Officers must always act to the best of their abilities in the best interests of the Council and the residents of the Borough;
- (e) be alert to issues which are, or are likely to be, contentious or politically sensitive and to be aware of the implications for Members, the media or other sections of the public;
- (f) maintain due confidentiality;
- (g) behave in a professional manner and comply with the Officers' Code of Conduct;
- (h) be helpful and respectful to Members; and
- (i) respond in a timely manner to telephone calls, email correspondence etc.

1.5.3 In their dealings with the public, Officers should be courteous and act with efficiency and timeliness.

1.5.4 In advising Members, Officers should be able to give honest and impartial advice without fear or favour from Members. Officers must serve all Members, not just those of any majority Group, and must ensure that the individual rights of all Members are respected.

1.5.5 Subject to the Council's [Whistleblowing Policy and Procedure](#). Officers should respect a Member's request for confidentiality when dealing with any legitimately delicate matter and Members should respect an Officer's request that a matter be kept confidential. Where confidentiality is requested, any written reply to a Member should

not be copied to any other Member without the original Member's permission, except to comply with an unavoidable legal or professional obligation.

## **1.6 What is the role of Members in appointing Officers?**

1.6.1 Officers are employed by the Council. Members' role is limited to the appointment of specified senior posts in accordance with the Officer Employment Procedure Rules and they have no role in appointments outside these roles.

1.6.2 If participating in the appointment of Officers, Members should:

- (a) remember that the sole criterion is merit;
- (b) never canvass support for a particular candidate;
- (c) not take part where the candidate is a close friend or relative;
- (d) not be influenced by personal knowledge of candidates; and
- (e) not favour a candidate by providing them with information not available to other candidates.

## **1.7 How can an Officer seek assistance from a Member as a constituent?**

A Member may be asked for advice and support by an employee who is one of their constituents. Employees are entitled to seek such assistance in the same way as any other member of the public. However, Members should be careful not to prejudice the Council's position in relation to disciplinary procedures or employment matters in respect of an employee. A Member approached for help in such circumstances should seek to direct employees to other sources of help, such as Human Resources, and not become directly involved. If a Member is unsure, the Democratic Services Team can offer advice on who to speak to.

## **1.8 What support services are available to Members?**

1.8.1 Members are provided with ICT (information and communication technology) equipment and support services (e.g., printing, photocopying etc.) to enable them to better perform their policy and constituency role as Councillors.

1.8.2 Members should not use – and Officers should not provide – such equipment and support services in connection with party political or campaigning activity or for purposes not related to Council business.

1.8.3 Section 1.8.2 above does not apply to:

- (a) limited private photocopying, which may be undertaken by Members, provided it is at no cost to the Council; and
- (b) the use by Members of ICT equipment for non-commercial / non-political purposes, provided it does not cause a conflict with, or risk to, Council systems, nor increase the support required from Officers.

## **1.9 What considerations should Members and Officers have when making decisions?**

- 1.9.1 Before any formal decisions are taken, Members will have regard to professional advice from officers. They are not obliged to follow that advice, simply to consider it before reaching a decision.
- 1.9.2 Officers taking decisions under delegated powers must consider whether the relevant Committee chair or Ward Member should be consulted based on the issue and taking into account political or corporate sensitivities where:
- (a) the matter falls under the responsibility of the relevant chair's Committee; or
  - (b) the matter relates to the relevant Ward.
- 1.9.3 Officers must be prepared to justify how decisions taken under delegated powers contribute to the delivery of Council policy and priorities when reasonably required to do so.
- 1.9.4 Where Officers have delegated authority to take certain actions by a Committee in consultation with a Member, it is the Officer who takes the action and is responsible for it. A Group Leader or Committee chair has no legal power to take decisions on behalf of the Council or a Committee neither should they apply inappropriate pressure on the Officer.

## **1.10 What is an Officer's obligation in respect of political neutrality?**

Officers are required at all times to serve the whole Council and provide support regardless of political affiliation and will need to exercise judgement in fulfilling this obligation, whilst maintaining the distinction between executive and scrutiny. Members must recognise this Officer obligation.

## **1.11 How do Officers work with Executive Portfolio holders?**

- 1.11.1 Any decision by an individual Executive Portfolio holder (or collective decision by the Executive Committee) should, except in an emergency, be supported by written advice from the appropriate Officer(s). An Officer's obligation to the whole Council requires that such advice is independent and Members must not seek to suppress or amend any aspect of such professional advice.
- 1.11.2 Reports to Committees will normally be produced by Officers but there may be occasions when an Executive Portfolio holder or other Member prepares a report. In either situation, the appropriate Officer shall place on record their professional advice to the Committee and ensure that their advice is considered when a decision is taken.
- 1.11.3 Officers may be representing the decisions (internally and externally) of a single party Executive or an individual Executive Portfolio holder. Other Members will need to recognise that, in so doing, the Officer is representing an executive decision of the Council.

## **1.12 How should Officers deal with Groups?**

- 1.12.1 There is statutory recognition for Groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of consideration by the relevant Council body.
- 1.12.2 On the invitation of a Group Leader, a Chief Officer or their nominee may attend a Group meeting to give factual information about an issue which is currently being or will shortly be debated by a Council body, provided that:
  - (a) the meeting is held on Council premises;
  - (b) notice of attendance is given to the appropriate Head of Service and made available on request to the other Group Leaders.
- 1.12.3 Officer support in these circumstances must not extend beyond providing information in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if Officers are not expected to be present when matters of party business are discussed.
- 1.12.4 Group meetings, while they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings are not Council decisions and it is essential that they are not interpreted or acted upon as such.
- 1.12.5 Similarly, where Officers provide information and advice to a Group in relation to a matter of Council business, this is not a substitute for the Officer providing all necessary information and advice to the relevant Council body when the matter is considered.
- 1.12.6 Officers will not normally attend and provide information to any Group meeting which includes non-Council members. Exceptions to this may be approved by the Chief Executive who shall do so in writing and copy the correspondence to all the Group Leaders.
- 1.12.7 In all dealings with Members, in particular when giving advice to Groups, Officers must demonstrate political impartiality and must not suppress their professional advice in the face of political views.
- 1.12.8 Officers must respect the confidentiality of any Group meeting at which they are present. They must not relay the content of any such discussion to another Group.
- 1.12.9 Any difficulties or areas of uncertainty relating to an Officer giving advice to a Group should be raised with the Chief Executive who will discuss them with the relevant Group Leader(s).

## **1.13 How should individual Members engage with Officers?**

- 1.13.1 Any Group Leader, Executive Portfolio holder, Group spokesperson or Committee chair may request a private and confidential briefing from a Director on matters of policy which have already been or may be discussed by the Council or within its

decision-making or advisory process. All requests should be made to the appropriate Director / Head of Service who should invite the Monitoring Officer or their nominee(s) to attend if this is thought appropriate. Briefings shall remain strictly confidential and are not to be shared with other Members unless so permitted by the relevant Member.

- 1.13.2 Except for the confidential policy advice referred to above, where possible, information will be shared among Group representatives. In particular, overview and scrutiny is a cross-party process involving all Groups represented on the Council. Information supplied to chairs of the Overview and Scrutiny Board and any Scrutiny Panel will, therefore, be shared as a matter of course with each Group.
- 1.13.3 Individual Members may request factual information from the Chief Executive (or the relevant Head of Service). Such requests must be reasonable and must recognise the need for Officers to maintain the distinction between the Executive and scrutiny processes. Relevant Executive Members, Committee chairs and Group Leaders will, unless it is of a minor nature, be advised that the information has been given and, on request, will be supplied with a copy.
- 1.13.4 If a Head of Service considers the cost of providing the information requested, or the nature of the request, to be unreasonable, they shall seek guidance from the Monitoring Officer as to whether the information should be provided. Where necessary, the Mayor in consultation with the Group Leaders, will determine whether the information should be provided.
- 1.13.5 Confidential information relating to, for instance, casework should not normally be sought. If in exceptional circumstances Members wish to discuss confidential aspects of an individual case, then they shall first seek advice from the Head of Service and follow appropriate guidance.
- 1.13.6 Finally, any Council information provided to a Member must only be used by the Member for the purpose for which it was provided (i.e., in connection with the proper performance of the Member's duties as a Member). This point is emphasised in the Members' Code of Conduct.

#### **1.14 What are Officers' obligations in relation to councillors and / or elected representatives from other council?**

- 1.14.1 Officers may be requested to meet with councillors or elected representatives from other councils or organisations to provide briefings and/or policy advice.
- 1.14.2 Any Officer requested to attend a meeting of this nature which is not held on a cross-political party basis must obtain the prior authorisation of the Chief Executive who shall inform all Group Leaders of the arrangements.

#### **1.15 What support and advice is available to Members in relation to media relations?**

- 1.15.1 A primary intention of the Government in introducing executive arrangements was to raise the public and media profile of Executive Portfolio holders and to make the Executive directly accountable for decisions taken. It follows that media presentation and media support will reflect this. Advice to the Executive and Executive Portfolio holders in relation to the media will be provided on a confidential basis if requested.

- 1.15.2 Chairs of the Overview and Scrutiny Board and Scrutiny Panels shall ensure that all media statements relating to the scrutiny function have the support of the relevant Committee / Panel. Any such statements must be consistent with the Council's intent that the scrutiny function shall help to achieve a culture of continuous improvement throughout the Council.
- 1.15.3 The Head of Marketing and Communications and other Officers will also assist Members who are not Executive Members with their media relations (on a confidential basis if requested).
- 1.15.4 Any Officer assisting a Member with media relations must act at all times in the interests of the whole Council and in a politically impartial manner. Other than factual statements, Members should not seek assistance from an Officer with the preparation or issue of any media statement that will adversely affect the reputation of the Council.

#### **1.16 What are Officers' obligations in relation to Ward matters?**

- 1.16.1 The Council via the relevant Officer(s), and / or Executive Member, will keep local Members fully informed about significant operational matters on which they may be required to make decisions or which affect their Wards.
- 1.16.2 Senior Officers will ensure that all relevant staff are aware of the requirement to keep local Members informed and that, subject to section 1.16.3 below, the timing of such information allows local Members to respond appropriately and contribute to relevant decisions.
- 1.16.3 Any notification under this section 1.16 should include sufficient detail to enable the local Member(s) to have a broad understanding of the issue including a summary of the advantages and disadvantages of any proposal and any financial implications.
- 1.16.4 Local Members must be informed by the relevant Officers of the formative stages of policy development as it affects their Ward.
- 1.16.5 Issues may affect a single Ward but others may have a wider impact in which case a wider number of Members will need to be kept informed. The Communications Team will, under the direction of the Chief Executive, share all significant Council news releases which affect the wider Council or a number of Wards with Members when they are published externally.
- 1.16.6 Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Wards affected should as a matter of course be invited to attend the meeting.
- 1.16.7 Whenever the Council undertakes any form of consultative exercise the local Members must be included.
- 1.16.8 Where a news release specifically relates to a significant issue affecting a particular Ward or geographical area, the local Member(s) will be advised by email, or telephone as appropriate and sent a copy when it is published on the Council's official news channels and/or shared with the local media.

**1.17 What training is available to Members?**

- 1.17.1 Members are expected to embrace the principles of personal development and skill training and ensure they allocate time to participate in all the necessary training and personal development activities. This includes the necessary skills to take advantage of the ICT facilities made available to them.
- 1.17.2 Officers will work with individual Members to produce a personal development plan, seek to ensure resources are available to fulfil the actions agreed in the plan, and provide appropriate training to ensure that all Members have the skills needed to fulfil their duties.

**1.18 What are the key differences between Members and Officers?**

| <b>Members</b>  | <b>Officers</b>  |
|---|--|
| Democratically elected and receive an allowance         | Employed by the Council and paid a salary                                    |
| Community Leaders with a focus on their Ward            | May have specialist role with a specific focus                               |
| Make decisions on behalf of the Borough and the Council | Work for the Borough and the Council   |
| Can bring a political dimension to the role             | Impartial – must give unbiased advice and information to all Members equally |
| Abide by a Members' Code of Conduct                     | Bound by their employment contract and the Officers' Code of Conduct         |
| Set policy and oversee service delivery                 | Implement policies and ensure delivery of Services                           |
| Only involved in senior officer appointments            | Day-to-day management of Officers and Services                               |



# **PROTOCOL FOR MEMBERS AND OFFICERS ON GIFTS AND HOSPITALITY**

## **PROTOCOL FOR MEMBER AND OFFICERS ON GIFTS AND HOSPITALITY**

Members and Officers should avoid putting themselves in a position where their integrity is called into question because of any financial or other impropriety. As well as avoiding actual impropriety it is also essential to avoid giving the impression or appearance of impropriety, and this Protocol provides guidance on how Members and Officers can avoid doing so.

### **LEGAL POSITION**

#### **1.1 What is the legal position in relation to gifts and hospitality?**

- 1.1.1 It is an offence for any employee or member of a public body to accept any gift, loan, fee, reward or advantage whatsoever as an inducement to or reward for doing, or not doing, something in respect of any matter or transaction involving the Council<sup>89</sup>. Such an offence can carry up to 7 years imprisonment.
- 1.1.2 Where such a gift, loan etc. is received by an employee or member of a public body from a person seeking a contract with the Council, then the gift is deemed to have been received corruptly<sup>90</sup>. This has the effect of shifting the balance of proof onto the giver and receiver of the gift i.e., they would have to prove that they did not act dishonestly.
- 1.1.3 The law also provides that an officer of a local authority shall not, under colour of their office, accept any reward or fee other than their proper remuneration<sup>91</sup>.

### **GENERAL PRINCIPLES**

#### **1.2 What are the general principles in relation to gifts and hospitality?**

- 1.2.1 The purpose of this Protocol is to:
  - (a) outline the principles which a Member or an Officer should apply whenever they have to decide whether it would be proper to accept any gift or hospitality;
  - (b) establish a procedure for obtaining consent to accept a gift or hospitality, when a Member or Officer considers that it would be proper to accept it; and
  - (c) establish a procedure for Members and Officers to declare any gift or hospitality, which they receive, and for accounting for any gift.
- 1.2.2 This Protocol does not apply to any offer of hospitality that may be provided by the Council.
- 1.2.3 Members and Officers must never solicit or invite an offer of a gift or hospitality in connection with their position as a Member or an Officer. Members and Officers should also take care to avoid giving any indication that they might be open to such an improper offer.

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<sup>89</sup> [Public Bodies Corrupt Practices Act 1889](#)

<sup>90</sup> [Public Bodies Corrupt Practices Act 1889](#)

<sup>91</sup> [Local Government Act 1972, section 117](#)

1.2.4 Members and Officers should never accept a gift or hospitality as an inducement or reward for anything they do as a Member or an Officer.

- (a) Members and Officers must always act in the public interest and must not be swayed in the discharge of their duties by the offer, prospect of an offer, or the non-offer of any inducement or reward for discharging those duties in a particular manner.
- (b) Further, the Members' Code of Conduct provides that a Member must act in the public interest, serving the Council and the whole community, rather than acting in the interests of any particular individual or section of the community, and that it is a breach of the Code improperly to confer any advantage or disadvantage of any person, including themselves.
- (c) The Officers' Code of Conduct deals specifically with the prevention of corruption at paragraph 1.28.

1.2.5 Members and Officers should never accept a gift or hospitality if acceptance might be open to misinterpretation.

- (a) The appearance of impropriety can be just as damaging to the Council and to a Member or an Officer as actual impropriety. The Council's ability to govern rests upon its reputation for acting fairly and in the public interest. Members and Officers must, therefore, consider whether the acceptance of the gift or hospitality is capable of being interpreted as a sign that they or the Council favours any particular person, company or section of the community or as placing the Member or Officer under any improper obligation to any person or organisation. If there is any possibility that it might be so interpreted, the Member or Officer must either refuse the gift or hospitality or take appropriate steps to ensure that such a misunderstanding cannot arise.
- (b) Certain occasions are particularly sensitive and require the avoidance of any opportunity for such misunderstanding. These include:
  - (i) occasions when the Council is going through a competitive procurement process, in respect of any indication of favour for a particular tenderer;
  - (ii) determination of licensing applications, planning applications or planning policy, in respect of any person or organisation which stands to gain or lose from the determination; and
  - (iii) funding decisions, when the Council is determining a grant application by any person or organisation.

1.2.6 Members and Officers should never accept a gift or hospitality, which puts them under an improper obligation.

- 1.2.7 Recognise that some commercial organisations and private individuals see the provision of gifts and hospitality as a means of buying influence. If you accept a gift or hospitality improperly, it is possible that they may seek to use this fact to persuade you to determine an issue in their favour. Equally, if others note that you have been prepared to accept a gift or hospitality improperly, they may feel that they will no longer be able to secure impartial consideration from the authority.

### **1.3 When may Officers and Members accept gifts and hospitality?**

- 1.3.1 The Council has agreed that, provided the principles set out in section 1.2 are not breached, Members and Officers may accept gifts and hospitality in the following circumstances:

- (a) civic hospitality provided by another public authority;
- (b) modest refreshment in connection with any meeting in the ordinary course of a Member or Officer's work, such as tea, coffee, soft drinks and biscuits;
- (c) tickets for sporting, cultural and entertainment events, which are sponsored by the Council;
- (d) small gifts of low intrinsic value below £25, branded with the name of the company or organisation making the gift, such as pens, pencils, mouse pads, calendars and diaries. Members and Officers should take care not to display any such branded items when this might be taken as an indication of favour to a particular supplier or contractor, for example in the course of a procurement exercise;
- (e) a modest working lunch in the course of a business meeting in the offices of a third party where this is required in order to facilitate the conduct of that business;
- (f) modest souvenir gifts with a value below £25 from another public authority given on the occasion of a visit by or to that authority;
- (g) hospitality received in the course of an external visit or meeting which has been duly authorised by the Council; and
- (h) other unsolicited gifts, where it is impracticable to return them to the person or organisation making the gift, provided that the Member or Officer deals with the gift strictly as follows:
  - (i) The Member or Officer must, as soon as practicable after the receipt of the gift, pass it to the Monitoring Officer, together with a written statement identifying the information set out in section 1.3.2(a) below.
  - (ii) The Monitoring Officer will then write to the person or organisation making the gift thanking them on the Member or Officer's behalf for the gift and informing them that you have donated the gift to the Elected Mayor's Charity Fund, where one exists, on whose behalf it will be

raffled or otherwise disposed of in due course, the proceeds being devoted to a charitable cause chosen by the Mayor.

- 1.3.2 If a Member or Officer wishes to accept any gift or hospitality which does not fall within any of the general consents set out in section 1.3.1 above, they may only do so if they have previously obtained specific consent in accordance with the following procedure:
- (a) The Member or Officer must make an application in writing to the Monitoring Officer, setting out:
    - (i) the nature of the gift or hospitality and their estimate of its market value;
    - (ii) who the invitation or offer has been made by or on behalf of;
    - (iii) the connection which they have with the person or organisation making the offer or invitation, such as any work that person or organisation has undertaken for the Council in which the Member or Officer has been involved;
    - (iv) any work, permission, concession or facility, of which the Member or Officer is aware that the person or organisation making the offer or invitation may seek from the Council; and
    - (v) any special circumstances, which lead the Member or Officer to believe that acceptance of the gift or hospitality will not be improper.
  - (b) A Member or Officer must not accept the gift or hospitality until they have received the appropriate consent as outlined in this section 1.3.
- 1.3.3 Whenever a Member accepts any gift or hospitality, which they estimate to have a market value or cost of provision of £25 or greater, they must, as soon as possible after receipt of the gift or hospitality, make a declaration in writing to the Monitoring Officer, setting out the information set out in section 1.3.2(a) above. A form for this purpose is attached to this Protocol. The Monitoring Officer will retain a copy of any such declaration in a register, which will be available for public inspection.
- 1.3.4 Where a Member is concerned that, even though the value of the gift or hospitality is less than £25, its acceptance might be misinterpreted, and particularly where it comes from a contractor or tenderer, they may make a voluntary declaration in the same manner as set out in section 1.3.2(a) to ensure that there is nothing secret or underhand about the gift or hospitality.
- 1.3.5 The Democratic Services Team keeps a register of gifts and hospitality and it is the responsibility of the Officer receiving the gift or hospitality to ensure that it is recorded in the register.
- 1.3.6 Gifts made to the Council may take the form of the provision of land, goods or services, either to keep or to test with a view to future acquisition, an offer to carry out works or sponsorship of a function which is organised or supported by the Council.

- 1.3.7 Members and Officers should not solicit any such gift on behalf of the Council except where the Council has formally identified the opportunity for participation by an external party and how that participation is to be secured, for example, in relation to sponsorship of public musical and theatrical performances and developers' contributions under Section 106 Agreements<sup>92</sup>.
- 1.3.8 If a Member or an Officer receives such an offer on behalf of the Council, they must first consider whether it is appropriate for the Council to accept the offer (in terms of whether the acceptance or the gift might be seen as putting the Council under any improper obligation, whether there is a real benefit to the Council which would outweigh any disbenefits).
- 1.3.9 If the Member or Officer does not have delegated authority to accept the gift, they should report the offer directly to the Monitoring Officer, together with your recommendation as to whether the gift or hospitality can be accepted. The Monitoring Officer will then write back to the person or organisation making the offer, to record the acceptance or non-acceptance of the gift, record the gift for audit purposes and ensure that the gift is properly applied for the benefit of the Council.
- 1.3.10 If a Member or Officer has any concerns about the motives of the person or organisation making the offer, or whether it would be proper for the Council to accept the gift, they should consult the Monitoring Officer directly.

#### **1.4 What is a gift or hospitality?**

- 1.4.1 For the purposes of this Protocol "gifts" and "hospitality" shall include:
- (a) the free gift of any goods or services;
  - (b) the opportunity to acquire any goods or services at a discount or on terms which are more advantageous than those that are available to the general public;
  - (c) the opportunity to obtain any goods or services which are not available to the general public; and
  - (d) the offer of food, drink, accommodation or entertainment, or the opportunity to attend any cultural, sporting or entertainment event.
- 1.4.2 References to the "value" or "cost" of any gift or hospitality are references to the higher of:
- (a) the Member or Officer's, or the Council's (as appropriate), estimate of the cost to the person or organisation of providing the gift or consideration; and
  - (b) the open market price which a member of the public would have to pay for the gift or hospitality if it were made available commercially to the public, less the cash sum of any contribution which the Member or Officer, of the Council (as

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<sup>92</sup> [Town and Country Planning Act 1990, section 106](#)

appropriate) would be required to make toward that price to the person or organisation providing or offering the gift or hospitality.

## **FILMING OF COUNCIL MEETINGS**

## FILMING OF COUNCIL MEETINGS

This section sets out the Council's Code of Conduct in relation to the filming, photographing and/or making of audio recordings of the proceedings of Council meetings, meetings of the Executive and Committee meetings.

### 1.1 What rights do members of the public have to record Council meetings?

- 1.1.1 The Council is committed to being open and transparent particularly in relation to the way it conducts business at those meetings which are open to the public.
- 1.1.2 To assist with this, the Council will film the proceedings of Council meetings and, where it is feasible and practical to do so, other meetings which are open to the public.
- 1.1.3 It is intended that the footage will be made available for public viewing via the Council website.
- 1.1.4 The law requires that members of the public and the media are to be allowed to film, photograph and/or make audio recordings at public meetings held by the Council<sup>93</sup>. The Government has provided [guidance](#) for members of the public on how they may access Council meetings.

### 1.2 How should members of the public conduct themselves when recording Council meetings?

- 1.2.1 To assist members of the public with accessing its meetings, the Council has adopted the following guidelines, which are based on common courtesy and respect:
  - (a) subject to (b) below, all members of the public remain seated during the proceedings of the meeting;
  - (b) any members of the public who prefer not to be filmed should sit or stand to the rear of the public area;
  - (c) those wishing to film a meeting must show appropriate respect for the wishes of the public who do not wish to be filmed;
  - (d) that in seeking to film, photograph or make an audio recording of a meeting, the conduct of the meeting is not disturbed;
  - (e) if it is agreed at the meeting to pass a motion to exclude the press and public because confidential and/or or exempt information<sup>94</sup> is likely to be disclosed, members of the public will be asked to leave the meeting and no filming, photography and/or audio recordings can then take place;
  - (f) that without the express consent of their parents / guardians, the filming of any children who might be in attendance is strictly prohibited;

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<sup>93</sup> [The Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012](#)

<sup>94</sup> [Local Government Act 1972, Schedule 12A](#)



- (g) whilst not a requirement, it would be helpful for anyone intending to film, or wishing to discuss any special requirements, to contact the Members' Office in advance of a meeting to seek advice, guidance and help.

1.2.2 There are some limited circumstances, related to items containing either confidential or exempt information, when the filming of public meetings is prohibited. Whilst it is considered that such items will be infrequent, when such matters do arise, the chair of the relevant meeting will be responsible for providing guidance and advice. If for whatever reason someone refuses to stop recording, taking photographs or making an audio recording when requested to do so, the chair will ask the person to leave the meeting. If they refuse to do so, then the chair may adjourn the meeting or make other appropriate arrangements for the meeting to continue without disruption. Any such arrangements will be in accordance with the disorderly conduct procedures set out in the Constitution.

### **1.3 What else should members of the public bear in mind when recording Council meetings?**

1.3.1 There is a presumption that Members and Officers give their consent to be filmed and for their images to be webcast, unless a specific request is made to the Monitoring Officer for an exception to be made in advance of a meeting. The Monitoring Officer will take a view on a case-by-case basis on whether there is sufficient justification for making such an exemption.

1.3.2 On each Council meeting agenda and on signs to be displayed inside and outside the meeting room there will be the following notice:

*Please note: this meeting may be filmed for live or subsequent broadcast via the Council's internet site. You should be aware that the Council is a Data Controller under the Data Protection Act. Data collected during this webcast will be retained in accordance with the Council's published policy.*

*Therefore, by entering the meeting room, you are consenting to being filmed and to the possible use of those images and sound recordings for webcasting and/or training purposes.*

# **APPENDIX 1**

## **CODE OF CORPORATE GOVERNANCE**

## **CODE OF CORPORATE GOVERNANCE**

The Council is committed to achieving effective corporate governance, and has adopted this Code of Corporate Governance, which establishes how good governance will be achieved within the organisation.

### **1.1 What is corporate governance?**

Corporate governance is about the systems, processes and values by which local authorities operate and by which they engage with, and are held accountable to, their communities and stakeholders.

### **1.1 What does good governance look like?**

The Council's code follows principles of good governance set out in guidance issued by the Chartered Institute of Public Finance and Accountancy (CIPFA) and the Society of Local Authority Chief Executives (Solace)<sup>95</sup>. These are:

- (a) behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law;
- (b) ensuring openness and comprehensive stakeholder engagement;
- (c) defining outcomes in terms of sustainable economic, social and environmental benefits;
- (d) determining the interventions necessary to optimise the achievement of the intended outcomes;
- (e) developing the entity's capacity, including the capability of its leadership and the individuals within it;
- (f) managing risks and performance through robust internal control and strong public financial management; and
- (g) implementing good practices in transparency, reporting, and audit to deliver effective accountability.

### **1.2 What are the benefits of good governance?**

1.2.1 Good governance leads to good management, good performance, good stewardship of public money, good public engagement and ultimately good outcomes for those who live, work in, or visit Middlesbrough.

1.2.2 It enables the Council to effectively pursue delivery of the Mayor's strategic priorities, as well as underpinning plans for delivery with mechanisms for the control and management of risk.

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<sup>95</sup> Delivering Good Governance in Local Government Framework 2016 Edition (CIPFA / Solace)

### 1.3 How is good governance implemented?

1.3.1 The Council has a robust governance framework in place. The table below sets out in high level terms the steps the Council takes to ensure its processes, policies, systems and practices align with the principles of good governance.

1.3.2 The framework comprises of a wide range of policies and procedures, which embed the core principles of the CIPFA / Solace framework into all aspects of the Council's conduct and operation.

| <b>CIPFA / Solace principle / supporting principles</b>   | <b>To meet these requirements, the Council will:</b>   |
|---|--|
| <p><b>Behaving with integrity, demonstrating strong commitment to ethical values and respecting the rules of law</b></p> <ul style="list-style-type: none"> <li>• Behaving with integrity</li> <li>• Demonstrating strong commitment to ethical values</li> <li>• Respecting the rule of law</li> </ul> | <ul style="list-style-type: none"> <li>• Work diligently and with integrity to achieve the strategic priorities of the Mayor.</li> <li>• Clearly document expected behaviours, and decision-making processes, for Members and Officers, and regularly review these.</li> <li>• Effectively communicate expected behaviours to Members and Officers and provide appropriate training on ethical behaviour.</li> <li>• Ensure Members, Statutory Officers, other key post-holders are able and supported to fulfil their duties and meet their responsibilities.</li> <li>• Ensure compliance by maintaining effective audit committee, internal audit and scrutiny functions, and standards and disciplinary processes.</li> </ul>  |
| <p><b>Ensuring openness and comprehensive stakeholder engagement</b></p> <ul style="list-style-type: none"> <li>• Openness</li> <li>• <i>Engaging comprehensively with institutional stakeholders</i></li> <li>• <i>Engaging with individual citizens and service users effectively</i></li> </ul>      | <ul style="list-style-type: none"> <li>• Document and operate a culture of openness and transparency within the organisation.</li> <li>• Maintain a culture of accountability, so that Members and Officers understand for what they are accountable and to whom.</li> <li>• Consult appropriately with stakeholders on the development of its Budget, key plans and Service development.</li> <li>• Maintain effective decision-making processes, ensuring that reports to decision-makers clearly set out stakeholder views where relevant.</li> <li>• Publish all Executive and Committee reports and decision papers, unless there is a legitimate need to preserve confidentiality on the basis of the statutory tests.</li> <li>• Publish on its website information on the Council's strategies, plans and</li> </ul> |

| CIPFA / Solace principle / supporting principles  | To meet these requirements, the Council will:  |
|---|--|
|   | <p>finances as well as on outcomes, achievements and challenges.</p>   |
| <p><b>Defining outcomes in terms of sustainable economic, social and environmental benefits</b></p> <ul style="list-style-type: none"> <li>• Defining outcomes</li> <li>• <i>Sustainable economic, social and environmental benefits</i></li> </ul>                               | <ul style="list-style-type: none"> <li>• Clearly set out its contribution to delivery of the Mayor’s strategic priorities and use this as the basis for its overall strategy, planning and other decisions.</li> <li>• Define outcomes through robust consideration of appropriate evidence bases, such as the Joint Strategic Needs Assessment that sets out the evidence base for public health needs across the life cycle.</li> <li>• Ensure that it delivers defined outcomes on a sustainable basis within available resources.</li> <li>• Effectively identify and manage risks to the achievement of targeted outcomes.</li> <li>• Manage customer expectations effectively when determining priorities to make best use of resources and ensure fair access to Services.</li> </ul>   |
| <p><b>Determining the interventions necessary to optimise the achievement of the intended outcomes</b></p> <ul style="list-style-type: none"> <li>• Determining interventions</li> <li>• Planning interventions</li> <li>• Optimising achievement of intended outcomes</li> </ul> | <ul style="list-style-type: none"> <li>• Ensure reports to decision-makers on Services are fair, balanced, and analyse options and the risks associated with those options, to ensure Best Value is achieved.</li> <li>• Ensure that external and internal stakeholders are engaged with when the Council is determining how Services should be planned and delivered, and the outcome of consultations is considered when decisions are made.</li> <li>• Ensure achievement of social value through Service planning and commissioning.</li> <li>• Ensure that it has clear and robust planning and control cycles for its strategic and operational plans, priorities and targets.</li> <li>• Determine appropriate KPIs to demonstrate Service and project performance and provide Members and Senior Officers with timely updates on these.</li> <li>• Ensure medium- and long-term resource planning is realistic, sustainable and inclusive.</li> <li>• Prepare budgets that are aligned to the organisation’s strategic objectives and its MTFP.</li> </ul> |

| CIPFA / Solace principle / supporting principles  | To meet these requirements, the Council will:  |
|---|--|
| <p><b>Developing the Council's capacity, including the capability of its leadership and the individuals within it</b></p> <ul style="list-style-type: none"> <li>• Developing the Council's capacity</li> <li>• <i>Developing the capability of the Council's leadership and other individuals</i></li> </ul>                   | <ul style="list-style-type: none"> <li>• Regularly review operations to ensure that it is continuing to deliver Services that are effective, including the use of benchmarking and sectoral research.</li> <li>• Work collaboratively and in partnerships where added value can be achieved.</li> <li>• Maintain an effective approach to organisational development to ensure continued capacity and capability to deliver.</li> <li>• Clearly define roles, responsibilities and terms of engagement for Members and Officers.</li> <li>• Maintain and regularly review its schemes of delegations that outline the types of decisions that are delegated and those that are reserved for collective decision-making.</li> <li>• Develop the capabilities of Members and Senior Officers to achieve effective shared leadership.</li> <li>• Ensure there are appropriate structures in place to encourage public participation.</li> <li>• Ensure that systems are in place to ensure that Members and Officers can be both held to account for performance and supported as appropriate.</li> </ul> |
| <p><b>Managing risks and performance through robust internal control and strong public financial management</b></p> <ul style="list-style-type: none"> <li>• Managing risk</li> <li>• Managing performance</li> <li>• Robust internal control</li> <li>• Managing data</li> <li>• Strong public financial management</li> </ul> | <ul style="list-style-type: none"> <li>• Embed effective risk management within all activities, ensure that progress is reviewed regularly, and that risk is considered as part of decision-making.</li> <li>• Ensure effective performance management of Service delivery and provide Members and Senior Officers with timely updates on Service performance and progress towards outcomes.</li> <li>• Ensure reports to decision-makers on services are fair, balanced, and analyse options and the risks associated with those options, to ensure Best Value is achieved.</li> <li>• Ensure effective, Member-led scrutiny is in place that provides constructive challenge and debate on objectives and policies before, during and after decisions are taken.</li> </ul>  |

| CIPFA / Solace principle / supporting principles  | To meet these requirements, the Council will:   |
|---|---|
|   | <ul style="list-style-type: none"> <li>• Ensure an effective, risk-led internal audit service is in place to provide assurance on the overall adequacy and effectiveness of the Council's governance arrangements.</li> <li>• Ensure effective counter-fraud and anti-corruption policies and arrangements are in place.</li> <li>• Ensure effective internal control arrangements exist for sound financial management.</li> <li>• Maintain an effective audit committee function.</li> <li>• Ensure effective arrangements are in place to collect, store, use and share data, including processes to safeguard personal data,</li> <li>• Put in place arrangements to ensure that data used to support decision-making is accurate and clear.</li> <li>• Ensure financial management arrangements support both long term outcome delivery and day-to-day operations.</li> </ul>  |
| <p><b>Implementing good practices in transparency, reporting, and audit to deliver effective accountability</b></p> <ul style="list-style-type: none"> <li>• Implementing good practice in transparency</li> <li>• <i>Implementing good practices in reporting</i></li> <li>• Assurance and effective accountability</li> </ul> | <ul style="list-style-type: none"> <li>• Provide reports in plain English wherever possible, ensuring that they are easy to access and interrogate and balance transparency requirements with clarity.</li> <li>• Report regularly on performance, delivery of value for money and stewardship of resources.</li> <li>• Report on compliance with good governance principles within its Annual Governance Statement, including an action plan for continued improvement.</li> <li>• Ensure compliance with good governance principles extends to its partnership arrangements.</li> <li>• Ensure that recommendations made by external audit are addressed.</li> <li>• Ensure that the internal audit service has direct access to Members to enable it to provide assurance with regard to governance arrangements.</li> <li>• Welcome and positively engage with peer challenges, reviews and inspections of its Services.</li> </ul> |

**1.4 How is governance monitored and reviewed?**

- 1.4.1 The policies and procedures that underpin the Council's governance framework are reviewed regularly, with revisions presented to the Audit Committee for agreement.
- 1.4.2 The Council's alignment with the CIPFA / Solace principles will be reviewed each year within the Annual Governance Statement (AGS) document, which is part of the Council's Statement of Accounts. The AGS will assess the Council's compliance with these principles and outline any improvement actions to be taken as a result of this assessment.



# **APPENDIX 2**

## **MEMBER ROLE PROFILES**

## THE ROLE OF COUNCILLORS

Councillors have general responsibilities as policy-makers for the Council and as representatives of their Ward constituents. More detail of these responsibilities is set out in section 1.1 below.

In addition to their general role, there are certain Councillor roles within the Council that have specific responsibilities. These are:

- (a) the Mayor;
- (b) the Deputy Mayor;
- (c) Executive Members;
- (d) the Chair of Council;
- (e) Group Leaders;
- (f) Overview and Scrutiny Board / Scrutiny Panel member / chair;
- (g) Committee member / chair (including Corporate Affairs Committee, Audit Committee, Standards Committee, Licensing Committee and Planning Committee); and

Details of the responsibilities attached to these roles are set out in the role profiles that follow.

## **1.1 ROLE PROFILE: MEMBER**

This role profile applies to all Ward Members, whether they are an Executive Member or a non-Executive Member. Executive Members have additional responsibilities, which are set out in section 1.4 below.

### **What are Members' responsibilities?**

- Representing local people as a Member of Middlesbrough Council.

### **What are Members' key objectives?**

- To provide local leadership in developing and maintaining active involvement of constituents in local democracy.
- To work for real and sustainable improvements in the economic, social and environmental well-being of the communities and local people they represent.
- To represent and act as an advocate for the interests of the Ward for which they were elected, and to deal effectively with constituents' enquiries and representations.
- To campaign for measures that will secure stronger and safer communities and a high quality of life for local people, and effective and responsive delivery of services.
- To contribute actively to the debates in the setting of the Council's performance, policies, strategies, budget and service delivery.
- To take up any opportunities for Member development to help improve their performance as an effective and influential Councillor.

### **What are Members' key tasks?**

- To attend and actively contribute to meetings of Full Council.
- To fulfil the statutory and locally determined requirements of a Member of the Council, including compliance with all relevant codes of conduct.
- To develop and maintain a working knowledge of the Council's policies, and of the community's needs and aspirations in respect of the Council's roles and functions.
- To participate effectively in and attend all meetings of any Council body, as required.
- To participate in the activities of and attend all meetings of any outside body to which they are appointed, providing two-way communication between the body and the Council.
- To develop and maintain a working knowledge of the Council's Services, management arrangements, powers and duties, and constraints, in particular as they affect the area and communities they represent; and to develop good working relationships with relevant Members and Officers of the Council.

- To actively participate in casework and Members' surgeries, in order to address constituents' problems.
- To act as a champion for, and represent the interests of, their local area and communities to the Council.
- To promote open government and democratic renewal through encouraging their local community to participate in the governance of the area.
- To act as champions for children looked after by the Council.
- To ensure that all Committees (including Executive Committees) on which they serve fulfil their corporate parenting responsibilities.
- To represent the Council's corporate parenting responsibilities in their involvement with outside bodies, in particular in relation to duties as a school governor.

In addition to the responsibilities, objectives and tasks set out above, Members should always seek to act within the spirit of the Nolan Principles and the Council's Values, as described in the Members' Code of Conduct.

## **1.2 ROLE PROFILE: THE MAYOR**

### **What are the Mayor's responsibilities?**

- Providing strong and visible leadership in relation to the Council, citizens, stakeholders and partners of the Council.
- Leading on partnerships and strategic matters of significance to Middlesbrough on a local, sub-regional, regional and national basis.
- Promoting, wherever possible, public engagement in the work of the Council.
- Leading in promoting the core values and objectives of the Council.
- Leading on promoting proposals in relation to the Council's Budget and Policy Framework.
- Leading on the delivery of continuous improvement in Council services.
- Promoting the highest standards of conduct and ethics within the Council.
- Making appointments to the Executive, determining portfolios and chairing the Executive.
- Determining the Executive Scheme of Delegation.
- Responsibility for the Armed Forces Covenant.
- Exercising the Council's rights as shareholder in BCCP Limited on behalf of the Teesside Pension Fund.

### **What are the Mayor's key objectives?**

- To appoint the Executive and the Deputy Mayor.
- To determine the portfolios of Executive Members.
- To ensure the development, maintenance and publication of the Forward Work Programme.
- To chair meetings of the Executive.
- To represent the Council and such external bodies as he or she decides.
- To promote local strategic partnerships.
- To propose the Budget and Policy Framework and any amendment thereof to Full Council.
- To maintain and promote the highest standards of conduct and ethics within the Council.

### **What are the Mayor's key tasks?**

- To report to Full Council on their activities.
- To provide strong, fair leadership and clear guidance to Members and Officers.
- To develop a clear understanding of the roles of the Mayor and the Executive, and the scope and range of the areas for which they and the Council are responsible.
- Leading on the delivery of continuous improvement in Council Services.
- To ensure that appropriate consultation is undertaken for the areas of responsibility held by the Mayor, and to involve local people and communities as fully as possible in Council decision-making.
- To respond within agreed timescales to the recommendations of the Overview and Scrutiny Board, setting out what action is proposed, if any, and giving full reasons for decisions taken.

### **1.3 ROLE PROFILE: THE DEPUTY MAYOR**

#### **What are the Deputy Mayor's responsibilities?**

- To chair the Executive in the absence of the Mayor.
- To promote and co-ordinate liaison between the Mayor, the Executive and non-Executive Members.
- To undertake such duties as may be directed by the Mayor.
- If for any reason the Mayor is unable to act, to act in their place until such time as the Mayor is able to act again.
- As part of the Education element of their portfolio the Executive Member for Education and Culture has responsibility to ensure that all children are provided with the opportunity to realise their educational attainment potential.
- The Executive Member will also oversee the provision of educational statutory services to address the needs of all children and young people and adults who need services (including youth justice).
- To take a lead on corporate issues in connection with the Council's performance, especially in relation to the Strategic Plan.
- To promote and develop Member accountability, especially in relation to Members' performance, both in terms of the general framework and the one specific to Executive Members.
- In terms of the Executive, to take a lead on scrutiny especially where the scrutiny issues do not relate to individual Executive Portfolios.
- To lead on corporate strategic issues.
- To promote and develop Members' early and meaningful involvement in developing Council policy.
- To lead on town twinning activities.

## **1.4 ROLE PROFILE: EXECUTIVE MEMBERS**

For the avoidance of doubt, the responsibilities set out in this section apply to Executive Members in addition to those general responsibilities, objectives and tasks set out in section 1.1 above.

### **What are Executive Members' responsibilities?**

- To provide strong, fair leadership and clear political guidance to Members, Officers and the community.
- To develop a clear understanding of their Executive Portfolio, the scope and range of the areas for which they are responsible, and the Council's policies in respect of those areas.
- To ensure the delivery of continuous improvement in Services within their portfolio, and the implementation of best practice in the Council.
- To ensure that there is collective responsibility for decisions taken by the Executive.
- To ensure that decisions taken by individual Executive Members are taken in accordance with the law, and with procedures agreed by the Council and/or by the Mayor.
- To ensure regular briefing meetings are held with those Chief Officers responsible for Services which fall within the remit of their Executive Portfolio.
- To attend meetings of the Executive and inform in advance if they are unable to attend.
- To commission the Overview and Scrutiny Board to undertake work on behalf of the Executive.
- To respond within an agreed timescale to the recommendations of relevant Scrutiny Panels, setting out what action is proposed, if any, and giving full reasons for decisions taken.
- To involve and consult non-Executive Members in the area of work for which they have responsibility, particularly Members of relevant Scrutiny Panel(s).
- To be accountable to the Council in respect of matters relating to their Executive Portfolios.



## **1.5 ROLE PROFILE: THE CHAIR OF THE COUNCIL**

For the avoidance of doubt, the responsibilities set out in this section 1.5 apply to the Chair in addition to those general responsibilities, objectives and tasks set out in section 1.1 above.

### **What are the Chair's key responsibilities?**

- To ensure the effective and efficient chairing of meetings of the Council.
- To undertake the role of "Member Development Champion".

### **What are the Chair's key tasks?**

- To preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community.
- To uphold and promote the purposes of the Constitution and interpret it as and when necessary whilst chairing meetings of the Council (in consultation with the Monitoring Officer).
- To ensure that Council meetings provide a forum for the debate of matters of concern to all Members and the local community and a space in which non-Executive Members are able to hold the Executive to account.
- To also chair the Constitution and Members' Development Committee.
- To have responsibility for the development, monitoring and review of the Member Development Policy and the annual Member Development Programme.
- To ensure that an appropriate level of Member development activities is in place.
- To encourage Members to undertake appropriate levels of training and development activities in order that they have the necessary skills and knowledge to fulfil their roles as Members of the Council.

## **1.6 ROLE PROFILE: GROUP LEADER**

The Council has a Mayor and 46 Members.

### **What is a group leader?**

Each political group represented on the Council has a group leader.

The Council recognises the key leadership role played by the leaders of all political groups represented on the Council and the importance of their commitment to cross-party working.

### **What are Group Leaders' responsibilities?**

- To provide strong, fair leadership and clear political guidance to group members.
- To act as the principal political spokesperson for the political group.
- To act in a manner which is likely to promote rather than undermine the best interests of the Council and ensure that members of their political group act in a similar manner.
- To encourage the highest standards of conduct by members of the group and promote compliance with the Members' Code of Conduct.
- To encourage a culture of learning and development among members of the group, including the active participation of group members in briefings, seminars and other learning and development processes.
- TO establish and maintain effective working relationships with the Leadership Management Team and other Chief Officers, and to meet regularly in order to keep fully apprised of relevant Service issues.
- To build effective relationships with other Councillors, stakeholders, Officers, communities and partners.
- To enable the group to engage in constructive criticism and challenge, promoting alternatives or amendments offered by members of the group on proposed decisions of the Executive, where appropriate.
- To ensure adequate liaison takes place with other political groups to further the interests of the Council.
- To work with their group to formulate overall policy and priorities for the group.
- To represent the Council on local, regional and national bodies, as appropriate

## **1.7 ROLE PROFILE: CHAIR OF THE OVERVIEW AND SCRUTINY BOARD**

In addition to the responsibilities, objectives and tasks contained in section 1.1 above, the chair of the Overview & Scrutiny Board shall also have the responsibilities set out in this section.

### **What are the Overview and Scrutiny Board chair's responsibilities?**

- To provide strong, fair leadership and clear guidance to Members and Officers and in relation to scrutiny functions.
- To have overall responsibility for the direction of scrutiny in the Council, and for ensuring that an appropriate annual scrutiny work programme is set.
- To continuously monitor and evaluate the relevance of the annual Scrutiny Work Programme.
- To meet with chairs of Scrutiny Panels on a regular basis, in order to give advice and guidance on the working of their Panels.
- To meet regularly with Members and Democratic Services Officers in order to ensure that the annual Scrutiny Work Programme is continually updated and that objectives within the Scrutiny Work Programme are achieved.
- To ensure that the work of the Overview and Scrutiny Board contributes to the delivery of continuous improvement in Services and implementation of best practice.
- To monitor the Forward Work Programme.
- To review, challenge and question the implementation of agreed policy and Service delivery, and make recommendations to the Executive and the Council to improve policy, performance and Service delivery.
- To monitor the implementation and delivery of recommendations approved by the Executive.
- To ensure that Scrutiny fulfils an audit and review function.
- To ensure that Executive Members are briefed at the appropriate time on significant issues i.e., those that may:
  - result in a change to established policy;
  - have major resource implications; and/or
  - be contentious.
- To seek to involve all Overview and Scrutiny Board members in the work of the Board.
- To ensure the development of Overview and Scrutiny in relation to health.
- To represent the views of Overview and Scrutiny at meetings of the Executive.

## **1.8 ROLE PROFILE: SCRUTINY PANEL CHAIRS**

In addition to the responsibilities, objectives and tasks contained in section 1.1 above, Scrutiny Panel chairs shall also have the responsibilities set out in this section.

### **What are Scrutiny Panel Chairs' responsibilities?**

- To provide strong, fair leadership and clear guidance to Members and Officers in relation to Scrutiny functions.
- To review, challenge and question the implementation of agreed policy and Service delivery, and make recommendations to the Overview and Scrutiny Board and the Council to improve policy, performance and Service delivery.
- To develop a clear understanding of the terms of reference of their Scrutiny Panel, the scope and range of the areas for which it is responsible, and the Council's policies in respect of those areas.
- To ensure the work of their Scrutiny Panel contributes to the delivery of continuous improvement in Services and implementation of best practice.
- To agree all agendas for Scrutiny Panel meetings, to take a lead in developing a forward agenda, and ensuring it is adhered to.
- To meet on a regular basis and consult with relevant Members to advise them of progress in the work of their Scrutiny Panel, discuss issues arising from the Scrutiny process, and note action being taken by the relevant Executive Members to address the concerns of their Scrutiny Panel.
- To seek to involve all Scrutiny Panel members in the work of their Panel.
- To prepare and present their Scrutiny Panel's final report to the Overview and Scrutiny Board and the Executive.

# **APPENDIX 3**

# **MONITORING OFFICER PROTOCOL**

## **MONITORING OFFICER PROTOCOL**

### **1.1 What is the statutory role of the Monitoring Officer and who holds the position?**

1.1.1 The Monitoring Officer is a statutory appointment<sup>96</sup>. This Protocol provides some general information on how those statutory requirements will be discharged by the Council.

1.1.2 The responsibilities of the Monitoring Officer rest with the Council's Head of Legal and Governance Services, who undertakes to discharge their statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council. In doing so, they will also safeguard, so far as is possible, Members and Officers, whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.

1.1.3 A summary list of the Monitoring Officer's statutory responsibilities appears in the table annexed to this document. In general terms, the Monitoring Officer's ability to discharge these duties and responsibilities will depend, to a large extent, on Members and Officers:

- (a) complying with the law (including any relevant Codes of Conduct);
- (b) complying with any general guidance issued, from time to time, by the Standards Committee, the government and the Monitoring Officer;
- (c) making lawful and proportionate decisions, and
- (d) generally, not taking action that would bring the Council, their offices or professions into disrepute.

1.1.4 In the interests of good working relationships, prior to the issuing of a statutory report<sup>97</sup>, the Monitoring Officer will consult with the Head of Paid Service and the Chief Finance Officer; however, the decision as to whether or not to issue such a report is solely one for the Monitoring Officer.

### **1.2 What are the working arrangements between the Monitoring Officer and Members and Officers?**

1.2.1 Having good working relations with Members and Officers will assist the Monitoring Officer in the discharge of their statutory responsibilities and ensure good governance. Equally, a speedy flow of relevant information and access to debate (particularly at the early stages of any decision-making by the Council) will assist in fulfilling those responsibilities. Members and Officers must, therefore, work with the Monitoring Officer (and their staff) to discharge the Council's statutory and discretionary responsibilities.

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<sup>96</sup> [Local Government and Housing Act 1989, section 5](#)

<sup>97</sup> [Local Government and Housing Act 1989, section 5](#)

1.2.2 The following arrangements and understandings between the Monitoring Officer, Members and Officers are designed to ensure the effective discharge of the Council's business and functions. The Monitoring Officer will:

- (a) report to the Council and to the Executive in any case where the Monitoring Officer is of the opinion that any decision or proposal of the Council in respect of any reportable incident (being any matter which, in the Monitoring Officer's opinion, has given rise to or is likely to or would give rise to any illegality, maladministration or breach of statutory code<sup>98</sup>;
- (b) have advance notice (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the Council at which a binding decision of the Council may be made (including a failure to take a decision where one should have been taken) at or before the Council, Committee meetings, Executive and/or Leadership Management Team (or equivalent arrangements);
- (c) have the right to attend any meeting of the Council (including the right to be heard) before any binding decision is taken by the Council (including a failure to take a decision where one should have been taken) at or before the Council, Committee meetings, Executive and/or Leadership Management Team (or equivalent arrangements);
- (d) carry out any investigation(s) where the Monitoring Officer believes a matter may constitute a reportable incident, and have unqualified access to any information held by the Council and to any Officer who can assist in the discharge of their functions;
- (e) ensure that other Statutory Officers are kept up-to-date with relevant information regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- (f) meet regularly with the Head of Paid Service and the Chief Finance Officer to consider and recommend action in connection with corporate governance issues and other matters of concern regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- (g) report to the Council, from time to time, on the Constitution and any necessary or desirable changes following consultation, in particular, with the Head of Paid Service and the Chief Finance Officer;
- (h) as per the statutory requirements, make a report to the Council, as necessary on the staff, accommodation and resources the Monitoring Officer requires to discharge their statutory functions, and the Council shall ensure that the Monitoring Officer has sufficient resources to enable them to address any matters concerning their statutory functions;

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<sup>98</sup> [Local Government and Housing Act 1989, section 5](#) and [section 5A](#)

- (i) have a special relationship of respect and trust with the Mayor, the Chair of the Council and the chair of the Licensing, Standards, Overview and Scrutiny and Planning Committees, with a view to ensuring the effective and efficient discharge of Council business;
- (j) develop effective working liaison and relationship with the District Auditor and the Local Government and Social Care Ombudsman (including having the authority, on behalf of the Council, to complain to the same, refer any breaches to the same or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary) and settle any compensation payments up to £5,000 for alleged or actual maladministration found against the Council;
- (k) maintain and keep up-to-date relevant statutory registers for the declaration of Members' interests, gifts and hospitality;
- (l) act as Principal Adviser to the Standards Committee;
- (m) give informal advice and undertake relevant enquiries into allegations of misconduct and, if appropriate, make a written report to the Standards Committee;
- (n) be responsible for the Council's complaints, local commissioner and whistle-blowing functions;
- (o) in consultation, as necessary, with the Chair of the Council and the chair of the Standards Committee, defer the making of a statutory report<sup>99</sup> where another investigating body is involved;
- (p) investigate any application for a dispensation and report and recommend to the Standards Committee;
- (q) undertake all statutory Monitoring Officer functions in respect of Parish Councils within the Borough and provide support and advice to such Parish Councils in maintaining probity, including:
  - (i) advice on the requirement for them to adopt a Local Code of conduct;
  - (ii) advice on the requirement upon Parish Council Members to sign an undertaking to observe their authority's Local Code within two months of the authority adopting its Local Code;
  - (iii) advice on the requirement for Parish Council Members to notify the Monitoring Officer of any financial or other interests and of any changes in such interests, that such declarations will form part of a public register, means of gaining access to that register, and of any arrangements to ensure that Parish Council clerks are kept informed of any such declarations;

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<sup>99</sup> [Local Government and Housing Act 1989, section 5](#)



- (iv) advice on the need to apply to the Standards Committee for any dispensations and of the arrangements agreed by the Standards Committee for receiving and determining any such applications, and for maintaining a register of such dispensations and advising the applicant and the Council of any dispensations which are granted;
- (v) advice on any provisions under which individual complaints of misconduct by Parish Council Members may be referred or delegated to the Monitoring Officer and the Standards Committee for investigation and determination, and any arrangements agreed by the Monitoring Officer and the Standards Committee for dealing with such complaints;
- (vi) advice to individual Parish Council Members on enquiries as to their obligations to declare or notify particular interests, on the need to apply for a dispensation, and on any consequent restrictions on the Parish Council Member's participation in consideration of the matter and subject to the approval of the Standards Committee, be responsible with others for preparing any training programme for Parish Council Members on ethical standards and Code of Conduct issues.
- (vii) appoint a deputy or deputies and keep them briefed on any relevant issues that they may be required to deal with in the absence or sickness of the Monitoring Officer (such absence or sickness being more than transitory);
- (viii) after consultation with the Head of Paid Service and the Chief Finance Officer, notify the Police, the authority's auditors and other regulatory agencies of the Monitoring Officer's concerns in respect of any matter and to provide them with information and documents in order to assist them with their statutory functions;
- (ix) obtain at the authority's expense, specialist legal advice, either internally or from an independent external solicitor or barrister, on any matter the Monitoring Officer believes may be a reportable incident.

1.2.3 To ensure the effective and efficient discharge of the arrangements set out above, Members and Officers will report any breaches of statutory duty or Council policies or procedures and other vices or constitutional concerns to the Monitoring Officer, as soon as practicable.

1.2.4 The Monitoring Officer and their deputies are also available for Members and Officers to consult on any issues of the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements (e.g. Standing Orders, Policy Framework, terms of reference, Scheme of Delegations etc.).

### **1.3 How will the Monitoring Officer deal with reportable incidents?**

1.3.1 The Monitoring Officer will seek to resolve potential reportable incidents by avoiding illegality etc., or by identifying alternative and legitimate means of achieving the objective of the proposals. Accordingly, Officers and Members may consult the

Monitoring Officer in confidence in respect of any proposal, and the Monitoring Officer will only need to make a public report on the matter if the proposal were to be a potential reportable incident and the Officer or Member subsequently took any action to progress that proposal despite being advised to the contrary by the Monitoring Officer;

- 1.3.2 Where the Monitoring Officer receives a complaint of a potential reportable incident, they shall, in appropriate cases, seek to resolve the matter amicably, by securing that any illegality, failure of process or breach of code is rectified, and that the complainant is informed of the rectification, with or without a compensation payment and/or apology. However, it is recognised that the Monitoring Officer may determine that the matter is of such import that a statutory report is the only appropriate response;
- 1.3.3 In appropriate cases, the Monitoring Officer may rely upon the Council's existing processes (such as internal appeals procedures or insurance arrangements) to resolve any potential reportable incident, but may intervene in such processes to identify that the particular matter is a potential reportable incident and to ensure the satisfactory resolution of the issue;
- 1.3.4 In appropriate cases, and to secure the rapid resolution of a potential reportable incident or to avoid a separate statutory report, the Monitoring Officer shall be entitled to add their written advice to the report of any other Officer;
- 1.3.5 Notwithstanding the above, the Monitoring Officer retains the right to make a statutory report where, after consultation with the Head of Paid Service and the Chief Finance Officer, the Monitoring Officer is of the opinion that such is necessary in order to respond properly to a reportable incident.
- 1.3.6 To ensure the effective and efficient discharge of this Protocol, the Chief Finance Officer will ensure that adequate insurance and indemnity arrangements are in place for the same to protect and safeguard the interests of the Council and the proper discharge of the Monitoring Officer role.

#### **1.4 How are breaches of this Protocol dealt with?**

Any complaint which indicates that there may have been a breach of the Members' Code of Conduct must be referred to the Monitoring Officer. The Monitoring Officer will contact the Independent Person to discuss the content of the complaint, and to consider whether an investigation is warranted. Complaints of any breach of this Protocol by a Member may be referred to the Standards Committee (to be heard in accordance with the procedure set out in section 8) and to the relevant political party group leader. Complaints of any breach of this Protocol by an Officer may be referred to the Head of Paid Service or their designated representative.

#### **1.5 What happens if the Monitoring Officer has a conflict in relation to a complaint?**

Where the Monitoring Officer is in receipt of a complaint or is aware of a potential reportable event relating to a matter upon which they have previously advised the Council, they shall consult the Head of Paid Service who may then either refer the matter to a deputy Monitoring Officer for investigation and to report back to the Head of Paid Service, or request a neighbouring authority to make their Monitoring Officer

available to the Council to investigate the matter and report to the Head of Paid Service and/or the Council as appropriate.

**ANNEX TO THE MONITORING OFFICER PROTOCOL**

This Annex sets out a summary of the Monitoring Officer's functions in consultation with the Head of Paid Service.

| <b>Description</b>   | <b>Source</b>   |
|--|---|
| Report on contraventions or likely contraventions of any enactment or rule of law.   | Local Government and Housing Act 1989, section 5 <sup>100</sup>   |
| Report on any maladministration or injustice where the Local Government and Social Care Ombudsman has carried out an investigation.  | Local Government and Housing Act 1989, section 5 <sup>101</sup>   |
| To review regularly the Council's Standing Orders, regulations, codes and procedures to ensure they are up-to-date and comply with statutory and best practice requirements.     |   |
| To monitor Committee agenda, reports and general decision-making to ensure that no proposals or decisions breach the law or amount to maladministration.                         |   |
| To advise Members and Officers on propriety issues when required.  |   |
| To receive (and consider) copies of certificates.  | Local Authorities (Contracts) Regulations 1997 <sup>102</sup>   |
| To monitor and revise the Members' Code of Conduct as necessary, via the chair of the Standards Committee, the Constitution and Members' Development Committee, and the Council. | Local Government Act 2000, sections 51(4) <sup>103</sup> 54(2) <sup>104</sup> as amended by the Localism Act 2011 |
| To establish and maintain a register of Members' (including Co-Opted Members) financial and other interests and make it available for public inspection.                         | Local Government Act 2000, section 81(1) <sup>105</sup>   |
| To advise the Standards Committee on the granting of dispensations to Members.   | Local Government Act 2000, section 81(4), (5) <sup>106</sup> as amended by the Localism Act 2011                  |

<sup>100</sup> [Local Government and Housing Act 1989 \(legislation.gov.uk\)](#)

<sup>101</sup> [Local Government and Housing Act 1989 \(legislation.gov.uk\)](#)

<sup>102</sup> [The Local Authorities \(Contracts\) Regulations 1997 \(legislation.gov.uk\)](#)

<sup>103</sup> [Local Government Act 2000 \(legislation.gov.uk\)](#)

<sup>104</sup> [Local Government Act 2000 \(legislation.gov.uk\)](#)

<sup>105</sup> [Local Government Act 2000 \(legislation.gov.uk\)](#)

<sup>106</sup> [Local Government Act 2000 \(legislation.gov.uk\)](#)

|  |  |
|--|--|
|  |  |
| To assist the Standards Committee in the exercise of its functions relating to Parish Councils in its area, including promoting / maintaining Member conduct and advising on the Local Code. | Local Government Act 2000, section 55(1), (2) <sup>107</sup> as amended by the Localism Act 2011 |
| To receive decision notices from interim case tribunals and advise the Standards Committee on their effect / steps to be taken.  | Local Government Act 2000, section 78(7) <sup>108</sup> as amended by the Localism Act 2011      |
| To receive decision notices from case tribunals on behalf of the Standards Committee and advise the Committee on steps (if any) to be taken.   | Local Government Act 2000, section 79 <sup>109</sup> as amended by the Localism Act 2011         |
| To advise the Standards Committee on steps to be taken by the Council following receipt of a case tribunal's recommendations relating to function / code / Standards Committee.              | Local Government Act 2000, section 80(3) <sup>110</sup> as amended by the Localism Act 2011      |
| As a matter of good practice, to report to the Council annually on operation of the internal and external complaints systems, and use of the 'whistleblowing' procedures.                    | 1998 White Paper para 6.42 LGMB guidance, Public Interest Disclosure Act 1998                    |
| To consider conducting an annual propriety audit within the Council as a preventative measure.   |  |
| Appointment of a deputy.   | Local Government & Housing Act 1989, section 5 <sup>111</sup>                                    |
| Report on resources.   | Local Government & Housing Act 1989, section 5 <sup>112</sup>                                    |
| Receive copies of whistleblowing allegations of misconduct.  |  |
| Advice to Members on interpretation of the Code.   |  |
| Key role in promoting and maintaining high standards of conduct through support to the Standards Committee.  | Statutory Guidance, paragraph 8.20   |

<sup>107</sup> [Local Government Act 2000 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>108</sup> [Local Government Act 2000 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>109</sup> [Local Government Act 2000 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>110</sup> [Local Government Act 2000 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>111</sup> [Local Government and Housing Act 1989 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>112</sup> [Local Government and Housing Act 1989 \(legislation.gov.uk\)](http://legislation.gov.uk)

|  |   |
|--|---|
| New Ethical framework functions in relation to Parish Councils.                                      | Local Government Act 2000, section 83(12) <sup>113</sup>                                    |
| Compensation for maladministration.  | Local Government Act 2000, section 92 <sup>114</sup>  |
| Advice on vires issues, maladministration, impropriety, probity and Policy Framework to all Members. | DETR Guidance   |
| Acting as Lead Officer for the Standards Committee.  |   |
| To act as the Council's Returning Officer and Electoral Registration Officer                         | Representation of the People Act 1983, section 35 and section 8 respectively <sup>115</sup> |

<sup>113</sup> [Local Government Act 2000 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>114</sup> [Local Government Act 2000 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>115</sup> [Representation of the People Act 1983, section 35; section 8](#)

# **APPENDIX 4**

## **STATUTORY OFFICER PROFILES**

## **STATUTORY OFFICER PROFILES**

This section sets out the roles and responsibilities of the Council's Statutory Officers.

### **HEAD OF PAID SERVICE**

#### **1.1 What are the Head of Paid Services individual statutory and constitutional responsibilities?**

It shall be the duty of the Head of Paid Service, where they consider it appropriate to do so, to prepare a report to the Council setting out their proposals on certain matters. Those matters are:

- (a) the manner in which the discharge by the Council of its different functions is co-ordinated;
- (b) the number and grades of staff required by the Council for the discharge of its functions;
- (c) the organisation of the Council's staff; and
- (d) the appointment and proper management of the Council's staff.

A copy of the report should be sent to each Member of the Council.

#### **1.2 Who may be the Head of Paid Service?**

The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

#### **1.3 What is the Head of Paid Service's role?**

The Head of Paid Service will:

- (a) have responsibility for the Council's management functions;
- (b) be responsible for establishing a framework for management direction, style, and standards, and for monitoring the performance of the organisation;
- (c) determine and publicise a description of the overall structure of the Council showing the management structure and deployment of officers;
- (d) 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;
- (e) be responsible for the Council's corporate and overall strategic management;
- (f) be responsible for establishing a framework for management direction, style and standards, and for monitoring the performance of the organisation;



- (g) represent the Council on partnership and external bodies, in accordance with the Scheme of Delegations; and
- (h) publish once a year a notice in at least one local newspaper regarding the Forward Work Programme.

## **CHIEF FINANCE OFFICER**

### **1.1 What are the Chief Finance Officer's statutory and constitutional responsibilities in ensuring lawfulness and financial prudence of decision-making?**

The Chief Financial Officer will:

- (a) be responsible for the administration of the financial affairs of the Council;
- (b) be responsible for all financial elements of the corporate governance of the Council;
- (c) after consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to Full Council or to the Executive in relation to an Executive Function, and to 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;
- (d) be responsible for setting and monitoring standards and reserve the right to be involved in the appointment of all staff employed in posts designated as requiring a qualified accountant or auditor;
- (e) in compliance with section 114 of the Local Government Finance Act 1998, report to the full Council, Executive and external auditor if the Authority or one of its officers has made or is about to make a decision which involves or would involve the Council in incurring expenditure which is unlawful; has taken or is about to take a course of action which, if pursued to its conclusion would be unlawful and likely to cause a loss or deficiency is on the part of the Council; is about to enter an item of account, the entry of which is unlawful;
- (f) produce a report if it appears that the expenditure proposed by the Council in a financial year is likely to exceed the resources available to meet that expenditure;
- (g) report to the Executive each year on the general financial situation of the Council and upon future financial scenarios in relation to the coming year's budget prospects and long term trends;
- (h) be responsible for ensuring that a revenue budget is prepared on an annual basis for consideration by the Executive, before full submission to the Council. Each Strategic / Assistant Director shall prepare annually a forward revenue budget in accordance with the criteria specified by the Chief Finance Officer;
- (i) report to the Executive not less than twice in each financial year on the activities of the treasury management operation and on the exercise of his delegated treasury management powers;

### **1.2 What are the Chief Finance Officer's statutory and constitutional responsibilities in relation to the administration of financial affairs?**

1.2.1 The Chief Finance Officer will:

- (a) have statutory responsibility for the financial administration and stewardship of the Council<sup>116</sup>;
- (b) be responsible for: the proper administration of the Council's financial affairs; setting and monitoring compliance with financial monitoring standards; advising on the corporate financial position and on the key financial controls necessary to secure sound financial management; providing financial information; preparing the revenue budget and the capital programme; treasury management, pension and trust funds; and advice on the safeguarding of assets including risk management and insurance;
- (c) be responsible for maintaining a continuous review of the financial regulations and submitting any additions or changes necessary to the Executive and for approval to Full Council. Also responsible for reporting, where appropriate, breaches of the financial regulations to the Council and/or the Executive;
- (d) nominate a properly qualified member of staff to deputise should they be unable to perform their duties to make statutory reports<sup>117</sup>;
- (e) approve all financial procedures, records, systems and accounts operated through the Council including any changes which are subsequently proposed;
- (f) be responsible for keeping the principal accounting records for all Services of the Council; that the accounts and accompanying reconciliations are properly prepared and presented for audit in accordance with relevant guidelines and statutes; undertake the day-to-day management of the financial work of the Council; provide advice on the retention and safe custody of all accounting records; produce and circulate to relevant officers a set of guidance notes for the production of final accounts; present the Statement of Accounts for the year in question to the Council's external auditors; and retain copies of the Statement of Accounts;
- (g) be informed of the existence of all 'unofficial funds' and issue and update accounting instructions for them where necessary. An 'unofficial fund' is any fund where the income and expenditure does not form part of the Council's accounts but which is controlled wholly or in part by an Officer by reason of their employment by the Council or other employment, e.g. the Governors of a school or other semi-autonomous body;
- (h) be authorised to pay all amounts to which the Council is legally committed;
- (i) make imprest advances to Officers for the purpose of defraying petty cash expenses and issue instructions on the control and operation on the imprest account;

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<sup>116</sup> [Local Government Act 1972, section 151](#); [Local Government Finance Act 1988](#); [Local Government and Housing Act 1989](#); [Accounts and Audit Regulations 1996](#)

<sup>117</sup> [Local Government Finance Act 1998, section 114](#)

- (j) have the final approval to authorise arrangements for payments to be automatically debited from the Council's bank account;
- (k) set out the arrangements necessary to ensure that all monies due are received and banked promptly;
- (l) along with the Monitoring Officer, take all reasonable steps to obtain recovery of debts;
- (m) be responsible for all Executive decisions on borrowing, investment or financing delegated to the Chief Finance Officer, acting in accordance with CIPFA's Code of Practice for Treasury Management in Local Authorities;
- (n) be responsible for the administration and day-to-day operation of the Council's borrowings for all purposes and raise, repay or vary the terms of loans as necessary;
- (o) be the registrar for all stocks, bonds and mortgages of the Council and maintain records of all transactions relating thereto, and of all borrowings of money by the Council;
- (p) be responsible for ensuring that secure arrangements are made for the preparation and holding of pre-signed cheques, stock certificates, bonds and other financial documents;
- (q) ensure that adequate insurance protection is maintained for the Council's assets and operations where it is considered to be cost effective and appropriate;
- (r) be responsible for the negotiation of all the Council's insurance contracts and have delegated responsibility for the maintenance of an adequate and effective internal audit;
- (s) ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory and that the risks have been fully appraised before agreements are entered into with external bodies;
- (t) ensure that exemptions to Financial Procedure Rules and/or the Contract Procedure Rules must be recorded, signed by the relevant Strategic / Assistant Director and countersigned by the Chief Finance Officer. All exemptions must be monitored;
- (u) consult, and take advice from, the Monitoring Officer and Strategic Commissioning and Procurement where contracts to work for organisations other than the Council are contemplated; and
- (v) ensure that Best Value and Partnership Arrangements comply with all applicable procurement legislation and follow the principles set out in the

Contract Procedure Rules. The advice of the Monitoring Officer, and Strategic Commissioning & Procurement must be taken.

1.2.2 The Chief Finance Officer shall have the power to make technical amendments to the Financial Procedure Rules and the Contract Procedure Rules to make them consistent with legal requirements.

**1.3 What are the Chief Finance Officer's statutory and constitutional responsibilities in 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.

**1.4 What are the Chief Finance Officer's statutory and constitutional responsibilities in providing advice / information?**

The Chief Finance Officer will:

- (a) provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework issues to all Members and the Mayor and support and advise the Mayor, Members and Officers in their respective roles;
- (b) be responsible for issuing advice and guidance to underpin the financial regulations that the Mayor, Members and Officers and others acting on behalf of the Council are required to follow;
- (c) be responsible for advising on effective systems of internal control. Those arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice;
- (d) provide advice on risk with every Chief Officer and Budget Holder having a responsibility to support these initiatives; and
- (e) provide financial information to the media, members of the public and the community.

## **MONITORING OFFICER**

### **1.1 What are Monitoring Officer's statutory and constitutional responsibilities?**

- 1.1.1 Unless the Council determines otherwise, the Monitoring Officer shall be the Council's Chief Legal Officer.
- 1.1.2 The Monitoring Officer shall be responsible for all non-financial elements of the corporate governance of the Council.
- 1.1.3 It is the duty of the Monitoring Officer to prepare a report to the Council with respect to any proposal, decision or omission by the Council, committee, or Officer that could give rise to unlawfulness, maladministration or injustice.
- 1.1.4 In preparing the report there is a duty to consult with the Head of Paid Services and the Chief Finance Officer and then arrange for a copy of it to be sent to each Member.
- 1.1.5 The Monitoring officer cannot be the Chief Finance Officer or the Head of Paid Service.

### **1.2 What are the Monitoring Officers responsibilities in relation to the Constitution?**

The Monitoring Officer will:

- (a) provide access to an electronic copy of the Constitution for all Members, Officers and the public via the Council's website, and ensure that any updated version of the Constitution is made available within a reasonable period;
- (b) maintain an up-to-date version of the Constitution;
- (c) monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect;
- (d) be aware of the strengths and weaknesses of the Constitution and make recommendations for ways in which it could be amended including observing meetings; undertaking audit trails of a sample of decisions; recording and analysing issues raised by Members, Officers, members of the public and stakeholders; compare practices with other comparable authorities or national examples of best practice;
- (e) give notice to the public of the time and place of any meeting in accordance with the Access to Information Procedure Rules; and
- (f) be responsible for the system of record keeping in relation to all decisions made by Full Council.

### **1.3 What are the Monitoring Officer's responsibilities in relation to Standards and governance?**

The Monitoring Officer will:

- (a) after consulting with the Head of Paid Service and the Chief Finance Officer, the Monitoring Officer will report to Full Council or to the Executive in relation to an Executive Function 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;
- (b) contribute to the promotion and maintenance of high standards of conduct through the provision of support to the Standards Committee;
- (c) conduct investigations into complaints against Members and Co-Opted Members, which after consultation with an Independent Person appointed for such purposes, are felt to have breached the Members' Code of conduct and make reports or recommendations in respect of them to the Standards Committee;
- (d) conduct such other investigations as it appears to the Monitoring Officer are necessary to ensure appropriate corporate governance;
- (e) ensure that Executive decisions, together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible;
- (f) advise on whether decisions of the Executive are in accordance with the Budget and Policy Framework;
- (g) provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework issues to all Members and the Mayor;
- (h) be responsible for corporate complaints, Ombudsman cases, reviewing the Constitution and whistleblowing;
- (i) be responsible for reporting any actual or potential breaches of the law or maladministration to Full Council and/or to the Executive, and for ensuring that procedures for recording and reporting Key Decisions are operating effectively;
- (j) ensure that Executive decisions, and the reasons for them, are made public;
- (k) be responsible for advising the Mayor, all Members and Officers about who has authority to take a particular decision;
- (l) be responsible for referring to Full Council any proposed variations to approved budgets, plans and strategies and which form part of the Policy Framework;
- (m) be responsible for promoting and maintaining the same high standards of conduct with regard to financial administration in partnerships that apply throughout the Council; and

- (n) receive written notice from the Mayor on amendments to the Scheme of Delegations of Executive Functions.



## **JOINT STATUTORY AND CONSTITUTIONAL RESPONSIBILITIES**

### **1.1 What are the Statutory Officers' joint statutory and constitutional responsibilities?**

1.1.1 The Head of Paid Service, in consultation with the Chief Finance Officer, shall produce and circulate to all relevant Officers a set of guidance notes for the production of the Capital Programme

1.1.2 The Monitoring Officer and the Chief Finance Officer will:

- (a) give advice to the Executive, Committees of the Executive, individual executive Members and any Officers or Joint Arrangements discharging Executive Functions on making decisions outside the Budget or the Policy Framework;
- (b) provide advice to the Overview and Scrutiny Board or a Scrutiny Panel on the process of Call-in of decisions, which if made, would be contrary to the Policy Framework or not in accordance with the Budget; and
- (c) be responsible for advising the Executive or Full Council whether a decision is likely to be considered contrary to or not wholly in accordance with the Budget.

1.1.3 The Head of Paid Service and the Monitoring Officer will be responsible for the system of record keeping in relation to all Full Council decisions.

## OTHER STATUTORY ROLE PROFILES

### COMPLAINTS MANAGER

#### 1.1 What are the statutory and constitutional responsibilities of the Complaints Manager?

1.1.1 It shall be the duty of the Complaints Manager to:

- (a) ensure that the Council fulfils its requirements in relation to: representations made under the Children Act 1989<sup>118</sup>; complaints made under the Health & Social Care (Community Health and Standards) Act 2003<sup>119</sup>, and the requirements of Part III of the Local Government Act 1974<sup>120</sup>;
- (b) ensure best practice in relations to complaints and representations made to the Council
- (c) promote the Council's complaints scheme (as described in section 3.4 of the Constitution);
- (d) provide support and guidance to Members, including Executive Members and Officers, in relation to the duties, practices and procedures in dealing with complaints.

1.1.2 The above shall also apply to Independent Panels constituted under the requirements of the Children Act 1989 Representations Procedures (England) Regulations 2006<sup>121</sup>.

1.1.3 The Complaints Manager will:

- (a) have responsibility for the overall management and overview of the Council's complaints functions as set out above;
- (b) be responsible for the corporate and overall strategic development of the Council's complaints functions;
- (c) be responsible for establishing, updating, maintaining and publishing the framework for standards and practice in relation to complaints (the "Corporate Complaints Procedures");
- (d) be responsible for the monitoring of the performance of the Corporate Complaints Procedures;
- (e) report to full Council on the manner in which the Corporate Complaints Procedures have been discharged;
- (f) publicise the Complaints Procedures within and outside the Council; and

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<sup>118</sup> [Children Act 1989 \(legislation.gov.uk\)](#)

<sup>119</sup> [Health and Social Care \(Community Health and Standards\) Act 2003 \(legislation.gov.uk\)](#)

<sup>120</sup> [Local Government Act 1974 \(legislation.gov.uk\)](#)

<sup>121</sup> [The Children Act 1989 Representations Procedure \(England\) Regulations 2006 \(legislation.gov.uk\)](#)

- (g) ensure that the Directorates with responsibility for discharging those functions provided for within the Children Act 1989 Representations Procedures (England) Regulations 2006<sup>122</sup> and the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009<sup>123</sup> meet the requirements of those regulations.

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<sup>122</sup> [The Children Act 1989 Representations Procedure \(England\) Regulations 2006 \(legislation.gov.uk\)](#)

<sup>123</sup> [The Local Authority Social Services and National Health Service Complaints \(England\) Regulations 2009 \(legislation.gov.uk\)](#)

## NOMINATED LOCAL AUTHORITY CHANNEL CHAIR

### 1.1 What are the statutory responsibilities of the Nominated Local Authority CHANNEL Chair?

1.1.1 It shall be the duty of the Head of Stronger Communities nominated as chair of Middlesbrough Council's CHANNEL Panel under S26 Counter Terrorism Security Act 2015<sup>124</sup>, to prepare a summary report to governance bodies including Local Authority Scrutiny, Home Office, Ofsted and Counter Terrorism Policing as required on the administration of CHANNEL Safeguarding locally.

1.1.2 The CHANNEL Chair must ensure that:

- (a) the Council operates a multi-agency safeguarding panel;
- (b) the Council provides the chair (if the chair is not available);
- (c) the Panel develops a support plan for individuals accepted as CHANNEL cases;
- (d) the Panel considers alternative forms of support, including health and social services, where CHANNEL is not appropriate;
- (e) all partners of a Panel (as specified in Schedule 7 of the CHANNEL Terms of Reference 2020), so far as appropriate and reasonably practicable, cooperate with the police and the Panel in the carrying out of their functions; and
- (f) the administration of the CHANNEL responsibilities are adhered to as per the CHANNEL Duty Guidance<sup>125</sup>.

1.1.3 The CHANNEL Chair will:

- (a) ensure the administration and operation of active and reviewed CHANNEL cases in a multi-agency safeguarding approach in partnership with Cleveland Police;
- (b) ensure that both they, and their deputy, comply with all training requirements of the role as directed by the Home Office;
- (c) support the Council's PREVENT lead in the administration of the Council's overarching PREVENT duty;
- (d) manage accountability of individual members' actions within CHANNEL cases
- (e) provide written reports to governance panels/inspectorate bodies as required; and
- (f) ensure the data protection of client information for the welfare of the client.

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<sup>124</sup> [Counter Terrorism Security Act 2015, section 26](#)

<sup>125</sup> [CHANNEL Duty Guidance 2020](#)

## NOMINATED LOCAL AUTHORITY PREVENT LEAD

### 1.1 What are the statutory responsibilities of the Nominated Local Authority PREVENT Lead?

1.1.4 The Council has a statutory responsibility<sup>126</sup> to have due regard to, and safeguard those at risk of, radicalisation. The nominated PREVENT Lead will provide the overarching responses to the governance on the administration of the Council's duty to inspectorate and governance panels including but not limited to the Community Safety Partnership, regional PREVENT panels, Home Office, Counter Terrorism Policing and Ofsted.

1.1.5 The PREVENT Lead must ensure that:

- (a) Officers receive suitable training on recognising the risk of radicalisation;
- (b) the Council contributes to reducing the risk of radicalisation;
- (c) the Council promotes the safeguarding ethos of PREVENT and the referral mechanism for CHANNEL; and
- (d) partners in education are supported in respect of the statutory responsibilities under Department of Education PREVENT Duty Guidance<sup>127</sup> and Keeping Children Safe in Education<sup>128</sup>.

1.1.6 The PREVENT lead will

- (a) chair the Middlesbrough Bronze Operational group and lead a multi-agency partnership approach to promote PREVENT and its safeguarding nature;
- (b) conduct an annual risk assessment against the Counter Terrorism Local Profile and develop plans for the Middlesbrough Bronze Operational group to lead;
- (c) develop and deliver Home Office and bespoke training to professionals aimed at recognising the risk of those vulnerable to, and how to support those at risk of, radicalisation;
- (d) promote online digital resilience from a safeguarding perspective;
- (e) promote national products on behalf of Counter Terrorism Policing;
- (f) assist schools and colleges with training, awareness raising and initiatives to promote the safeguarding ethos of PREVENT;
- (g) support the CHANNEL Panels as directed by the Council, the CHANNEL Chair, and Counter Terrorism Case Officers;

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<sup>126</sup> [Counter Terrorism Security Act 2015, section 26](#)

<sup>127</sup> [PREVENT Duty Guidance for England and Wales](#)

<sup>128</sup> [Keeping Children Safe in Education 2022](#)

- (h) assist Children`s and Adults Safeguarding Officers at referral stage;
- (i) chair the regional Cleveland PREVENT Leads group;
- (j) attend the Silver PREVENT group; and
- (k) provide quarterly written reports to the Community Safety Partnership.

# **APPENDIX 5**

## **PROPER OFFICER FUNCTIONS**

## PROPER OFFICER FUNCTIONS

### 1.1 What is a Proper Officer?

A Proper Officer is an Officer appointed by the Council to carry out certain administrative functions as required by statute including, for example, receiving or giving notices, certifying or authenticating documents, keeping registers, and issuing summonses for meetings.

### 1.2 Who are the Council's Proper Officers and what are their responsibilities?

The Council has appointed the following Proper Officers:

#### 1.2.1 Head of Paid Service:

- (a) Head of Paid Service<sup>129</sup>.

#### 1.2.2 Monitoring Officer:

- (a) Monitoring Officer<sup>130</sup>.
- (b) In relation to any reference in any enactments passed before or during the 1971–1972 session of Parliament (other than the Local Government Act 1972) or in any instrument made before 26th October 1972, to the “Clerk” of a Council or the “Town Clerk” of a Borough, which by virtue of any provision in the said Act, is to be construed as a reference to the Proper Officer of the Council.
- (c) Preparation, publication, distribution, and retention of papers and records of decisions taken by Council, Committees, Sub-Committees, Executive, Individual Executive Members, and Executive Sub-Committees<sup>131</sup>.
- (d) Clerk of the peace of the Borough<sup>132</sup>.
- (e) Returning Officer and Electoral Registration Officer<sup>133</sup>.
- (f) Acceptance of declaration of office of Members<sup>134</sup>.
- (g) For the purposes of the Common Registration Act 1965<sup>135</sup> and the Commons Act 2006<sup>136</sup>.
- (h) Receipt of declarations as to election expenses<sup>137</sup>.

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<sup>129</sup> [Local Government and Housing Act 1989, section 4](#)

<sup>130</sup> [Local Government and Housing Act 1989, section 5](#)

<sup>131</sup> [Local Government Act 1972](#)

<sup>132</sup> [Sheriffs Act 1887, section 6\(3\)](#)

<sup>133</sup> [Representation of the People Act 1983, section 35](#) and [section 8](#) respectively

<sup>134</sup> [Local Government Act 1972, section 83](#)

<sup>135</sup> [Commons Registration Act 1965 \(legislation.gov.uk\)](#)

<sup>136</sup> [Commons Act 2006 \(legislation.gov.uk\)](#)

<sup>137</sup> [Representation of the People Act, section 82](#)



- (i) Receipt of Members' declarations of interests<sup>138</sup>.
- (j) Record of Executive Members prejudicial interests<sup>139</sup>.
- (k) Determination of confidential and exempt reports and decisions of Executive<sup>140</sup>.
- (l) Parish trustee<sup>141</sup>.
- (m) Receipt of declaration of resignation of office<sup>142</sup>.
- (n) Convening Council meeting to fill casual vacancy of Chair<sup>143</sup>.
- (o) Receipt of Notice of casual vacancy from two local government electors in the event of a casual vacancy in the office of Councillor<sup>144</sup>.
- (p) Receipt and keeping of record notice of pecuniary interests<sup>145</sup> (Section 29 Localism Act 2011).
- (q) For the purposes of public access to information<sup>146</sup>.
- (r) Freedom of Information requests<sup>147</sup>.
- (s) Charity functions of offices with existing authorities transferred to holders of equivalent office with new authority<sup>148</sup>.
- (t) Deposit of documents<sup>149</sup>.
- (u) Certification of photographic copies of documents<sup>150</sup>.
- (v) Authorisation of documents<sup>151</sup>.
- (w) Sharing of copies of byelaws<sup>152</sup>.

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<sup>138</sup> [Local Authorities \(Members' Interests\) Regulations 1992](#)

<sup>139</sup> [Local Authorities \(Executive and Alternative Arrangements\) \(Modification of Enactments\) Order 2001](#)

<sup>140</sup> [\(Local Authorities\) \(Executive Arrangements\) \(Access to Information\) \(England\) Regulations 2000](#)

<sup>141</sup> [Local Government Act 1972, section 13\(3\)](#)

<sup>142</sup> [Local Government Act 1972, section 84](#)

<sup>143</sup> [Local Government Act 1972, section 88\(2\)](#)

<sup>144</sup> [Local Government Act 1972, section 89\(1\)\(b\)](#)

<sup>145</sup> [Localism Act 2011, section 29](#)

<sup>146</sup> [Local Government Act 1972, sections 100B-100F](#)

<sup>147</sup> [Freedom of Information Act 2000](#)

<sup>148</sup> [Local Government Act 1972, section 210\(6\) and \(7\)](#)

<sup>149</sup> [Local Government Act 1972, section 225](#)

<sup>150</sup> [Local Government Act 1972, section 229\(5\)](#)

<sup>151</sup> [Local Government Act 1972, section 234\(1\) and \(2\)](#)

<sup>152</sup> [Local Government Act 1972, section 236\(9\) and \(10\)](#)

- (x) Certification of byelaws<sup>153</sup>.
- (y) Keeping of the roll of freemen<sup>154</sup>.
- (z) Signature of summonses to Council meetings<sup>155</sup>.
- (aa) Receipt of notices of addresses to send summonses<sup>156</sup>.
- (bb) Making certified copies of resolutions<sup>157</sup>.
- (cc) Rent Office Service<sup>158</sup>.
- (dd) Receipt of notification from Mayor of the appointment and terms and conditions of appointment of Mayor's assistant (see section 11.13 of the Constitution)<sup>159</sup>.
- (ee) Receipt of notification from the Mayor of any objections to the proposed appointments made by the Chief Officer Appointments Committee<sup>160</sup>.
- (ff) Proper Officer for the purposes of the Registration Services Act 1953<sup>161</sup>.

#### 1.2.3 Chief Finance Officer:

- (a) Proper administration of financial affairs<sup>162</sup> (Section 151 Local Government Act 1972).
- (b) In relation to any reference in any enactment or instrument to a "Borough Treasurer" or "Treasurer" which, by any such provision is to be construed as a reference to the Proper Officer of the Council.
- (c) Receipt of money due from Officers<sup>163</sup>.
- (d) Declarations and certificates with regard to securities<sup>164</sup>.

#### 1.2.4 Director of Environment and Commercial Services:

- (a) To receive applications for assistance with Ordnance Survey mapping<sup>165</sup>.
- (b) In relation to any reference in any enactment or instrument to a "Borough Engineer", "Borough Surveyor", "Surveyor" or "Head of Engineering", which by

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<sup>153</sup> [Local Government Act 1972, section 238](#)

<sup>154</sup> [Local Government Act 1972, section 248](#)

<sup>155</sup> [Local Government Act 1972, Schedule 12, paragraph 4\(2\)\(b\)](#)

<sup>156</sup> [Local Government Act 1972, Schedule 12, paragraph 4\(2\)\(b\)](#)

<sup>157</sup> [Local Government Act 1972, Schedule 14, paragraph 25\(7\)](#)

<sup>158</sup> [Rent Act 1977, section 63](#)

<sup>159</sup> [The Local Authority Elected Mayor's and Mayor's Assistants Regulations 2002](#)

<sup>160</sup> [The Local Authorities \(Standing Orders\) \(England\) Regulations 2001](#)

<sup>161</sup> [Registration Service Act 1953 \(legislation.gov.uk\)](#)

<sup>162</sup> [Local Government Act 1972, section 151](#)

<sup>163</sup> [Local Government Act 1972, section 115](#)

<sup>164</sup> [Local Government Act 1972, section 146\(1\)\(a\) and \(b\)](#)

<sup>165</sup> [Ordnance Survey Act 1841, section 1](#)

any provision of the Local Government Act 1972<sup>166</sup>, is to be construed as a Proper Officer of the Council.

(c) Traffic Manager<sup>167</sup>.

1.2.5 Director of Adult Social Care and Health Integration:

(a) In relation to any reference in any enactment or instrument to a “Sanitary Inspector” or “Public Health Officer”, which by any such provision is to be construed as a reference to the Proper Officer of the Council.

(b) Procedure for assessing housing conditions<sup>168</sup>.

(c) Receipt of application for a justices’ licence<sup>169</sup>.

1.2.6 Director of Social Care and Health Integration:

(a) The “director of social services” for the purposes of the Local Authority Social Services Act 1970, section 6<sup>170</sup>.

1.2.7 Executive Director of Children’s Services:

(a) The “director of children’s services” for the purposes of the Children Act 2004, section 18<sup>171</sup>.

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<sup>166</sup> [Local Government Act 1972 \(legislation.gov.uk\)](#)

<sup>167</sup> [Traffic Management Act 2004](#)

<sup>168</sup> [Housing Act 2004, section 3](#)

<sup>169</sup> [Licensing Act 1964, Schedule 2](#)

<sup>170</sup> [Local Authority Social Services Act 1970 \(legislation.gov.uk\)](#)

<sup>171</sup> [Children Act 2004 \(legislation.gov.uk\)](#)

## **APPENDIX 6**

# **COUNCILLOR CALLS FOR ACTION PROCEDURE AND GUIDANCE**

## **COUNCILLOR CALL FOR ACTION PROCEDURE AND GUIDANCE**

### **1.1 What is a Councillor Call for Action (CCfA)?**

- 1.1.1 Councillors have a legal obligation to consider requests from members of the public in relation to certain issues<sup>172</sup>.
- 1.1.2 The CCfA gives Councillors a central role in holding Council services and other agencies to account at a local level. It allows Councillors to escalate issues where they cannot be resolved through discussions with service providers and/or agencies, or otherwise at a local level. The CCfA process involves asking the Overview and Scrutiny to consider an issue in order to assist a Councillor in finding a resolution.
- 1.1.3 A CCfA may relate to any local government matter relating to any Council function affecting a Councillor's Ward and/or constituents. This includes matters relating to crime and disorder.
- 1.1.4 A CCfA should only be requested as a last resort. It should not be used to address vexatious, persistent, unreasonable or discriminatory matters, or to achieve actions for political reasons<sup>173</sup>.

### **1.2 How is a CCfA different from a normal Overview and Scrutiny request?**

- 1.2.1 CCfA requests are different from the Council's normal Overview and Scrutiny function in that:
- (a) they are initiated by a Councillor in relation issues of local concern in their Ward;
  - (b) they focus on neighbourhood and locality issues, specifically the quality of service provision at a local level;
  - (c) they should relate to a genuine local community concern (as judged by the Councillor); and
  - (d) they should only be referred to the Overview and Scrutiny Board as a last resort when the Councillor has been unable to resolve the issue by other means.
- 1.2.2 Detailed guidance on whether an issue is appropriate to be a CCfA is set out in the Annex to this Procedure.

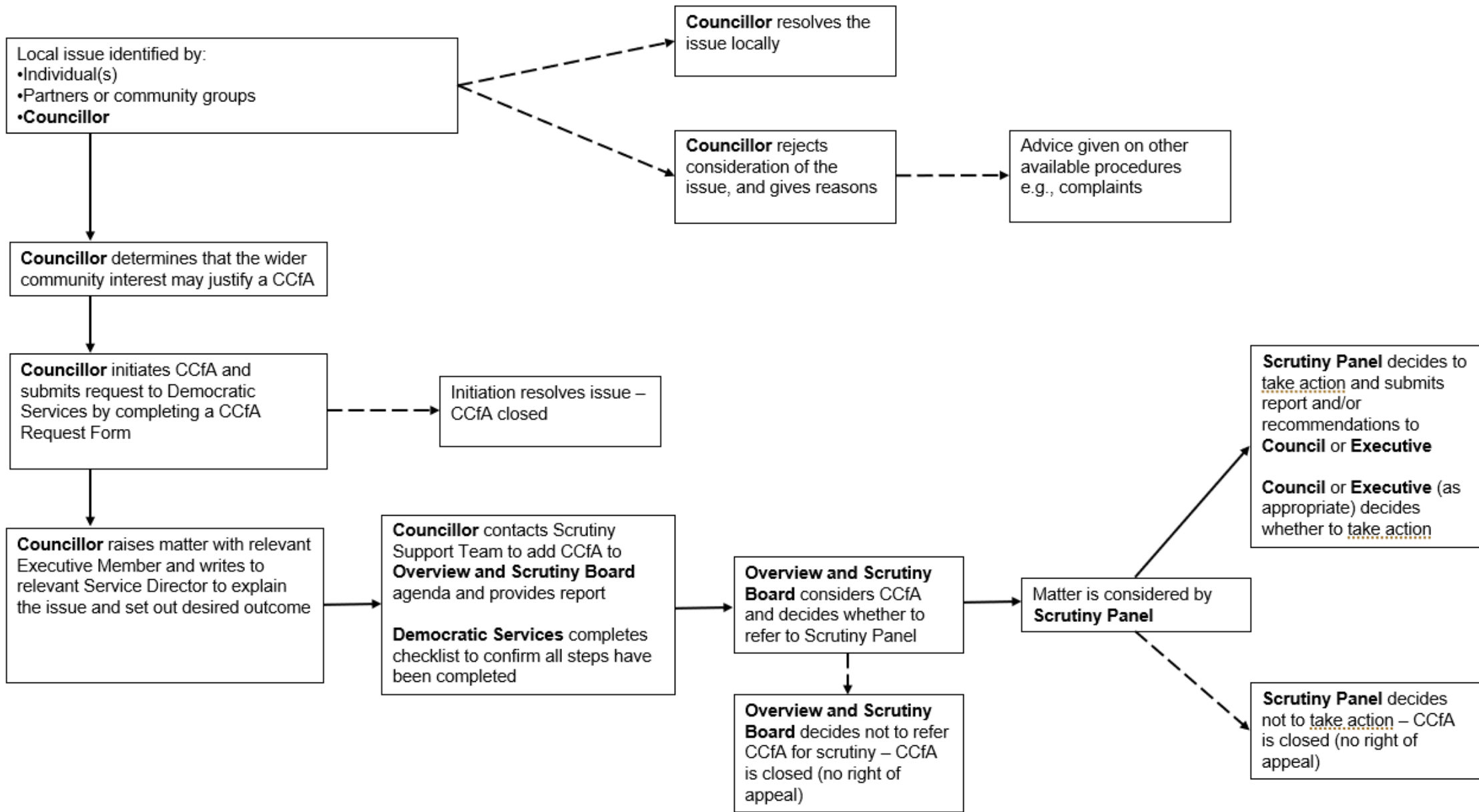
### **1.3 What is the process for submitting a CCfA**

- 1.3.1 Democratic Services can advise on the CCfA process. It is preferable for Councillors to seek out this advice before starting the process.
- 1.3.2 The CCfA process is set out on the following page. The CCfA Request Form can be found in Annex 2 to this Procedure.

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<sup>172</sup> [Local Government and Public Involvement in Health Act 2007](#) and [Police and Justice Act 2006](#)

<sup>173</sup> [Overview and Scrutiny \(Reference by Councillors\) \(Excluded Matters\) \(England\) Order 2008](#)



## **1.4 What is the role of Overview and Scrutiny in relation to a CCfA?**

- 1.4.1 Legislation requires that matters requested under the CCfA process, and in respect of which all required steps have been taken, are added to the Overview and Scrutiny Board agenda and discussed. Once a CCfA Request Form is submitted, and Democratic Services are satisfied that they can complete the checklist appended to the CCfA Request Form, the CCfA will be placed on the agenda of the next available Overview and Scrutiny Board meeting.
- 1.4.2 There is no requirement for issues raised under a CCfA to be scrutinised or for any action to be taken in relation to them<sup>174</sup>.
- 1.4.3 While Councillors may request that matters are considered by Overview and Scrutiny under a CCfA, Overview and Scrutiny will ultimately decide if an issue will be addressed.
- 1.4.4 If a Scrutiny Panel decides not to exercise its powers in relation to a CCfA, it must notify the Councillor who proposed the CCfA of its decision and provide reasons for it. There is no right of appeal in respect of a Scrutiny Panel's decision not to exercise its powers, and constituents may not appeal to the Executive.
- 1.4.5 The Scrutiny Panel considering a CCfA will provide the requesting Councillor with a copy of any report and/or recommendations made to the Council or the Executive.

## **1.5 What actions may the Overview and Scrutiny Board take in respect of a CCfA?**

- 1.5.1 The Overview and Scrutiny Board may accept a CCfA as valid, in which case it may:
- (a) decide to take no action (giving reasons for doing so);
  - (b) refer the CCfA to the Ad Hoc Scrutiny Panel for consideration;
  - (c) in the case of an issue relating to crime and disorder<sup>175</sup>, refer the CCfA to the Scrutiny Panel that deals with such matters; or
  - (d) in exceptional circumstances, refer the issue to another Scrutiny Panel (for example, where a Scrutiny Panel is already considering a similar issue).
- 1.5.2 The Overview and Scrutiny Board will reject a CCfA if:
- (a) the issue is currently being considered under the Council's complaints procedure;

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<sup>174</sup> [Local Government and Public Involvement in Health Act 2007](#)

<sup>175</sup> An issue will fall into this category where it relates to (i) crime and disorder (including forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment; or (ii) the misuse of drugs, alcohol and other substances that affects the electoral area represented by the Councillor, or the people who live and work in that area.

- (b) Ward Councillor(s) have not explored the issue fully and exhausted all avenues for resolution;
  - (c) the Overview and Scrutiny process will not add any value to the work undertaken by Ward Councillor(s);
  - (d) the matter has already been subject to Call-in; or
  - (e) the matter has been considered by the Overview and Scrutiny Board (or a Scrutiny Panel), or the Executive within the previous six months and there has been no change in circumstances that warrants fresh consideration.
- 1.5.3 If a CCfA is referred for scrutiny, the relevant Scrutiny Panel will, on the advice of the Overview and Scrutiny Board, determine the duration of any scrutiny investigation into a CCfA.
- 1.5.4 The Overview and Scrutiny Board and/or a Scrutiny Panel's only power in relation to a CCfA is to refer the matter, if appropriate, to the Council or the Executive, to consider its recommendations.
- 1.5.5 If the Council or the Executive, as appropriate, decides not to take any action, the CCfA will be closed. The Overview and Scrutiny Board cannot take any further action.



## **ANNEX 1**

### **Exhaustion of other avenues**

#### **Have all other possible avenues for resolving the issue been exhausted?**

Councillors should look to resolve issues by other means where possible and remember that the CCfA process is only to be used as a last resort. Councillors should consider appropriate means of resolution including:

- submitting a formal enquiry;
- advising residents to use the Council's complaints procedure (and assisting them to do so, where required);
- advising on the petition process; and
- Call-in of Executive decisions (where appropriate).

### **The initial issue Checklist**

#### **Are the concerns to do with the quality of public service provision at a local level?**

CCfAs are intended to address issues of broad concern in the community relating to Council services. They can also address broader issues relating to other public services. These might include matters such as anti-social behaviour, community safety, health services and issues relating to local schools.

#### **Are the concerns individual complaints?**

CCfAs are not appropriate for dealing with individual complaints. If the matter relates to a complaint, advice can be given about how this may be best brought to the Council's attention and dealt with.

#### **Do the concerns relate to individual 'quasi-judicial' decisions (e.g. Planning or Licensing) or to Council Tax or Non-Domestic Rates?**

CCfAs are not appropriate for dealing with these matters as they are subject to other appeals processes. However, patterns of issues may be appropriate to consider as a concern under a CCfA; for example, community concerns about the proliferation of licensed premises in a local neighbourhood.

### **The Local Community Concern Checklist**

#### **Is the focus of concern on a neighbourhood or locality issue?**

CCfAs focus on neighbourhood or locality issues. They provide a mechanism for Ward Councillors to help resolve issues of concern in their Wards. If the concern is of a more general nature, for example, about policy or town-wide issues, a request for Overview and Scrutiny can still be made in the usual way.

#### **Is the issue a genuine local concern?**

Councillors should ensure that concerns raised in their Ward are genuine and widely held, and not just an individual constituent's point of view or 'hobby horse'. Establishing the views of other members of the community will be essential in clarifying this.

### **The 'Championing a Request' Checklist**

#### **Is a CCfA the most appropriate way of resolving the issue?**

The core purpose of a CCfA is to assist in the resolution of local problems and concerns. Before Councillors agree to championing a CCfA, they should consider other appropriate courses of action such as complaints procedures, Members' enquiries or petitions.

#### **Would an apology, explanation or an assurance about a particular problem be enough to satisfy a community concern?**

Where a Councillor raises an issue, an apology, an explanation, or an assurance that an action will not be repeated might be given. If that addresses the concerns identified, and further actions such as changes to service provision are not required, then referral to Overview and Scrutiny would not be appropriate.

#### **What happens if the above are not appropriate or have not succeeded?**

If other actions such as complaints, member enquiries or petitions are not appropriate, have been tried without success, then Councillors might wish to consider a CCfA. Pursuing a CCfA requires Councillors to:

- raise the issue with any local interest groups;
- facilitate an informal discussion meeting to consider residents' views – ensuring that ALL points of view are recorded and reported;
- raise the issue at Community Council, cluster group etc.;
- discuss the issue with the appropriate Executive Member; and
- contact the Head of Service for the appropriate Service area.

Before you start down the CCfA route, Councillors should first register with the Scrutiny Support Team their intent to action a CCfA.

### **The 'Reality' Checklist**

#### **Is the use of the CCfA process being applied selectively?**

Councillors should only agree to take on issues that have wide support. It should be borne in mind that for every group of residents that supports a particular scheme, there will probably be another group that opposes it. Councillors should avoid setting themselves impossible objectives.

CCfAs are not a pathway to additional funding. If the Council has already decided not to take a particular course of action it might well be that the funding is not available. Councillors should seek relevant information BEFORE committing themselves to a particular course of action.

**ANNEX 2**

**COUNCILLOR CALL FOR ACTION (CCfA)**

**CCfA REQUEST FORM**

*If you need help completing this form, please contact Democratic Services*

|   |  |
|---|--|
| <b>Name of Councillor submitting this request</b>                 |  |
| <b>Date of submission</b>   |  |
| <b>Name(s) of any other Councillor(s) supporting this request</b> |  |

**Please provide details of the matter for which you are requesting Scrutiny and the reasons why you are seeking Scrutiny**

*Please be as specific as possible*

**Please provide details of any actions taken by you (and/or other Councillors supporting this CCfA request) to resolve the issue**

**Please provide details of any Officers, Services and/or partner agencies involved in the matter**

**Please explain the resolution you are seeking**

Councillor name: .....

Signature: .....

Date: .....

**For Democratic Services' use**

|  | <b>YES/NO</b> | <b>EVIDENCE – please provide</b>   |
|--|---------------|--|
| Has there been consideration of other appropriate actions?               |               | <i>List actions</i>  |
| Has the issue been defined clearly?                                      |               | <i>Insert details of issue</i>   |
| Have community views been obtained?<br><br>Are they supportive of CCfA?  |               | <i>List community groups consulted and include supporting documents e.g. minutes</i> |
| Have relevant groups been contacted for support?                         |               | <i>List relevant groups contacted and include supporting documents e.g. minutes</i>  |
| Is the Community Council supportive of the CCfA?<br><br>If not, why not? |               | <i>Include supporting documents e.g. minutes</i>                                     |
| Has the Executive Member been contacted?                                 |               | <i>Include copies of relevant emails/letters etc.</i>                                |
| Has the Head of Service been contacted?                                  |               | <i>Include copies of relevant emails/letters etc.</i>                                |
| Has a report been prepared for the Overview and Scrutiny Board?          |               | <i>Attach report – check format and content and advise accordingly</i>               |