

# Constitution Sub-Committee

## Agenda

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**Date:** Friday, 17th November, 2017  
**Time:** 10.00 am  
**Venue:** Committee Suite 1,2 & 3, Westfields, Middlewich Road,  
Sandbach CW11 1HZ

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The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and in the report.

It should be noted that Part 1 items of Cheshire East Council decision-making meetings are audio recorded and the recordings are uploaded to the Council's website.

### **PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT**

1. **Apologies for Absence**
2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a period of 10 minutes is allocated for members of the public to address the meeting on any matter relevant to the work of the body in question. Individual members of the public may speak for up to 5 minutes but the Chairman or person presiding will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

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Please contact Paul Mountford, Executive Democratic Services Officer  
Tel: 01270 686472  
E-Mail: [paul.mountford@cheshireeast.gov.uk](mailto:paul.mountford@cheshireeast.gov.uk)

4. **Members Speaking**

To provide an opportunity for visiting members to speak in relation to the review of the constitution.

5. **Minutes of Previous meeting** (Pages 3 - 40)

To approve the minutes of the meeting held on 3<sup>rd</sup> November 2017.

6. **Review of the Constitution - General** (Pages 41 - 44)

To consider a report which recommends a process which will ensure that the revised Constitution, to be presented to the Constitution Committee for consideration, is complete and incorporates all requested amendments.

7. **Review of the Constitution - Work Package 4: Procedure Rules** (Pages 45 - 232)

To consider the draft revised Constitution for Work Package 4 and Explanatory Note (Schedule of Substantive Issues).

8. **Review of the Constitution - Work Package 5: Codes and Protocols** (Pages 233 - 308)

To consider the draft revised Constitution for Work Package 5 and Explanatory Note (Schedule of Substantive Issues).

**THERE ARE NO PART 2 ITEMS**

**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Constitution Sub-Committee**  
held on Friday, 3rd November, 2017 at Committee Suite 1,2 & 3, Westfields,  
Middlewich Road, Sandbach CW11 1HZ

**PRESENT**

Councillor A Martin (Chairman)  
Councillor B Burkhill (Vice-Chairman)

Councillors G Baxendale, S Edgar, S Hogben, J P Findlow (for Cllr Gaddum),  
A Kolker (for Cllr Beanland) and B Roberts (for Cllr Mannion)

**Officers**

Brian Reed, Head of Governance and Democratic Services  
Julie Gregory, Solicitor  
Chris Allman, Senior Manager, Project and Change  
Paul Mountford, Executive Democratic Services Officer

**Bevan Brittan (external advisers)**

Judith Barnes

**Other Members present**

Councillors Rhoda Bailey, P Butterill, P Groves, J Jackson, G Merry,  
J Nicholas, A Stott and B Walmsley

**Apologies**

Councillors M Beanland, H Gaddum and N Mannion

**20 DECLARATIONS OF INTEREST**

There were no declarations of interest.

**21 PUBLIC SPEAKING TIME/OPEN SESSION**

There were no members of the public wishing to speak.

**22 MEMBERS SPEAKING**

Councillor A Stott asked how members would know what had changed in the constitution. Judith Barnes of Bevan Brittan referred to the authority given to officers by members to report any substantive changes to the Sub-Committee. Brian Reed added that any member concerned about a change could discuss it with him.

Councillor J Jackson commented that she did not agree with the proposed changes to the planning committees as set out in the agenda and added that reserved matters on outline planning applications should be returned to the planning committees. She also disagreed with any proposals to

deny officers on lower grades the opportunity to be heard by the Staffing Appeals Sub-Committee. She also urged careful consideration of the filtering process in relation to the IDC Committee.

Councillor G Merry, as Chairman of the Strategic Planning Board, indicated that she had not been consulted on the proposed reduction in the size of the planning committees. She also supported the retention of substitutes.

### **23 MINUTES OF PREVIOUS MEETING**

#### **RESOLVED**

That the minutes of the meeting held on 29<sup>th</sup> September 2017 be confirmed as a correct record.

### **24 REVIEW OF THE CONSTITUTION - PRINCIPLES**

The Sub-Committee considered a report on mechanisms to ensure that the revised Constitution was concise, user-friendly and future-proof.

A key principle of the review had been to be concise, covering only those essential issues which needed to be in the formal Constitution and sign-posting to other documents and sources. The Sub-Committee considered an Advice Note by Bevan Brittan which explained in more detail how this would work in practice, including the use of 'hyperlinking' and the status and ownership of each hyperlinked document in the proposed revised Constitution. The Advice Note is attached as Appendix A to these minutes.

The Sub-Committee also considered a schedule of sections/documents to be taken out of the constitution and linked to it where appropriate. The schedule made suggestions for the appropriate ownership and review processes for each document. A number of questions had been highlighted in the Schedule for members' consideration. The schedule is attached as Appendix B to these minutes.

Much feedback had been received on the most appropriate mechanism for highlighting changes from the existing Constitution to the new revised document, including a request for 'tracked changes'. Bevan Brittan had advised that the redrafted Constitution, whilst taking much of the content from the current one, was a significantly changed document, especially in terms of its layout. This had required a significant restructuring and editing of repetitious, superfluous or outdated content. As such, a large part of the New Constitution was essentially a new document, not an amended one, and the facility to 'track all changes' did not lend itself to this kind of rewrite. It was difficult, if not impossible, to use the 'tracked changes' functionality within Microsoft Word and attempts to highlight these changes manually through notation, high-lighting, colour-coding or other methods often obscured rather than enlighten, when trying to review the new material. Such an approach could not therefore be recommended.

Bevan Brittan proposed instead to bring to the attention of Members the substantive areas of change within an Explanatory Note/Schedule of Substantive Changes.

The Sub-Committee had endorsed this approach at its meeting on 15<sup>th</sup> September 2017 when it resolved that Officers be permitted to use their discretion (this to be exercised with caution) in bringing to the attention of the Sub Committee only matters of substance when constitutional changes are proposed. It was therefore proposed that offices would:

- draw attention to all substantive changes (exercising caution) in the Explanatory Note (List of Substantive Changes);
- provide printed copies of both the existing Constitution and the revised Constitution to any Member that requested them; and
- highlight any specific changes (with page number references for both documents) as requested by Members on a case-by-case basis if these were not immediately apparent and/or incorporated within the Explanatory Note (List of Substantive Changes).

### **RESOLVED**

That the Constitution Committee be recommended to approve:

1. the overall proposed approach to hyperlinking as set out in the Bevan Brittan Advice Note (Appendix A to these minutes) subject to all hyperlinked documents being linked to the public website as well as the Intranet;
2. that with regard to the specific questions raised in the schedule at Appendix B:
  - (a) the terms of reference of committee chairmen be removed from the Constitution and be hyperlinked and the Constitution Committee retain responsibility for the document;
  - (b) the Whistleblowing Policy be removed from the Constitution and be hyperlinked and ownership of the Policy remain with the Audit and Governance Committee;
  - (c) the Planning Protocol of Conduct and the Protocol on Public Speaking Rights at planning committee meetings be removed from the Constitution and be hyperlinked and responsibility for the documents be passed to the Strategic Planning Board; and
  - (d) the Local Ward Member Protocol be removed from the Constitution and be hyperlinked and responsibility for the document remain with the Constitution Committee;

3. subject to resolution 2 above, the proposals set out in Appendix B, subject to the inclusion of a hyperlink to the Fire Authority website; and
4. the approach to highlighting substantive changes to the Constitution to Members as set out above.

**25 REVIEW OF THE CONSTITUTION - WORK PACKAGE 2: DECISION-MAKING: TERMS OF REFERENCE OF MEMBER BODIES**

The Sub-Committee considered a draft revised Explanatory Note (Schedule of Substantive Issues) for Work Package 2, and a redrafted element of Work Package 2 – Decision-making: Terms of Reference of Member Bodies (New Constitution Section 2 (a) to (d)).

The Explanatory Note (Schedule of Substantive Issues) highlighted proposed changes to the constitution in three categories:

Section I – substantive changes required by law for approval (although these will be minimal as the original Bevan Brittan review confirmed that the Constitution was compliant)

Section II – substantive changes based on best practice recommended for approval

Section III – substantive changes for consideration by the Sub-Committee

The Sub-Committee considered the substantive changes and agreed an appropriate course of action in respect of each one. [The Explanatory Note (Schedule of Substantive Changes) has since been updated to reflect the Sub-Committee's decisions and is attached as Appendix C to these minutes.]

**RESOLVED**

That

1. the content of the report and the significant progress made to date be noted;
2. the Constitution Committee be recommended to approve:
  - (a) the proposed Substantive Issues as set out in Appendix C to these minutes: Explanatory Note (Schedule of Substantive Issues) Sections I & II;
  - (b) the specific recommendation in respect of each individual issue as set out in Appendix C: Explanatory Note (Schedule of Substantive

Issues) Section III; and

- (c) the revised draft of Section 2 (a) to (d) of the Constitution (Work Package 2) as set out in Appendix B to the report and the accompanying Explanatory Note (Schedule of Substantive Issues), subject to the specific responses agreed by the Sub-Committee.

**26 REVIEW OF THE CONSTITUTION - WORK PACKAGE 3: DECISION-MAKING: OFFICER SCHEME OF DELEGATION**

The Sub-Committee considered a draft revised Explanatory Note (Schedule of Substantive Issues) for Work Package 3, and a redrafted element of Work Package 3 – Decision-making: Officer Scheme of Delegation (New Constitution Section 2 (e)).

The Explanatory Note (Schedule of Substantive Issues) highlighted proposed changes to the constitution in three categories:

Section I – substantive changes required by law for approval (although these will be minimal as the original Bevan Brittan review confirmed that the Constitution was compliant)

Section II – substantive changes based on best practice recommended for approval

Section III – substantive changes for consideration by the Sub-Committee

The Sub-Committee considered the substantive changes and agreed an appropriate course of action in respect of each one. [The Explanatory Note (Schedule of Substantive Changes) has since been updated to reflect the Sub-Committee's decisions and is attached as Appendix D to these minutes.]

**RESOLVED**

That

1. the content of the report and the significant progress made to date be noted;
2. the Constitution Committee be recommended to approve:
  - (a) the proposed Substantive Issues as set out in Appendix D to these minutes: Explanatory Note (Schedule of Substantive Issues) Section II;
  - (b) the specific recommendation in respect of each individual issue as set out in Appendix D: Explanatory Note (Schedule of Substantive Issues) Section III; and

- (c) the revised draft of Section 2 (e) of the Constitution (Work Package 3) as set out in Appendix B to the report and the accompanying Explanatory Note (Schedule of Substantive Issues), subject to the specific responses agreed by the Sub-Committee.

**27 REVIEW OF THE CONSTITUTION - WORK PACKAGE 4: PROCEDURE RULES**

The Sub-Committee considered a draft revised Explanatory Note (Schedule of Substantive Issues) for Work Package 4, and a redrafted element of Work Package 4 – Procedure Rules (New Constitution Section 3)

The Explanatory Note (Schedule of Substantive Issues) highlighted proposed changes to the constitution in three categories:

- Section I – substantive changes required by law for approval (although these will be minimal as the original Bevan Brittan review confirmed that the Constitution was compliant)

- Section II – substantive changes based on best practice recommended for approval

- Section III – substantive changes for consideration by the Sub-Committee

The Sub-Committee considered the substantive changes and agreed an appropriate course of action in respect of each one. [The Explanatory Note (Schedule of Substantive Changes) has since been updated to reflect the Sub-Committee's decisions and is attached as Appendix E to these minutes.]

**RESOLVED**

That

1. the content of the report and the significant progress made to date be noted;
2. the Constitution Committee be recommended to approve:
  - (a) the proposed Substantive Issues as set out in Appendix E to these minutes: Explanatory Note (Schedule of Substantive Issues) Sections I & II;
  - (b) the specific recommendation in respect of each individual issue as set out in Appendix E: Explanatory Note (Schedule of Substantive Issues) Section III; and

- (c) the revised draft of Section 3 of the Constitution (Work Package 4) as set out in Appendix B to the report and the accompanying Explanatory Note (Schedule of Substantive Issues), subject to the specific responses agreed by the Sub-Committee.

### 28 **NEXT MEETING**

The next meeting of the Sub-Committee would be held on Friday, 17<sup>th</sup> November 2017 at 10.00 am in the Committee Suite at Westfields.

The meeting commenced at 2.30 pm and concluded at 5.00 pm

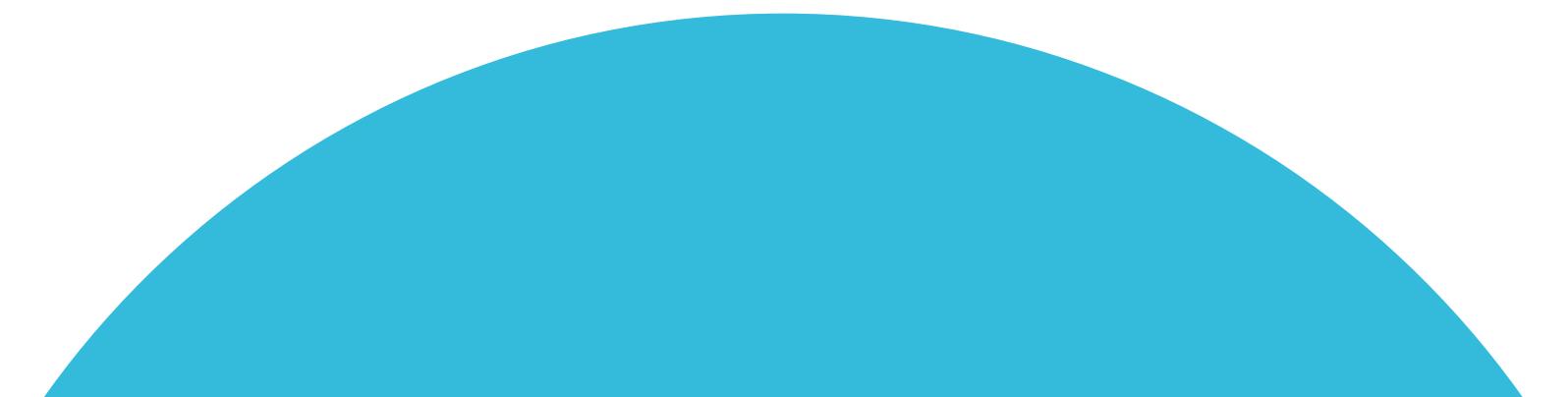
Councillor A Martin (Chairman)

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## Cheshire East Council Constitution

### Note on proposed use of hyperlinks within the Constitution

24 October 2017



## 1 USE OF HYPERLINKS

- 1.1 The Constitution Committee at its meeting on 4 August 2017 agreed the principles which are underpinning the current review of the Constitution. These include that the new Constitution should:-
- be modern in its language, format and presentation; and
  - be concise, covering only those essential issues which need to be in the formal Constitution and sign-posting to other documents and sources.
- 1.2 The Committee discussed and agreed that the use of hyperlinks would be very helpful to achieve these aims. Hyperlinks allow readers to click on certain words or phrases which are highlighted in the document and be taken to other places in the Constitution or to other documents which sit outside the Constitution itself. There are a number of advantages to this including that the core Constitution can be shorter/easier to read/understand and the links allow easy navigation around the document.
- 1.3 It is recognised that members want to be confident that key issues are not relegated to documents outside the Constitution which are then not visible or are then open to amendment without the necessary scrutiny. This is not the intention of the use of hyperlinks (although it is the case that a number of parts of the current Constitution are not statutorily required to be in the core document and can therefore be safely moved outside it).
- 1.4 Even where it is proposed that a current section of the Constitution is moved outside the core document, it is essential that, depending on the nature of the document, it has a clear process for review/amendment etc. It is suggested that any examples of this are clearly flagged as the new Constitution emerges and members agree any new proposals for keeping such "ancillary" documents under review.
- 1.5 It is important to clarify that there are different types of hyperlinks which will be used in the new document. These are set out in paragraphs 2 – 5 below.

## 2 TIER ONE LINKS

- 2.1 **Tier One links** are links which take readers to factual documents which are required to be part of the Constitution and will need to be updated from time to time but which are self-standing. For example, the Constitution will direct readers to:-
- The list of elected members;
  - The register of members' interests; and
  - The management team structure.
- 2.2 These documents are strictly part of the Constitution but if they are embedded completely in the text of the main document as now (particularly in hard copy) the whole core document has to be changed whenever an update is needed and it goes out of date very quickly. Going forward, it is proposed that the changes to these type of documents which are factual and therefore non contentious, will be made simply through the Monitoring Officer using his/her delegated powers which are proposed to include the following delegation:-
- "In consultation with the Chairman and Vice-Chairman of the Constitution Committee, to make such changes to the Council's Constitution as he/she deems to be necessary and which are in the Council's interests and not major in nature, including, but not limited to, changes:-
- amounting to routine revisions;
  - to provide appropriate clarity;
  - to correct typographical and other drafting errors;
  - to reflect new legislation;
  - to correct inconsistencies in drafting; and

- to reflect new officer structures and job titles, properly approved through Council processes".

2.3 So the Monitoring Officer will be able to make changes following, for example a by-election which changes the details of the elected members on the Council.

2.4 If these documents are accessed through hyperlinks they can simply be factually updated without disturbing any other part of the Constitution and the hyperlink will ensure that the reader always accesses an accurate version of the information.

2.5 This approach lends itself well to Constitutions held on Council's IT systems i.e. not held in hard copy. Unfortunately the rules on whether a Council now needs to have a hard copy of its Constitution are not clear and have not necessarily kept up with new technology. The requirements are set out in s.9P of the Local Government Act 200 and are as follows:-

- "A local authority must prepare and keep up to date a "document...". The Act does not specify whether hard copy or not, and it is not defined elsewhere in the Act;
- The local authority must ensure that "copies of its constitution are available at its principle office for inspection"; and
- The local authority must "supply a copy of its constitution to any person who requests a copy...".

2.6 To be prudent given the need to provide a copy of the Constitution to people who ask for one and also recognising that the Council will probably want all members to have a hard copy of the new Constitution as it is debated through meetings over the next few months, it is suggested that these Tier Two type documents are added in hard copy at the end of the new Constitution.

### 3 TIER TWO LINKS

3.1 **Tier Two links** are links which take readers to documents which support the Constitution but are not required legally to be part of it – we will call these "ancillary documents". These can be different types of documents and could include:-

- Codes;
- Guidance;
- Parts of the current financial regulations; and
- Proper Officer Register.

3.2 These type of documents have probably been added to the Constitution because this seemed a sensible location for the document to be stored. However, it has been recognised by the Constitution Committee that this has meant the Constitution becoming a depository of useful and often important information which has to be kept somewhere and easily accessed, but it does not strictly have to be part of the Constitution.

3.3 It is this tier of links/documents which, it is anticipated, members will want to track to ensure their removal from the core Constitution does not mean their disappearance from visibility or scrutiny.

3.4 It is therefore proposed that any such sections/documents will be identified in the reports to the Constitution Committee and Council recommending the new Constitution and will clearly set out:-

- whose responsibility the document will be going forward (which could be the Constitution Committee, could be another relevant member body or could be officers depending on the nature of the particular document); and
- what the process is for updating/reviewing.

Private and Confidential:  
subject to legal professional privilege

Bevan Brittan  Lawyers for the public,  
private and third sectors

## 4 TIER THREE LINKS

4.1 **Tier Three links** are links which take readers to documents completely outside the Constitution and possibly outside the Council itself but where it is useful to signpost readers to a particular source e.g. an external complaints route/Ombudsman contact details/outside bodies.

## 5 TIER FOUR LINKS

5.1 **Tier Four links** are links which take readers quickly from one part of the Constitution to another e.g. a link from an introductory list of contents to the substantive section or a link from the terms of reference of a meeting to the procedural rules which cover that meeting.

5.2 These are not links to other documents but simply help navigation around the Constitution and ensure a reader can see clearly what other parts of the document might be relevant to them.

Bevan Brittan LLP  
24 October 2017

## Cheshire East Council Constitution

### Summary table of sections/documents to come out of Constitution

**APPENDIX B**

Work Package	Element	Where it has moved to
2	Introductory Chapters	All necessary content from this section will be covered elsewhere in the revised Constitution.
2	Cheshire Police and Crime Panel Terms of Reference	This will be hyperlinked from 'Joint Arrangements' section to relevant external website.
2	Shared Services Joint Committee	Following consideration, we advise that this needs to remain in the Constitution as it is a (joint) body of the Council.
2	Job Description of Committee Chairmen	Hyperlink from 'Committees' section to Member area of CEntranet Responsibility for reviewing this and updating as required could still rest with the Constitution Committee or with the Audit and Governance Committee? <a href="#">[Q.1]</a>
3	Officer Delegations and Proper Officer Register	Although there will still be an important section of the new Constitution (Part 2 (e) Responsibility for Functions – Officer Delegations) this will be much shorter than it is now. It will deal with delegations to the most senior officers and the statutory officers of the Council and then allows that officer to decide on the delegations which he/she wishes to cascade to officers in their own team/departments. The Register of Proper Officer functions will be maintained by the relevant officer and accessed through a hyperlink as will the Local Schemes of Delegation.
4	Contract Procedure Rules	Following consideration, we advise that this needs to remain in the Constitution.

Work Package	Element	Where it has moved to
4	Finance Procedure Rules	Following consideration, we advise that this needs to remain in the Constitution. The issue is that they contain a lot of information which is not necessary in a set of Finance Procedure Rules and could be in ancillary documents – this will have to be assessed when the rules are reviewed. BB's note [BB272] to the FPRs in the original review is set out below for reference <sup>1</sup> .
5	Whistleblowing Policy	This does not have to be in the Constitution. It could be referenced somewhere in the document and hyperlinked with ownership and responsibility for reviewing/updating passing to the Staffing Committee? <a href="#">[Q.2]</a>
5	Planning Protocol of Conduct in relation to the determination of planning matters	This does not have to be in the Constitution. It could be referenced in the main Member Code of Conduct and also in the terms of reference of the Strategic Planning Board and could be accessed by hyperlink. Ownership could pass to the Strategic Planning Board? <a href="#">[Q.3]</a>
5	Protocol on Public Speaking Rights at Strategic Planning Board and Planning Committee	This does not have to be in the Constitution. It is mentioned in the Committee and Sub-Committee Procedure Rules and could simply be accessed by this hyperlink with ownership for it passing to the Strategic Planning Board? If it stays in the Constitution it would be better placed with the Appendix 7 to the Rules of Procedure in Part 3 <a href="#">[Q.4]</a>
5	Local Ward Member Protocol	This does not have to be in the Constitution. Responsibility for reviewing this and updating as required could still rest with the Constitution Committee or with the Audit and Governance Committee? <a href="#">[Q.5]</a>
5	Councillor Call for Action Protocol	This detailed protocol is not required. The process will be included in the Council Procedure Rules.
5	Mayoralty Code of Practice	This will be taken out of the Constitution altogether. We understand that this is an important document for the Council, but strictly speaking it is an internal document for the Council, and it does not need to appear in the Constitution.

Work Package	Element	Where it has moved to
5	Petitions Scheme	This detailed protocol is not required. Petitions will be referred to within the Council Procedure Rules.

**<sup>i</sup> Note on Finance Procedure Rules in initial review of Constitution**

Before looking at the sets of rules on financial related issues, it is worth revisiting the statutory requirements setting out what has to be included in a local authority constitution

*a description of the rules and procedures for the management of its financial, contractual and legal affairs including:*

- i. procedures for auditing of the local authority;*
- ii. the local authority's financial rules or regulations or such equivalent provisions as the local authority may have in place whether specified in the authority's standing orders or otherwise;*
- iii. rules, regulations and procedures in respect of contracts and procurement including authentication of documents whether specified in the authority's standing orders or otherwise; and*
- iv. rules and procedures in respect of legal proceedings brought by and against the local authority*

Although it is usual for councils to include far more than this statutory minimum, it is not essential to have lengthy financial processes and procedures in the constitution itself. To make the document more manageable, we suggest that a rigorous review is carried out of what the Council considers is essential to have in the core document and what could better be dealt with by links through to other documents/web pages.

At the moment this section stands at over 66 pages and there is much of it (whilst essential to the effective running of a council) which does not need to be in the formal Constitution

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## Explanatory note – List of Substantive Issues – Record of Sub-Committee Recommendations

### APPENDIX C

#### Part 2 (A) to (D) Responsibility for Functions

##### I. Substantive changes required by law for approval

Page	Section	Comment and/or area for consideration	Recommendation of the Sub-Committee
72	Audit and Governance Committee	This section has been amended to make it clear that the independent member of the committee (who is not a councillor) is not entitled to vote. This is a legal requirement.	The proposal was supported.

##### II. Substantive changes based on best practice recommended for approval

Page	Section	Comment and/or area for consideration	Recommendation of the Sub-Committee
22	Policy Framework	The following have been removed from the Policy Framework as they are no longer required by law to be included: <ul style="list-style-type: none"> <li>• Sustainable Community Strategy;</li> <li>• Business Plan; and</li> <li>• Adult Learning Plan.</li> </ul>	The proposal was supported.

Page	Section	Comment and/or area for consideration	Recommendation of the Sub-Committee
23	Local Choice Functions	A comment has been received that these need to be explained more clearly – the wording has been amended to try to do this but this is a specific statutory requirement for the Council to set out in its Constitution.	The proposal was supported.
25	Appointment to Outside Organisations	It has been suggested that the list of organisations could be taken out of the Constitution and linked to elsewhere. We have inserted a link which will navigate to a page on the Council's website.	It was agreed that the reference to appointments to outside organisations being made by Cabinet or Portfolio Holders should more fully explain appointments to the full range of outside organisations.
25	Role of the Mayor	<p>Following feedback from Members we have re-inserted (as the first responsibility) the phrase "the Mayor is the conscience of the Council" which was missing from earlier drafts.</p> <p>A query was raised as to whether this should be included in the job description of all councillors. Although the sentiment of every Councillor needing to be the conscience of the Chair is understood, this does not seem to reflect what members collectively felt at the last working groups/sub-committee which was that it is a prime responsibility of the Chair.</p>	The proposal was supported.
32	Responsibilities of all Cabinet Members	We have updated and strengthened this list following very helpful wording suggest by respondents.	The proposal was supported.
33	Portfolio Holder responsibilities for Leader	We note that the term "devolution" can have different meanings in different contexts. Following officer feedback we have made it clear that devolution in this context means the devolution of powers from Central	The proposal was supported.

Page	Section	Comment and/or area for consideration	Recommendation of the Sub-Committee
		Government to combined authorities and the Council, and from the Council to Town and Parish Councils.	
48	Strategic Planning Board	Members have commented that the Strategic Planning Board no longer nominates Councillors to sit on the Northern and Southern Planning Committee. Reference to this has been removed from the draft Constitution.	The proposal was supported.
55	Staffing Committee - Recruitment and Selection	Purpose and functions have been merged to avoid repetition.	The proposal was supported.
65	Constitution Committee	Following officer comments we have removed the requirement for the Constitution Committee to approve appointments to the Independent Persons Panel as this is not a requirement.	The proposal was supported.
78	Health and Wellbeing Board	We suggest changing the terminology from core/non-core members to voting/non-voting members to better reflect their respective roles. We have also added a link to the Code of Conduct for the HWB.	The proposal was supported.

III. Substantive changes for consideration by the Sub-Committee

Page	Section	Comment and/or area for consideration	Recommendation of the Sub Committee
18	Introduction Key Decision	It has been proposed that operational treasury management decisions (for example investment decisions relating to the Council's reserves) should be excluded from the definition of a Key Decision (which otherwise remains the same as now) whatever the financial implications.	The proposal was supported.
25	Chairman or Chair?	This page refers to the allocation of "chairmen" and "vice chairmen" to committees and sub-committees. These are the current terms used in the new document and the Sub-Committee is asked to consider if they support the continuation of these terms or would prefer to move to the use of the gender neutral terms "Chair" and Vice Chair" throughout the new Constitution?	It was agreed that the presumption would be in favour of the use of the term "chairman" or "vice chairman", but that the wishes of the individual would be respected.
27	The Cabinet	A query has been raised on whether in practice the Leader does present a written record of delegations and information about executive functions as currently required (7.2). This is not a statutory requirement.	It was agreed that this does not need to happen in future.
34	Responsibilities of Portfolio Holders	Responsibilities for the overall interface with ASDVs needs to be identified and allocated appropriately to Cabinet/Portfolio Holders.	The proposal was supported.
39	Procedure for Taking Portfolio Holder Decisions	The requirement for an individual Portfolio Holder to hold a meeting to make a decision has been removed. This approach was supported at the Sub-	It was agreed that the requirement for formal Portfolio Holder decision making meetings would no longer continue, and that officers would be given responsibility for designing an appropriate

Page	Section	Comment and/or area for consideration	Recommendation of the Sub Committee
		<p>Committee meeting of 29 September.</p> <p>It should be noted of course that, as a matter of law, Key Decisions need to be publicised in advance of being taken (under Regulation 9 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012). We understand that Key Decisions will continue to be made with 28 clear days' notice and be identified in the Forward Plan.</p> <p>So if an individual Portfolio Holder is to make a decision which is a Key Decision they will have to publish the time of when they are to make it etc. (although this does not then need to be made at a "meeting").</p> <p>Members have raised concerns that removing the requirement for Portfolio Holder meetings for decisions could make it more difficult for Members to scrutinise in advance the decisions that are being made. It was suggested that an internal procedure be agreed to determine how information is circulated in advance of Portfolio Holders' decisions being taken.</p> <p>Members have suggested that they would like to have advance notice of <b>all</b> decisions, whether Key Decisions or not. This is an administrative procedure for the Council to determine and does not necessarily need to be recorded in the Constitution (but it may be helpful to include it). There is no legal requirement to circulate details in advance of non-key decisions being made, but the Council should decide whether it wishes to adopt such a procedure,</p>	<p>administrative process which will address the issues identified in the comments section.</p>

Page	Section	Comment and/or area for consideration	Recommendation of the Sub Committee
		which could include publishing details of non-key decisions in the Forward Plan.	
40	Role of Deputy Cabinet Members	We have amended this to reflect concerns at the previous drafting which went beyond what is a legitimate role.	The proposal was supported.
42	Functions of Committees	The Council may wish to consider including the Public Rights of Way Committee functions elsewhere e.g. a sub-committee of the Planning Board or the Planning Committees.	The proposal was not supported.
43	Overview and Scrutiny Committees	<p>A query has been raised on whether it is best practice for Scrutiny Committees to be chaired by opposition members.</p> <p>There is no legal requirement that a Chair is from an opposition party. Practice varies on this. It is correct that a number of academic studies have advocated that scrutiny chairs should be drawn from elsewhere than the majority party but practice varies across councils.</p> <p>DCLG Guidance on scrutiny says</p> <p>"Where there is a majority group, local authorities might consider it appropriate to have all or some of these committees chaired by members outside the majority group or by church or parent governor representatives. Overview and scrutiny should be constructive and not merely be there either always to oppose the executive or to rubberstamp the executive's decisions."</p>	This should remain as it is in the current constitution.

Page	Section	Comment and/or area for consideration	Recommendation of the Sub Committee
		<p>But LGA guidance makes clear that the chair of the scrutiny committee can represent any political party.</p> <p>It is a matter for the Council – in our experience the effectiveness of scrutiny can be less about the party the Chair represents and more about the overall approach and culture of a council and the skills of the members on the committee (including the Chair).</p>	
45	Specific Responsibilities of Overview and Scrutiny Committees	<p>New wording has been included to recognise that the Scrutiny remits mirror the remits of the Portfolio Holder so if the Leader changes the portfolios of the Cabinet, the Monitoring Officer will automatically be able to change the Scrutiny remits to mirror this.</p>	The proposal was supported.
48	Strategic Planning Board	<p>Following feedback from the Director of Planning and Sustainable Development we have made a number of changes:</p> <p>Membership of SPB reduced from 12 to 10</p> <p>Membership of North and South planning committees has been reduced from 12 to 7.</p> <p>Reference to cross party pool of Planning Substitutes has been removed, and no substitutes will be allowed. This approach was supported by the Chairs and Vice Chairs of the Planning Committees.</p> <p>Although this position has Council support, the risk of removing the ability to use substitutes needs to be recognised in relation to situations where it is not possible to find a quorum and/or where members might wish to recuse themselves from a meeting in</p>	The proposal was not supported.

Page	Section	Comment and/or area for consideration	Recommendation of the Sub Committee
		order to represent a constituent etc.	
48	Strategic Planning Board	<p>Officers have suggested that SPB will determine applications involving a significant departure from council policy only where the matter has been referred to SPB by the Planning Committees.</p> <p>The prohibition on applications to vary or remove conditions which were imposed by committee being delegated has been removed.</p>	The proposal was not supported.
48	Strategic Planning Board	<p>Suggestions have been made to the definition of Large Scale Major Development. These are noted. We propose that to ensure flexibility the definition of Large Scale Major Development be moved to a hyper linked document. The proposed substantive changes are:</p> <p>Threshold for developments being retained by the SPB to be increased from 200 dwellings to 250 dwellings and from 4 ha and above to 5ha and above.</p>	The proposal was not supported.
50	Northern and Southern Planning Committees	<p>Following Officer Feedback the threshold for developments being retained by the Planning Committees to be increased:</p> <p>From 20-199 dwellings to 100-249 Dwellings.</p> <p>From 1-4ha to 3-5ha.</p> <p>The prohibition on applications to vary or remove conditions which were imposed by committee being delegated has been removed.</p>	The proposal was not supported.

Page	Section	Comment and/or area for consideration	Recommendation of the Sub Committee
50	Planning Committees Terms of Reference	<p>It has been noted that the use of the term "call-in" to refer to the challenge of a delegated officer planning decision is confusing. The term call-in is a specific term relating to the functions of the Overview and Scrutiny Committee.</p> <p>It was suggested that an alternative phrase be adopted. "Member Challenge", or "Referral" were proposed by members, and Bevan Brittan could suggest further alternatives. The Council should confirm the term it wishes to adopt.</p>	It was agreed that the alternative term "referral" should be used.
53	Licensing	<p>We have re-written this section significantly taking into account officer comments and what we understand to be the aim. For discussion is whether the political proportionality waiver at paragraph (4) that applies to the sub-committees at paragraph (3) should also apply to the sub-committees at paragraph (2).</p> <p>All references to officer delegations have been taken out as these will be picked up in the local schemes of delegation.</p>	The proposal was supported.
55	Staffing Committee – HR Policies	We have added to paragraph 5.3, which concerns new posts where the pay exceeds £100,000, the proviso that the Staffing Committee is not required to make recommendations to Council affecting the remuneration of a new post where remuneration for	The proposal was supported.

Page	Section	Comment and/or area for consideration	Recommendation of the Sub Committee
		that post is already included within the Council's annually approved Pay Policy Statement.	
56	Staffing Committee – appeals	Officers are considering whether there an appropriate level below which appeals will be dealt with by officers e.g. Principal Officer grades?	The proposal was not supported. Existing arrangements to remain the same.
59	Investigatory and Disciplinary Committee – Receiving Investigating Officer's Report para 3.9	<p>A Councillor has raised a concern that in a previous version (April 2017) of the Constitution that a sentence had been added to the Terms of Reference to the Investigatory and Disciplinary Committee which gives the MO and the Chair of the staffing Committee the ability to "filter out and deal with allegations which are clearly unfounded, trivial or can be dealt with under some other procedure".</p> <p>Bevan Brittan notes that similar wording appears in the Chief Executives' National Salary Framework and Conditions of Service, dated 13 October 2016.</p> <p>Bevan Brittan recommends that the decision is delegated to the MO, unless the complaint is against the MO, in which case the delegation should be to the chief executive. In both cases we advise that the delegation should be "in consultation with the Chair of the IDC".</p>	It was agreed that the decision should be delegated to the MO, in consultation with the Chair of the IDC, and thereafter the matter should be reported to the IDC.
64	Lay Members Appointment Committee	This function could be added to the Terms of Reference of the Constitution Committee.	The proposal was supported.
71	Polling Districts and	The functions of the sub-committee could be	It was agreed that the functions of the sub-

Page	Section	Comment and/or area for consideration	Recommendation of the Sub Committee
	Polling Places Review Sub-Committee	delegated to officers.	committee be delegated to the Electoral Registration Officer, or his/her Deputy. It was also agreed that the functions of the Civic Sub Committee, and the Outside Organisations Sub Committee be performed, with effect from the new municipal year, by the Constitution Committee.
72	Audit and Governance Committee – Functions	<p>We have taken out much of the previous detail for this committee as the detailed list of activities of the Committee is not necessary – the headline areas are sufficient for this section. We have suggested the details are hyperlinked.</p> <p>We have extracted what look to be the most important formal/statutory and listed them. Officers/member comments on this are welcome.</p> <p>If the Initial Assessment Panel and Local Resolution Panel are standing bodies, their membership and terms of reference need to be included here.</p>	Agreed, subject to the approval of the Annual Governance statement being written in.
78	Health and Wellbeing Board – Agenda and notice of Meetings	Should this be amended so that exempt and confidential information be circulated to all members of the Board?	The proposal was supported
83	Shared Services Joint Committee	Are there any other joint arrangements with other Councils? – if so they need to be included here.	It was agreed that, whilst no other joint arrangements could be identified, these could be added to the documentation, as and when they arose.

NON-SUBSTANTIVE ISSUE:

OFFICIAL

Is a diagrammatic representation of the Member decision-making bodies desirable in Section A? Does it aid understanding? It is not required by law but one was included in the previous Constitution, although it was not wholly comprehensive or up-to-date.

**It was agreed that a diagrammatic representation of member decision-making bodies should be included, together with an officer structure chart.**

**Explanatory note – List of Substantive Issues – Record of Sub-Committee Recommendations**

**APPENDIX D**

**Part 2 (E) Responsibility for Functions – Officer Delegations/Scheme of Delegation**

- I. Substantive changes required by law for approval – None for this part
  
- II. Substantive changes based on best practice recommended for approval

Page	Section	Comment and/or area for consideration	Recommendation of the Sub-Committee
2	Introduction	<p>The current constitution defines the Chief Officers as being:</p> <ul style="list-style-type: none"> <li>• Chief Executive</li> <li>• Executive Director People and Deputy Chief Executive</li> <li>• Chief Operating Officer (Section 151 Officer)</li> <li>• Executive Director Place</li> <li>• Strategic Director of Adult Social Care and Health</li> <li>• Director of Legal Services (Monitoring Officer)</li> </ul>	<p>This proposal was supported, subject to Chief Executive and Head of Paid services being inserted as appropriate.</p>

Page	Section	Comment and/or area for consideration	Recommendation of the Sub-Committee
		<p>We have redefined the Chief Officers as:</p> <ul style="list-style-type: none"> <li>• Executive Director (People)</li> <li>• Executive Director (Place)</li> <li>• Chief Operating Officer</li> <li>• Section 151 Officer</li> <li>• Monitoring Officer</li> </ul> <p>Note that we have listed the COO and the Section 151 Officer separately to accommodate the reality that although they may be performed by the same person, this is not always the case.</p>	
4	General Principles relating to Officer Delegation	<p>This section has been completely re drafted, taking best practice from the previous Constitution and making the remit of officers exercising delegated powers much clearer to ensure transparency and accountability.</p> <p>A number of provisions make it more future proof –</p> <ul style="list-style-type: none"> <li>• the delegation will apply to the post-holder with the relevant functions so the Constitution will not need updating if changes are made to job titles/roles</li> <li>• the delegation is not linked to named statutes/legal provisions but to areas of service responsibility.</li> </ul>	This proposal was supported.

Page	Section	Comment and/or area for consideration	Recommendation of the Sub-Committee
		<p>There are changes to the obligations for consultation by officers exercising their delegated powers. In the new Office Scheme of Delegation the relevant wording now states as follows:-</p> <p>"An officer in exercising delegated powers may consult the relevant portfolio holder or chair of committee if he/she considers it appropriate to do so and shall consult other officers for professional advice including legal, financial and technical officers and shall have regard to any views and advice received".</p> <p>This approach is in accordance with the principle agreed by the Constitution Committee i.e. to</p> <ul style="list-style-type: none"> <li>• delegate decision-making to the most appropriate level with the right checks, balances and scrutiny</li> </ul>	
8, 16	Proper Officer functions	<p>In the current Constitution this is somewhat dispersed.</p> <p>The revised Constitution consolidates this at the highest level within the organisation i.e. Chief Executive/Head of Paid Service, with the facility for explicit delegation down the organisation as required.</p>	This proposal was supported.

III. Substantive changes for consideration by the Sub-Committee – none for this Part

**Explanatory note – List of Substantive Issues – Record of Sub-Committee Recommendations**

**APPENDIX E**

**Part 3 Procedure Rules**

I. Substantive changes required by law for approval

Page	Section	Comment and/or area for consideration	Recommendation of the Sub-Committee
Contract Rules			
	Throughout	All references have been updated with dates to ensure compliance with the latest Procurement Regulations.	The proposal was supported.

II. Substantive changes based on best practice recommended for approval

Page	Section	Comment and/or area for consideration	Recommendation of the Sub-Committee
Committee and Sub Committee Procedure Rules			
11	Attendance of Members at Committees and Sub-Committees of which they are not Appointed Members	The Current Constitution allows members to attend committees of which they are not members where private and confidential or exempt business is to be conducted.	It was agreed that the existing constitutional provisions would continue to remain in place, but that the operation of these would be reviewed in 6 months' time.

Page	Section	Comment and/or area for consideration	Recommendation of the Sub-Committee
		<p>Following feedback from the Working Group, we have suggested introducing a "need to know" basis, whereby the Member's attendance at such a meeting would have to be agreed in advance by the Monitoring Officer and the Chair of the Meeting.</p>	
15	<p>Attending and speaking at Cabinet Meetings</p>	<p>The current Constitution states that questions will not be allowed which repeat or are substantially the same as questions asked at a meeting of Council or Cabinet within the preceding 3 months.</p> <p>We have changed this to 6 months (and have standardised this time scale for all other similar references throughout the Constitution).</p>	<p>The proposal was supported.</p>
52	<p>Members Access to exempt or confidential documents</p>	<p>We have added the words "of that body" to the end of paragraph 19.2 for clarity.</p>	<p>The proposal was supported.</p>
<p>Contract Rules</p>			
General	All	<p>Following Officer feedback, references to "the Authority" are now references to "The Council" – this is consistent throughout the document.</p>	<p>The proposal was supported.</p>

Page	Section	Comment and/or area for consideration	Recommendation of the Sub-Committee
Definitions	Definition of Chief Officer	Following Officer feedback references to The Chief Officer are now references to the "Executive Director". This is to ensure consistency with the Finance Procedure Rules and the rest of the constitution.	The proposal was supported.
1.1.1	Introduction	We understand that the Procurement Board has changed to the Commissioning and Procurement Board. We have defined the board and included a hyperlink to the detailed terms of reference.	The proposal was supported.
1.5.1	Contracts Register	Following Officer feedback we have made it clear that all contracts with a value above £5,000 must be recorded in the Contracts Register. This is required by the Government's Transparency Agenda.	The proposal was supported.
2.1.4	Best and Final Offer	Following Officer Feedback we have made it clearer that Legal Services must be involved in the decision to include a Best and Final Offer (BAFO) stage in procurement process.	The proposal was supported.
4.3.1	Method of Opening Bids	Following Officer feedback we have amended this section to include provisions that in addition to the Procurement Manager, a Category Manager can verify bids from the EU threshold up to £1,000,000 provided that they have not been involved in the tender in question.	The proposal was supported.

Page	Section	Comment and/or area for consideration	Recommendation of the Sub-Committee
5.1.8	Monitoring Contracts	We have included a requirement for monitoring of insurance.	The proposal was supported.
6.1	Waiver Process/Breach	We understand that the Procurement Board will be changing to the Commissioning and Procurement Board. We have left in reference to the Procurement Board for now.	The proposal was supported.
Employment Rules			
	Throughout	All unnecessary references which simply repeated the legal and statutory basis for the procedures and the relevant regulations have been stripped out	The proposal was supported.

III. Substantive changes for consideration by the Sub-Committee

Page	Section	Comment and/or area for consideration	OUTCOME
Procedure Rules			
2	Council Procedure Rule	<p>Five members can call a Special Council – it has been queried as to whether this number is too low.</p> <p>We have not currently amended the text as this is a standard number in many councils to ensure small groups and minority members can exercise this right.</p>	The officers were asked to review the legal position to see if the number could be varied.
28	Notices of Motion	<p>An issue has been raised as to whether motions should always be debated or at least should the proposer be able to explain it.</p> <p>At the moment the wording has been left as in the previous Constitution. Practice varies in councils as to how motions are dealt with. The risk of allowing them to be debated in detail is that (1) the Full Council may not be (and often is not) the correct decision making body to deal with the issue so the matter will have to be re-run and (2) the debate will not be informed by a report setting out the issues, implications and options.</p>	It was agreed that the provisions of the current constitution be retained.

Page	Section	Comment and/or area for consideration	OUTCOME
		<p>However, it is not unreasonable for consideration to be given to the proposer of the motion to be able to explain it briefly – for discussion.</p>	
29	Rules of Debate	<p>An issue has been raised requesting that members should have the Right to Speak at Council at any point, and not only as determined by the Chair</p> <p>This is not usual practice and would potentially cause an unmanageable meeting. The Constitution has not been changed in this respect.</p>	It was agreed that the existing arrangements should be retained.

## Constitution Sub-Committee

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<b>Date of Meeting:</b>	17 <sup>th</sup> November 2017
<b>Report of:</b>	Acting Director of Legal Services & Monitoring Officer
<b>Subject/Title:</b>	Review of the Constitution – General

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### 1.0 Report Summary

- 1.1 This report recommends a process which will ensure that the revised Constitution, to be presented to the Constitution Committee for consideration, is complete and incorporates all requested amendments.

### 2.0 Recommendations

- 2.1 That the Constitution Committee be recommended to approve the proposed approach to collating and summarising the revised content and Explanatory Note(s) as set out in the main body of this report.

### 3.0 Reasons for Recommendations

- 3.1 To implement the decision of the Constitution Committee on 4<sup>th</sup> August 2017.

### 4.0 Detailed Proposals

- 4.1 The review of the whole Constitution has been a substantial exercise. In order to achieve that, it has been 'segmented' into five separate Work Packages, as set out in previous meetings of the Sub-Committee:
- Work Package 1 was presented to Sub-Committee and approved on 15<sup>th</sup> September 2017
  - Work Packages 2, 3 and a substantial section of 4 were presented to Sub-Committee and approved on 3<sup>rd</sup> November 2017, subject to a number of requested amendments. Those amendments are now being incorporated into the revised documents.
  - Work Packages 4 (including all remaining sections) and 5 are being presented to Sub-Committee today, for approval. Those amendments requested by Sub-Committee on 3<sup>rd</sup> November 2017 on the first part of Work Package 4 have been incorporated – these have already been agreed and are included for information o and completeness only, and do not require further debate today.

- 4.2 It is necessary, however, to bring all those Work Packages together into a single document for presentation to the Constitution Committee on 30<sup>th</sup> November 2017; the publication date for those papers is 22<sup>nd</sup> November 2017. This is not a small exercise, and will necessarily change all the paragraph referencing and page numbering of the content previously presented to Sub-Committee.
- 4.3 We also need to provide reassurance to the Constitution Committee that all requests and recommendations of the Sub-Committee have been addressed and incorporated where necessary.
- 4.4 In order to achieve this, and to ensure consistency between the different Work Packages as part of the collation exercise, we propose the following approach to bringing this work to the Constitution Committee on 30<sup>th</sup> November 2017:
- A new draft Constitution is presented in whole as a single document which takes into account those matters agreed as part of the various Work Packages, together with all changes and other recommendations of the Sub-Committee.
  - A combined Explanatory Note (List of Substantive Changes) which lists all of the original substantive issues raised with the Sub-Committee, in accordance with the agreed approach, together with a note against each one which records the recommendations of the Sub-Committee.
  - A general report which highlights any changes arising from the collation process, together with any additional issues that may arise between the meetings of the Sub-Committee and presentation of the final set of recommendations to the Constitution Committee.
  - A combined document of all content previously held within the Constitution that is now proposed to sit *outside* the Constitution, in accordance with the process agreed at the Sub-Committee on 3<sup>rd</sup> November 2017, together with that which will be agreed at this meeting.
- 4.5 We have already committed to the following additional processes if requested:
- Provide printed copies of both the existing Constitution and the revised Constitution to any Member that requests them
  - Highlight any specific changes (with page number references for both documents) as requested by Members on a case-by-case basis, if these are not immediately apparent and/or incorporated within the Explanatory Note (List of Substantive Changes).
- 4.6 Any changes requested by the Constitution Committee on 30<sup>th</sup> November 2017 will be incorporated into the documentation ahead of presentation to Council on 14<sup>th</sup> December 2017.

4.7 Any further consequential changes arising between presentation to Constitution Committee on 30<sup>th</sup> November 2017 and Council on 14<sup>th</sup> December 2017 will be dealt with under delegated powers by the Monitoring Officer, subject to drawing full attention to these in the aforementioned general report.

**5.0 Wards Affected and Local Ward Members**

5.1 All wards are affected.

**6.0 Policy Implications**

6.1 Policy Implications are unchanged from the position set out in the report to Constitution Committee on 4<sup>th</sup> August 2017.

**7.0 Access to Information**

7.1 The Constitution Committee papers of 4<sup>th</sup> August 2017 and 5<sup>th</sup> October 2017 relate.

**8.0 Contact:**

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Designation: Acting Director of Legal Services & Monitoring Officer

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## Constitution Sub-Committee

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**Date of Meeting:** 17<sup>th</sup> November 2017

**Report of:** Acting Director of Legal Services & Monitoring Officer

**Subject/Title:** Review of the Constitution – Work Package 4:  
**Procedure Rules**

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### 1.0 Report Summary

- 1.1 To consider the draft revised Constitution for Work Package 4 and Explanatory Note (Schedule of Substantive Issues).
- 1.2 The Explanatory Note (Schedule of Substantive Issues) is attached at Appendix A. The redrafted element of the Constitution: Work Package 4 – Procedure Rules (New Constitution Section 3) is attached as Appendix B. Members are asked to consider both documents and make appropriate recommendations to the Constitution Committee.
- 1.3 Sections of this Work Package were previously presented to the Sub-Committee on 3<sup>rd</sup> November 2017 and the comments received on that have been incorporated into this updated version.
- 1.4 The completed section presented in this report is now a ‘final draft’ and ready for approval for submission to Constitution Committee on 30<sup>th</sup> November 2017.

### 2.0 Recommendations

- 2.1 That the Constitution Sub-Committee:
  - 2.1.1 Notes the content of this report and the significant progress made, including inclusion of the requested changes from the 3<sup>rd</sup> November meeting
  - 2.1.2 Recommends that the Constitution Committee approves the proposed Substantive Issues as set out in Appendix A: Explanatory Note (Schedule of Substantive Issues) Sections I & II
  - 2.1.3 Makes a recommendation to Constitution Committee in respect of each individual issue as set out in Appendix A: Explanatory Note (Schedule of Substantive Issues) Section III
  - 2.1.4 Recommends that the Constitution Committee approves the revised draft of Section 3 of the Constitution (Work Package 4) as set out in Appendix B and the accompanying Explanatory Note (Schedule of Substantive Issues), subject to the specific responses to 2.1.2 and 2.1.3 above.

### **3.0 Reasons for Recommendations**

- 3.1 To implement the decision of the Constitution Committee on 4<sup>th</sup> August 2017.

### **4.0 Detailed Proposals**

- 4.1 It was agreed at Constitution Sub-Committee on 23<sup>rd</sup> August 2017 to break the review of the Constitution into five 'Work Packages', with a Lead Member and Lead Officer to lead each relevant working groups, as set out below:

- 4.1.1 Work Package 1 – The overall style and presentation of the Constitution

This Work Package was approved by the Constitution Sub-Committee on 15<sup>th</sup> September 2017 without the need for a separate Working Group.

- 4.1.2 Work Package 2 – Decision-making: Terms of Reference of Member Bodies

Lead Member: Cllr. Gordon Baxendale

Lead Officer: Daniel Dickinson

- 4.1.3 Work Package 3 – Decision-making: Officer Scheme of Delegation

Lead Member: Cllr. Nick Mannion

Lead Officer: Daniel Dickinson

**4.1.4 Work Package 4 – Procedure Rules**

**Lead Member: Cllr. Andrew Martin**

**Lead Officer: Brian Reed**

- 4.1.5 Work Package 5 – Codes & Protocols

Lead Member: Cllr. Barry Burkhill

Lead Officer: Brian Reed

- 4.2 As agreed at Constitution Committee on 5<sup>th</sup> October 2017, this report makes recommendations in respect of the proposed redrafted Constitution with regard to Work Package 4. The redrafting has been conducted by the Council's independent legal advisor, Bevan Brittan, based upon its own expertise and experience as well as detailed feedback obtained through a wide-ranging Member and officer engagement process.

- 4.3 A comprehensive Explanatory Note (List of Substantive Issues) to the redrafted section has also been prepared, attached at Appendix A. This summarises the Substantive Issues being recommended in that section as part of the redrafting process, and the reasons for them.

4.4 Bevan Brittan, in consultation with officers on the project team, has used its discretion, exercised with caution, in listing those matters considered substantive and worthy of inclusion in the Explanatory Note (List of Substantive Issues). In doing so, it has been mindful of comprehensive feedback from Members received through the consultation process (including the joint Member/officer workshop on 31<sup>st</sup> August 2017, participation in the Working Groups and several informal 'drop-in' sessions), all of which has been logged and considered.

4.5 Changes have been classified as follows:

- Section I – Substantive Issues required by law for approval
- Section II – Substantive Issues based on best practice recommended for approval
- Section III – Substantive Issues for consideration by the Sub-Committee

4.6 The redrafted element of the Constitution is presented as follows:

- Work Package 4 – Procedure Rules (New Constitution Section 3)

4.7 This is attached at Appendix B.

## **5.0 Wards Affected and Local Ward Members**

5.1 All wards are affected.

## **6.0 Policy Implications**

6.1 Policy Implications are unchanged from the position set out in the report to Constitution Committee on 4<sup>th</sup> August 2017.

## **7.0 Access to Information**

7.1 The Constitution Committee papers of 4<sup>th</sup> August 2017 and 5<sup>th</sup> October 2017 relate.

## **8.0 Contact:**

Name: Daniel Dickinson

Designation: Acting Director of Legal Services & Monitoring Officer

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## Cheshire East Council – New Constitution

## Explanatory note to new Part 3 - Procedure Rules

## Structure of Part 3

Part	Title	Contents
A	<a href="#">Rules of Procedure</a>	Set out the rules of procedure relating to meetings and decisions of the Council covering <ul style="list-style-type: none"> <li>• Full Council Meetings</li> <li>• Committees and Sub Committee Meetings</li> <li>• Cabinet Meetings</li> <li>• General Provisions relating to Procedure Rules</li> <li>• Overview and Scrutiny Procedure Rules</li> </ul>
B	<a href="#">Access to Documents and Information</a>	Sets out the rights to access documents and information of the Council and the obligations to publish and make information available.
C	<a href="#">Budget and Policy Framework Procedure Rules</a>	Set out the Council's budget and policy framework rules.
D	<a href="#">Finance Procedure Rules</a>	Set out the rules relating to the financial operation of the Council.  (These will be subject to a more detailed review in due course)
E	<a href="#">Contract Rules</a>	Set out the rules relating to the way in which the Council contracts with other organisations.
F	<a href="#">Employment Rules</a>	Set out the rules relating to the recruitment, appointment and dismissal of senior staff.

## Substantive Changes

This Part largely follows the form of the current constitution and contains sets of various Procedure Rules dealing with the operation of the Council and its decision making.

We describe the changes that we have made in three categories:

- I. Substantive changes required by law for approval
- II. Substantive changes based on best practice recommended for approval
- III. Substantive changes for consideration by the Sub-Committee

**Please Note:** The table of Financial Limits is currently presented separately and the relevant extract may will form part of these Rules once finalised.

### I. Substantive changes required by law for approval

Page	Section	Comment and/or area for consideration
Procedure Rules		
	Throughout	All references have been updated dates to ensure compliance with the latest legislation including the Accounts and Audit Regulations and Procurement Regulations.

### II. Substantive changes based on best practice recommended for approval

Page	Section	Comment and/or area for consideration
Committee and Sub Committee Procedure Rules		
11	Attendance of Members at Committees and Sub-Committees of which they are not Appointed Members	<p>The Current Constitution allows members to attend committees of which they are not members where private and confidential or exempt business is to be conducted.</p> <p>Following feedback from the Working Group, we have suggested introducing a "need to know" basis, whereby the Member's attendance at such a meeting would have to be agreed in advance by the Monitoring Officer and the Chair of the Meeting.</p>
15	Attending and speaking at Cabinet Meetings	<p>The current Constitution states that questions will not be allowed which repeat or are substantially the same as questions asked at a meeting of Council or Cabinet within the preceding 3 months.</p> <p>We have changed this to 6 months (and have standardised this time scale for all other similar references throughout the Constitution).</p>

Page	Section	Comment and/or area for consideration
52	Members Access to exempt or confidential documents	We have added the words "of that body" to the end of paragraph 19.2 for clarity.
65	Petitions	Proposed new procedure rule for petitions in place of the petitions scheme
	Councillor Call for Action	Reflected in procedure rules at Appendix 6
Access to Information Procedure Rules		
13.1	Period of Forward Plan	<p>The period of the Forward Plan has been reduced from 4 months to read: "<i>Forward plans will be prepared by the Leader to cover a period of 28 clear days (longer where this is possible) beginning with the first day of any month. They will contain outstanding matters from the previous forward plan</i>"</p> <p>This is to ensure that the Forward Plan is kept up to date on a shorter timeline to reflect the 2012 Regulations.</p>
13.2.2(c)	Publication in newspapers	Recommended for removal as no longer a legal requirement
16	Reports to Council	This section has been significantly shortened, with the procedure for the OSC requiring a report and the Cabinet's report to Council being taken out.
19	Members access to Exempt or Confidential Documents	<p>The words in italics below have been added. This is part of a wider review of access to information, and Bevan Brittan have produced an advice note which addresses concerns about the possible risks to the Council of not taking sufficient steps to control the circulation of exempt and confidential documents.</p> <p>We recommend removal of "<i>In addition, the following categories of Member shall automatically receive copies of confidential or exempt executive reports:</i></p> <ul style="list-style-type: none"> <li>▪ <i>Group Leaders</i></li> <li>▪ <i>Local Ward Members for the Ward affected, in accordance with the Ward Member Protocol</i></li> <li>▪ <i>Relevant overview and scrutiny committee Chairmen and Vice-Chairmen</i></li> <li>▪ <i>Members visiting the meeting in question (with the agreement of the Monitoring Officer and Chairman of</i></li> </ul>

Page	Section	Comment and/or area for consideration
		<i>the meeting) who would receive the papers upon arrival"</i>
	Scheme of Delegation to Senior Officers	<p>Whilst strictly part of WP2, this is part of a wider consideration of access to information.</p> <p>The current constitution has at paragraph 1.28 of the delegation to Senior Officers the following wording:</p> <p><i>"Chief Officers shall implement and ensure compliance with the Authority's procedures relating to data protection, Environmental Information Regulations, freedom of information, human rights and surveillance activities and shall only withhold the publication of requested information with the permission of the relevant Portfolio Holder, whose refusal shall not override the Scheme of Publication"</i></p> <p>None of this provision appears in the draft constitution in this form. Bevan Brittan believes that it is covered by a general requirement to follow "any appropriate legislative, regulatory, consultation, equalities, or procedural requirements that may be required" which does appear in the Scheme of Delegation at paragraph 2.9.5, but if members require it to be made more explicit then this can be achieved.</p> <p>If members require the need for Portfolio Holders to permit the withholding of information then this can also be reinserted. Bevan Brittan advise that any judgement on these matters is a professional and technical one, and there are risks if members seek to take such decisions. We advise that this requirement is not re-inserted.</p>
<b>Contract Rules</b>		
General	All	Following Officer feedback, references to "the Authority" are now references to "The Council" – this is consistent throughout the document.
Definitions	Definition of Chief Officer	Following Officer feedback references to The Chief Officer are now references to the "Executive Director". This is to ensure consistency with the Finance Procedure Rules and the rest of the constitution.
1.1.1	Introduction	We understand that the Procurement Board has

Page	Section	Comment and/or area for consideration
		changed to the Commissioning and Procurement Board. We have defined the board and included a hyperlink to the detailed terms of reference.
1.5.1	Contracts Register	Following Officer feedback we have made it clear that all contracts with a value above £5,000 must be recorded in the Contracts Register. This is required by the Government's Transparency Agenda.
2.1.4	Best and Final Offer	Following Officer Feedback we have made it clearer that Legal Services must be involved in the decision to include a Best and Final Offer (BAFO) stage in procurement process.
4.3.1	Method of Opening Bids	Following Officer feedback we have amended this section to include provisions that in addition to the Procurement Manager, a Category Manager can verify bids from the EU threshold up to £1,000,000 provided that they have not been involved in the tender in question.
5.1.8	Monitoring Contracts	We have included a requirement for monitoring of insurance.
6.1	Waiver Process/Breach	We understand that the Procurement Board will be changing to the Commissioning and Procurement Board. We have left in reference to the Procurement Board for now.
<b>Employment Rules</b>		
	Throughout	All unnecessary references which simply repeated the legal and statutory basis for the procedures and the relevant regulations have been stripped out
6.0	Other Chief Officers and Deputy Chief Officers	We have inserted a section relating to the executive objection process relating to the appointment and dismissal of those Chief Officers and Deputy Chief Officers who are not covered by paragraphs 4 and 5. This rectifies an omission in the current constitution.

### III. Substantive changes for consideration by the Sub-Committee

Page	Section	Comment and/or area for consideration
Council Procedure Rules		

OFFICIAL

Page	Section	Comment and/or area for consideration
2	Council Procedure Rule	<p>Five members can call a Special Council – it has been queried as to whether this number is too low.</p> <p>This number cannot be increased as it is specified by Paragraph 3 of Schedule 12 of the Local Government Act 1972.</p>
28	Notices of Motion	<p>An issue has been raised as to whether motions should always be debated or at least should the proposer be able to explain it.</p> <p>At the moment the wording has been left as in the previous Constitution. Practice varies in councils as to how motions are dealt with. The risk of allowing them to be debated in detail is that (1) the Full Council may not be (and often is not) the correct decision making body to deal with the issue so the matter will have to be re-run and (2) the debate will not be informed by a report setting out the issues, implications and options.</p> <p>However, it is not unreasonable for consideration to be given to the proposer of the motion to be able to explain it briefly – for discussion.</p>
29	Rules of Debate	<p>An issue has been raised requesting that members should have the Right to Speak at Council at any point, and not only as determined by the Chair</p> <p>This is not usual practice and would potentially cause an unmanageable meeting. The Constitution has not been changed in this respect.</p>
	Council Procedure Rule – Appendix 4	<p>The definition of an urgent decision, for the purposes of this section, has been widened following feedback from the Chief Operating Officer. It was previously defined as where "any delay likely to be caused by following the usual procedures would seriously prejudice the Council's or the Public's interest." It now reads:</p> <p><i>"A decision will be urgent in the case of: civil emergency; natural or man-made disaster; matter of serious public health; matters regarding safeguarding of people; or where the Council is at risk of serious reputational damage; loss or claims; or any other matters where the CE or in his/her absence the CFO has declared that an urgent decision is required"</i></p>
Finance Procedure Rules		

Page	Section	Comment and/or area for consideration
	<u>General</u>	References to Authority amended to Council throughout.
	<u>General</u>	References to Cabinet Member for Finance and Assets amended to Cabinet Member for Finance and Communications throughout.
	<u>Foreword – Paragraph 1</u>	Decision makers required to check that they have authority to incur financial consequences arising from any decisions they may make.
	Foreword – Paragraph 2	A requirement to maintain a written record of delegated decision making has been added – covered in detail at A24 and A26 to A27.
	Foreword – Paragraph 4	Responsibility of COO to report breaches of FCPRs amended from Cabinet and Council to Audit & Governance Committee.
	Foreword – Paragraph 6	Amended to remove reference to role of internal audit and Corporate Governance and Audit Manager (covered in detail under internal audit and risk management section of FPRs)
	Foreword – Paragraph 7	Clarifies that advice should be sought from COO before decisions are taken where the interpretation of the FPRs is unclear.
	Section A – Financial Management – A5	Additional wording to clarify that when making decisions Members must check they have authority to incur financial consequences arising from their decisions.
	Section A – Financial Management – A7	Clarifies that A&G Committee has right of access to information required for the effective discharge of its responsibilities.
	Section A – Financial Management – A16	Expanded commentary on actions that may be considered contrary to budget
	Section A – Financial Management – A20	Designated Deputy s151 Officer amended from Finance Manager to Head of Finance & Performance
	Section A – Financial Management – A23	Members of Corporate Leadership Team updated
	Section A – Financial Management – A26	Expanded commentary on objectives of Schemes of Financial Delegation
	Section A – Financial Management – A31	Additional bullet point clarifying that administrative virements do not require Member approval.
	Section A – Financial Management – A33	Supplementary Estimates section split into revenue and capital
	Section A – Financial Management – A35	New table added with separate approval limits for SREs funded from earmarked reserves and contingencies
	Section A – Financial Management – A36	Clarifies that SREs funded wholly or in part from general reserves or general purpose funding require Council approval regardless of value.
	Section A – Financial	Clarifies that Supplementary Capital Estimates

Page	Section	Comment and/or area for consideration
	Management – A38	funded wholly or in part from additional Council resources such as capital reserves, borrowing and capital receipts, regardless of value, must be approved by Council. Council approval also required where there are significant revenue implications for future year's budgets.
	Section A – Financial Management – A42	Clarifies that requests for carry forward of underspends should not be submitted where directorate budgets as a whole are overspent.
	Section B – Financial Planning – B15	Clarifies that Council should not amend revenue or capital budgets without first having considered advice of Cabinet and COO on financial implications arising.
	Section B – Financial Planning – B17	Reinforces responsibility of CLT to alert the COO in a timely manner to any potential overspending.
	Section B – Financial Planning – B26	Removes reference to lower limit of £10,000 for capital expenditure
	Section B – Financial Planning – B35	Reference to Portfolio Holder for Corporate Policy and Legal Services needs to be checked for accuracy.
	Section B – Financial Planning – B42	Amended wording to clarify that Council will decide how capital receipts should be used when setting the annual revenue budget and capital programme and remove reference to repayment of debt.
	<u>Section C – Risk Management and Control of Resources – C2 and throughout</u>	Reference to Corporate Manager Governance and Audit needs to be updated to reflect current management arrangements
	<u>Section C – Risk Management and Control of Resources – C27</u>	Clarifies internal audit rights of access apply equally to Council ASDVs and these rights should be documented in management agreements.
	<u>Section C – Risk Management and Control of Resources – C28</u>	Additional paragraph citing statutory basis of external audit.
	<u>Section C – Risk Management and Control of Resources – C29</u>	Updated to reference new arrangements for appointment of external auditors under Local Accountability and Audit Act 2014.
	<u>Section C – Risk Management and Control of Resources – C46</u>	Additional wording to make clear that cash held on Council premises should not exceed insurance limits.
	<u>Section C – Risk Management and Control of Resources –</u>	Additional wording to clarify that relevant Director (or Chief Exec) should approval all requests for early retirement or severance.

Page	Section	Comment and/or area for consideration
	<u>C61</u>	
	Section D – Financial Systems and Procedures – D50	Requirement for trading accounts where turnover exceeds £1m deleted.
	Section D – Financial Systems and Procedures – D52	This section on ASDVs will need to be updated in light of the ongoing ASDV review.
	<u>Section E – Partnerships and Jointly Funded Projects – E24</u>	Clarifies that the Cabinet Member for Finance & Communities will periodically set out policy on approach to be taken to the allocation of grants, donations and other contributions to outside bodies, in consultation with the Chief Operating Officer and Head of Legal Services.

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# Cheshire East Council

## New Constitution

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### Part 3

### Rules of Procedure

This part of the Constitution covers the following areas:-

Part	Title	Contents
A	<a href="#">Rules of Procedure</a>	Set out the rules of procedure relating to meetings and decisions of the Council covering <ul style="list-style-type: none"> <li>• Full Council Meetings</li> <li>• Committees and Sub Committee Meetings</li> <li>• Cabinet Meetings</li> <li>• General Provisions relating to Procedure Rules</li> <li>• Overview and Scrutiny Procedure Rules</li> </ul>
B	<a href="#">Access to documents and information</a>	Sets out the rights to access documents and information of the Council and the obligations to publish and make information available
C	<a href="#">Budget and Policy Framework Rules</a>	Set out the rules providing the framework for managing the Council's financial affairs.
D	<a href="#">Finance Procedure Rules</a>	Set out the rules relating to the financial operation of the Council.
E	<a href="#">Contract Rules</a>	Set out the rules covering the way in which the Council contracts with other organisations.
F	<a href="#">Employment Rules</a>	Set out the rules relating to the recruitment, appointment and dismissal of senior staff

## **Part A – Procedure Rules**

### **Council Procedure Rules**

#### **1 Council meetings**

- 1.1 The Council will decide when and where its meetings will take place. Details will be contained in a calendar of meetings which will be approved by the Council.
- 1.2 The Mayor, or the Council, can agree to hold a meeting at a different place or time.
- 1.3 A special meeting can be called by resolution of the Council or by the Mayor, or five members of the Council can ask the Mayor, in writing, to call a special meeting. If the Mayor does not agree, then those Members can call the meeting by giving written notice to the Monitoring Officer.
- 1.4 The Monitoring Officer, in consultation with the Mayor, may also call a special meeting, taking into consideration the subject matter of the request, its urgency and impact on the Council and its citizens.
- 1.5 Before the start and at the end of each meeting, Members and Officers will stand whilst the Mayor and the Deputy Mayor enter and leave the room.

#### **2 Mayor and Deputy Mayor of the Council**

- 2.1 At its annual Mayor-making meeting, the Council will elect its Mayor and appoint its Deputy Mayor for the following year.
- 2.2 The Mayor of the Council, or in his/her absence the Deputy Mayor (who will have the same powers and duties as the Mayor), will preside at meetings of the Council.

#### **3 Quorum**

- 3.1 No business shall be dealt with at a Council meeting if there are fewer than 21 Councillors present. Where the meeting has started, and the number of Councillors present is fewer than 21, the Mayor will adjourn the meeting. Where the Mayor does not give a date and/or time to re-convene, all business not completed will be considered at the next scheduled meeting.

#### **4 What the Council can decide**

- 4.1 The Council will decide such matters as required by the law, and those matters set out in Part 3 of this Constitution.

## **5 Council Agenda and Order of Business**

- 5.1 The Council has adopted [model agendas](#) for Council meetings – these are for guidance only.
- 5.2 Business shall be dealt with in the order in which it is set out in the agenda unless the Council decides otherwise.

## **6 Urgent Business**

- 6.1 Business cannot be dealt with at a Council meeting unless it is included in the Summons or unless the Mayor has agreed that it is urgent and cannot wait until the next meeting. The Mayor must give the reasons for urgency, which must be recorded in the Minutes of the meeting.

## **7 Confirmation of Minutes**

- 7.1 Minutes of the last Council meeting must be confirmed at the next ordinary meeting of the Council where possible.
- 7.2 Only matters relating to the accuracy of the Minutes can be raised, which must be done by way of a motion which is proposed, seconded and voted upon. Where no issues are raised, or after the motion has been dealt with, the Mayor shall sign the Minutes.

## **8 Matters for Decision by the Council**

- 8.1 When the item is reached on the agenda, the appropriate Cabinet Member or the Chairman of the relevant Committee will, where appropriate, move the recommendation or advice of the Cabinet or Committee, or endorsement of a Cabinet or a Committee decision. Another Member may second the motion.
- 8.2 The Chairman cannot ask the Council to agree to withdraw a recommendation of the Cabinet or a Committee under, [Appendix 3, paragraph No.10](#), unless new and relevant information has become available after the decision of the body concerned. The information must be disclosed to the Council.

## **9 Motions Moved Without Notice**

- 9.1 [Appendix 1](#) lists those motions and amendments which can be moved at a Council meeting without notice.

## **10 Speaking and Questions at Council meetings**

- 10.1 A Member of the Council may ask the Mayor, the appropriate Cabinet Member or the Chairman of a Committee any question about a matter which the Council, the Cabinet or the Committee has powers, duties or responsibilities.
- 10.2 A Member may ask the nominated/designated representative of the Cheshire Fire Authority or the Cheshire Police and Crime Panel any question about the responsibilities of his/her respective Authority.
- 10.3 There is no requirement for questions to be submitted in writing which relate to the work of the Cabinet. They can be asked at the meeting without notice.
- 10.4 For the Chairman of a Committee or the nominated/designated representative of the Cheshire Fire Authority or the Cheshire Police and Crime Panel questions must be sent in writing to the Monitoring Officer at least three clear working days before the meeting.
- 10.5 There will be a maximum question time period of 30 minutes.
- 10.6 Questions will be selected by the Mayor taking into account the time available.
- 10.7 Those Members submitting more than one question in writing may indicate the priority of importance of each question.
- 10.8 Questions in writing will not be read out at Council meetings.
- 10.9 All Questions will be brief, clear and focussed.
- 10.10 No questions will be allowed which, in the opinion of the Monitoring Officer are
  - inappropriate, frivolous, derogatory or vexatious;
  - relate to a Council employment or staffing matter or
  - could be defamatory.
- 10.11 No questions will be allowed which repeat, or are substantially the same as, questions submitted to a meeting of Council during the preceding 6 months.
- 10.12 Questions will be asked and answered without discussion. In replying, the Member responding will use their reasonable endeavours to address the matters raised in the question. The Member responding may decline to answer any question or may: reply direct, reply by reference to a publication, or reply by written answer with a copy to such other Members of the Council as the Council agrees, or refer the question to an appropriate committee or to the Cabinet.
- 10.13 Following the answer to each question, the Mayor may permit the questioner to ask a concise and focussed supplementary question which relates to the subject matter of the initial question and answer.

10.14 Where a question submitted under this Procedure Rule relates to a matter that appears on the agenda for that meeting, the question shall be put and answered in accordance with this Procedure Rule, at the start of the consideration of that matter.

10.15 A public speaking time and public question facility will apply to Council meetings, as detailed in [Appendix 7](#).

## **11 Notices of Motion**

11.1 A notice of motion must relate to matters for which the Council has responsibility or which affect its area.

11.2 The arrangements for submitting and dealing with notices of motion are set out in [Appendix 2](#).

## **12 Rules of Debate**

12.1 The rules of debate to be followed at Council meetings are set out in [Appendix 3](#).

## **13 Rescission of Earlier Resolution**

13.1 Subject to Rule 13.2, at a meeting of the Council, no motion or amendment shall be moved to rescind any resolution of the Council which was passed within the preceding 6 months or which is to the same effect as one which has been rejected within that period.

13.2 Such a motion may be moved if:

1. it is recommended by the Cabinet or a Committee; or
2. notice of such motion has been given under Procedure Rule 12 and signed by at least 8 elected Members of the Council.

## **14 Voting**

14.1 Voting will be by a show of hands.

14.2 When a Member asks for a recorded vote to be taken, and 8 other Members support the request, the vote will be recorded to show whether each Member voted for or against the motion or abstained.

14.3 A recorded vote will not be taken if the vote has already begun to be taken by a show of hands.

14.4 Members must be in their designated seats for their vote to be counted. The Mayor may agree to waive this requirement before the vote is taken.

- 14.5 A Member may require, after a vote is completed, that the Minutes of the meeting record how he/she voted or abstained.
- 14.6 A Member may, immediately after the item of business is voted upon, request that a lost motion or amendment be recorded in the minutes.
- 14.7 Where there are equal votes cast for a motion or amendment the Mayor or the person presiding will have a second or casting vote.

## **15 Offices and Appointments**

- 15.1 A vote will be held to elect or appoint the Mayor and Deputy Mayor of the Council, the Leader of the Council and Members to any office or position where more than one person is nominated.
- 15.2 If more than one person is 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.

## **16 Election of Chairmen of Committees and Sub-Committees**

- 16.1 The Chairmanships and vice-chairmanships of the Council's committees and sub-committees shall be allocated to the political groups each year at the Annual Meeting of Council. Nominations to chairmanships and vice-chairmanships shall be notified by the Council's Group Leaders or Group Whips in writing or by email to the Head of Governance and Democratic Services and shall thereafter be published on the Council's website. Such nominations shall be in accordance with the relevant numerical allocations made by Council in relation to the body in question.
- 16.2 A Member appointed as Chairman or Vice-Chairman must be a member of the relevant Committee or Sub-Committee.
- 16.3 Where a vacancy occurs in the office of Chairman or Vice-Chairman, the relevant Group Leader or Whip shall nominate a replacement in accordance with the provisions of paragraph 16.1.
- 16.4 Where both the Chairman and Vice-Chairman are absent from a meeting of the relevant body, a Chairman will be appointed from those Members of the body present, provided the meeting is quorate and subject to any restrictions on the eligibility of Cabinet Members for appointment.
- 16.5 A description of the [Role and Responsibilities of a Chairman](#) of a meeting is available.

**17 Urgent Decisions – Non-Executive Matters**

- 17.1 An item of urgent business which has to be decided before the next meeting of the Council can be determined in accordance with the procedure set out in [Appendix 4](#).

## **Committee and Sub-Committee Procedure Rules**

### **18 Committees and Sub-Committees**

18.1 The standing Committees and Sub-Committees of the Council and their membership size are set out in [Part 2 \(D\) of the Constitution](#).

### **19 Co-option**

19.1 A committee or sub-committee may co-opt any person as a Member.

19.2 An overview and scrutiny committee or sub-committee may co-opt persons to advise and/or assist in the scrutiny of particular areas of the Council's functions.

19.3 Co-optees must not be elected Members of the Council. Save as provided in paragraphs 3.1 and 3.2 of the Overview and Scrutiny Procedure Rules, co-optees shall not be entitled to vote at any meeting.

### **20 Appointment to Committees and Sub-Committees**

20.1 Where a by-election takes place during the year, the Council will decide upon the composition of Committees and Sub-Committees to reflect any change in political balance.

### **21 Substitutions**

21.1 A Political Group may appoint a substitute member to a committee or sub-committee in accordance with the procedure set out in Appendix 5.

### **22 Urgent Decisions – Non-Executive Matters**

22.1 An item of urgent business which has to be decided before the next meeting of a Committee or Sub-Committee can be determined in accordance with the procedure set out in [Appendix 4](#).

### **23 Changes to the Calendar of Meetings**

23.1 Meetings of Committees and Sub-Committees will be set out in the calendar of meetings approved by the Council. There will be a presumption against alterations to the date, time and venue for meetings.

23.2 A meeting of a decision-making body scheduled in the Calendar of Meetings may be cancelled or changed by the Chairman following consultation with the whole membership of the body provided that such

cancellation or change takes place at least five clear working days before the scheduled date of the meeting to enable sufficient public notice to be given.

- 23.3 When it is necessary to arrange a special meeting, the Head of Governance and Democratic Services will consult the Chairman and Spokespersons of the relevant Committee or Sub-Committee before any action is taken. The Chairman of the Committee or Sub-Committee will then determine the matter.

## **24 Quorum at Committees and Sub-Committees**

- 24.1 Business cannot be transacted at meetings of Committees and Sub-Committees unless there are at least one quarter of the Members of the body present. However, where the total membership of any Committee or Sub-Committee comprises eleven or fewer Members, the quorate number shall be 3.
- 24.2 These arrangements may be varied because of a legal requirement or by the Council.

## **25 Minutes of Committees and Sub-Committees**

- 25.1 The Minutes of a Committee or Sub-Committee must be confirmed at its next meeting where possible.
- 25.2 Only matters relating to the accuracy of the Minutes can be raised. Where accuracy is questioned, this must be by a motion which is proposed, seconded and voted upon.
- 25.3 Where no issues of accuracy are raised, or after any motion has been dealt with, the Chairman shall sign the Minutes.
- 25.4 The Minutes of any Sub-Committee must be submitted to the next meeting of the parent Committee by the Sub-Committee Chairman.
- 25.5 Members may ask a question or comment on any Minute. The Chairman of the Sub-Committee will then reply. There will be no debate on any question or comment raised under this procedure and no further motions can be moved.
- 25.6 Where a Member has a question or comment on an exempt, private or confidential Minute, the question or comment must be given in writing to the Monitoring Officer at least 24 hours before the start of the meeting.

## **26 Motions moved without Notice at Committees and Sub-Committees**

26.1 [Appendix 1](#) lists those motions and amendments which can be moved without notice.

## **27 Rules of Debate at Committees and Sub-Committees**

27.1 [Appendix 3](#) sets out the rules of debate.

## **28 Voting**

28.1 Voting at Committee and Sub-Committee meetings will be by a show of hands.

28.2 When a Member asks for a recorded vote to be taken, and one other Member supports the request, the vote will be recorded to show whether each Member present voted for or against the motion or abstained.

28.3 A recorded vote will not be taken if the vote has already begun to be taken by a show of hands.

28.4 A Member may require, after a vote is completed, that the Minutes of the meeting record how he/she voted or that he/she abstained.

28.5 A Member may request that a lost motion or amendment be recorded in the minutes by requesting this immediately after the vote is taken.

28.6 Where there are equal votes cast for a motion or amendment, the person presiding at the meeting will be entitled to, and may exercise, a second or casting vote. However, where there remains an equality of votes in respect of a motion, the motion will be lost.

## **29 Offices and Appointments**

29.1 A vote will be held to elect or appoint Members to any office or position where more than one person is nominated.

29.2 If more than one person is 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.

## **30 Mover of a Motion at Council under Procedure Rule 12: Attendance at Committee and Sub-Committee**

30.1 Where a motion has been referred under Procedure Rule 12 from the Council to a Committee or Sub-Committee for consideration and report, the mover of the motion has the right to attend the meeting and to explain the motion.

- 30.2 The mover of the motion will be advised of the date and time of the meeting at which the matter is to be considered and he/she will be sent a copy of the relevant papers.

**31 Requests by Members for items of business to be included on agendas of a Committee or Sub-Committee**

[Appendix 6](#) to these Procedure Rules sets out details of the process by which a Member of the Council can ask for an item of business to be included on the agenda of Committee or Sub-Committee meeting.

**32 Questions Submitted by Members of the Public**

- 32.1 The Council has a procedure to enable members of the public to submit questions at ordinary meetings of its Committees and Sub-Committees. This is set out in [Appendix 7](#). Separate procedures for public involvement apply to meetings of the Council's Planning, Licensing and Scrutiny committees and sub-committees which can be accessed by clicking this [link – public involvement](#).

**33 Committee and Sub-Committee Agenda - Urgent Items of Business**

- 33.1 Generally, business will only be transacted at meetings of Committees and Sub-Committees which appears on the agenda and which has been available for public inspection at least five clear working days before the meeting or, where the meeting is convened at short notice, from the time the meeting is convened.
- 33.2 The Chairman of the Committee or Sub-Committee may agree to deal with an item of business at the meeting if, in his/her opinion, the matter is urgent given the circumstances requiring a decision. The Chairman's ruling and the reasons for urgency will be recorded in the Minutes of the meeting.

**34 Attendance of Members at Committees and Sub-Committees of which they are not Appointed Members**

- 34.1 Notwithstanding their rights as a member of the public, a Member may attend any meeting of a Committee or Sub-Committee to which he/she has not been appointed, for the purposes of performing his/her duties as a Councillor, including when exempt or private and confidential business is transacted, provided that such attendance is agreed in advance by the Monitoring Officer and the Chairman of the meeting on the basis that the Member has a "need to know" about the exempt or private and confidential business to be transacted.
- 34.2 Where a Member has permission to attend a meeting under Procedure Rule 34.1 above, he/she will be given, when he/she arrives at the meeting, a copy of the agenda and relevant papers.

34.3 The Member has no right to vote, but may speak with the consent of the Chairman of the meeting.

34.4 At meetings of the Strategic Planning Board and Planning Committees, Members' speaking rights are subject to the protocol on public speaking entitled '[Public Speaking Rights at Strategic Planning Board and Planning Committees](#)

### **35 Overview and Scrutiny Committees/Sub-Committees**

35.1 In applying these Procedure Rules to overview and scrutiny committees and sub-committees, regard shall be had to the [Overview and Scrutiny Procedure Rules](#).

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## **Executive Arrangements and Cabinet Procedure Rules**

### **36 Appointing the Cabinet and Responsibility for Functions**

36.1 At the Annual Meeting of Council, the Leader will present to the Council a written report containing the following information about executive functions in relation to the coming year:

36.1.1. the names, addresses and wards of the people appointed to the Cabinet by the Leader;

36.1.2. the extent of any authority delegated to Cabinet Members individually, including details of the limitation on their authority;

36.1.3. the terms of reference and constitution of such Cabinet committees as the Leader appoints and the names of Cabinet Members appointed to them;

36.1.4 the nature and extent of any delegation of executive functions to area committees, any other authority or any joint arrangements, and the names of those Cabinet Members appointed to any joint committee for the coming year; and

36.1.5 the nature and extent of any delegation to officers with details of any limitation on that delegation, and the title of the officer to whom the delegation is made (where this is not already covered in the Council's Constitution).

36.2 Where the Cabinet, a committee of the Cabinet, or an individual Member of the Cabinet is responsible for an executive function, they may delegate further to a committee of the Cabinet, an area committee, joint arrangements, or an officer.

36.3 Even where executive functions have been delegated, that does not prevent the discharge of delegated functions by the person or body who delegated them.

### **37 The Law and Executive Functions**

37.1 Those responsible for discharging executive functions will ensure that they are acting within the law and this Constitution.

37.2 The functions in question are set out in Part 3 of this Constitution. This also sets out the body or individual responsible for taking decisions in respect of executive functions.

37.3 The Cabinet, and any individual member or committee thereof, must ensure, and be satisfied, that they have appropriate and adequate

legal, financial and other relevant professional advice from officers before taking a decision on any matter before them. Advice from the Council's Monitoring Officer and Section 151 Officer should always be obtained where there is doubt about vires, procedure or probity.

### **38 Conflicts of Interest**

- 38.1 Where the Leader or any Cabinet Member has a conflict of interest, s/he will follow the requirements of the Council's Code of Conduct for Members.
- 38.2 If all (or a majority) of the Members of the Cabinet present have a conflict of interest then consideration will be given to applying to the Audit and Governance Committee for a dispensation from the provisions of the Code.
- 38.3 If the discharge of an executive function has been delegated to another body or individual and a conflict of interest arises, then it will fall to the body or individual who delegated the matter to take the decision. Where that body or individual also has a conflict of interest, then the action set out in 38.2 shall be considered.

### **39 Meetings of the Cabinet**

- 39.1 The Cabinet will meet as indicated in the Council's programme of meetings. The Cabinet or the Leader may agree to change the date of any programmed meeting, to cancel a meeting or to arrange additional meetings as it/he/she sees fit.
- 39.2 The Cabinet may meet in public or in private, subject to legal requirements and the Access to Information Procedure Rules contained in the Constitution.
- 39.3 The Leader will preside at meetings of the Cabinet. If the Leader is absent then the Deputy Leader will preside. Where both the Leader and Deputy Leader are absent, the Cabinet Members present shall appoint one of their number to be the chairman of that meeting.
- 39.4 All Members of the Cabinet shall be entitled to attend meetings of the Cabinet unless the Cabinet determine otherwise.
- 39.5 Attendance by other Members of the Council or the public shall be in accordance with the Access to Information Procedure Rules, by invitation, or as set out in paragraphs 45.1 to 45.4 below.

### **40 Quorum at Cabinet Meetings**

- 40.1 The quorum at a meeting of the full Cabinet, or a Committee or Sub-Committee established by the Cabinet, shall be 50% of its voting membership.

**41 Attending and speaking at Cabinet Meetings**

- 41.1 The Chairman and Spokesperson(s) of the Council's overview and scrutiny committees shall be entitled, at any formal public meeting of the Cabinet, to speak to any matter on the agenda for that meeting.
- 41.2 Other Members not previously described above may also speak at such meetings with the permission of the Leader or person presiding in his/her absence.
- 41.3 At every formal public meeting of the Cabinet there shall be a period of 20 minutes for questions to be put to Cabinet members by members of the Council. Notice of these questions is not required in advance of the meeting. The following rules shall apply:
- Questions must relate to the powers, duties or responsibilities of the Cabinet.
  - Questions put to Cabinet members must relate to their portfolio responsibilities.
  - The Leader will determine how Cabinet question time should be allocated where there are a number of members wishing to ask questions.
  - Questions will be brief, clear and focussed.
  - Questions which the Leader deems to be:
    - inappropriate, frivolous, derogatory or vexatious;
    - related to a Council employment or staffing matter or
    - defamatory.will not be allowed.
  - Questions will not be allowed which repeat, or which are substantially the same as questions asked at a meeting of Council or Cabinet within the preceding 6 months.
  - Where any question might be disallowed under the agreed provisions, the Leader, as chairman of the Cabinet, will have absolute discretion to determine whether to do so.
  - Questions will be asked and answered without discussion. In replying, the Cabinet member responding will use their reasonable endeavours to address the matters raised in the question. The Cabinet member responding may decline to answer any question or may: reply direct, reply by reference to a publication, or reply by written answer.
  - Following each answer, the Leader may permit the questioner to ask a concise and focussed supplementary question which relates to the subject matter of the initial question and answer.
  - Where a question relates to a matter which appears on the agenda of the Cabinet meeting in question, the Leader may allow the question to be asked at the beginning of consideration of that item.

- 41.4 The Cabinet may invite any person to its meetings to discuss matters of mutual interest or concern or to advise. Such persons may only be given access to confidential and/or exempt information on terms to be decided by the Monitoring Officer so as to ensure that the Council's obligations under the Local Government Acts in respect of Access of Information and Data Protection are observed.

## **42 Business at Cabinet Meetings**

- 42.1 The business to be transacted at a meeting of the Cabinet will be set out in an Agenda for that meeting, subject to any requirements or exemptions under the Access to Information Procedure Rules.
- 42.2 The Agenda may be supported by additional papers prepared by the Officers or by or on behalf of other bodies, subject to requirements about disclosure of confidential or exempt information. Full agendas for meetings of the Cabinet will be made available, electronically, in advance of the respective meeting, to all Members of the Council and in accordance with the Council's current policy.
- 42.3 The Cabinet is obliged to consider matters referred to it by an overview and scrutiny committee, or by the Full Council, for consideration under the Overview and Scrutiny Procedure Rules.
- 42.4 The Cabinet will, at each formal meeting, confirm the record of decisions taken at its previous meeting as a correct record.
- 42.5 The Monitoring Officer, or his/her nominated officer, shall be responsible for preparing and distributing the Agenda for Cabinet meetings, attending meetings for the purpose of advising the Cabinet on matters within his/her area of responsibility and recording decisions as required under this Constitution.
- 42.6 In taking decisions, the Cabinet must satisfy itself that it has before it adequate and appropriate advice from the relevant service, and from legal and financial advisers who shall, where appropriate, be present at any meeting where a decision is being taken and that that advice is taken into consideration in determining the matter. Where there is any doubt about vires, procedure or probity then advice must be obtained from the Monitoring Officer and the Section 151 Officer.
- 42.7 Meetings of the Cabinet will be programmed into the Council diary. The Cabinet can agree to change the date of any programmed meeting, to cancel a meeting or to arrange additional meetings as it sees fit.
- 42.8 The order of business at Cabinet meetings is a matter for the Cabinet to determine.

- 42.9 Any Member of the Cabinet may require the Monitoring Officer to place an item on the Agenda for a stipulated meeting of the Cabinet.
- 42.10 Any Member of the Council may request the Leader to place an item on the Agenda of a meeting of the Cabinet. The Leader shall have sole discretion as to whether or not to accede to such a request and, if such a request is granted, whether the Member in question can speak to the item at the meeting in question.
- 42.11 The Head of the Paid Service, the Monitoring Officer and/or the Section 151 Officer can include an item for consideration on the Agenda of a Cabinet Meeting. In pursuance of their statutory duties they can require that a special meeting of the Cabinet be convened.
- 42.12 Except where it is urgent, business cannot be conducted at formal meetings of the Cabinet unless it is included in the Agenda for the meeting. An item of business which is not included on an agenda for a Cabinet meeting may not be considered unless the Leader or person presiding is of the opinion that the matter is urgent and cannot await another meeting, and unless the requirements of the Access to Information Procedure Rules have been complied with. This shall also apply to any committee of the Cabinet or to an individual Portfolio Holder.
- 42.13 The Cabinet will report to the Council, as required under the Access to Information Procedure Rules, on any matter which is classified as a key decision and which is dealt with under special urgency procedures.
- 42.14 Subject to 3 clear working days' notice being provided to the Head of Governance and Democratic Services, questions can be submitted by members of the public at meetings of the Cabinet, in accordance with Council Procedure Rule No. 41 and [Appendix 7](#) of the Procedure Rules.
- 42.15 Cabinet decisions, including those taken under delegated powers, shall not take effect until they have been recorded in writing, as required under the Council's procedures, and shall not be implemented where the right of call-in applies and has been exercised until the call-in process has been concluded. Where the right of call-in applies but is not exercised, a Cabinet decision may be implemented immediately after the expiry of the call-in period.
- 42.16 A written record of all Cabinet decisions will be kept by the Head of Governance and Democratic Services and these will be made available publicly as soon as practicable after the decision has been taken (excluding the disclosure of confidential and exempt information and in accordance with the Overview and Scrutiny Procedure Rules). In recording decisions of the Cabinet, the Head of Governance and Democratic Services will set out the decision, the reasons for the

decision and alternative options considered as required under the Access to Information Procedure Rules in the Constitution.

**43 Voting at Cabinet Meetings**

43.1 Voting at Cabinet meetings will be by a show of hands and any Cabinet Member may require, immediately after the vote is taken, that the Minutes of the meeting record how he/she voted or that he/she abstained. Where there are equal votes cast and the Leader or person presiding has voted, the Leader or person presiding will have a second or casting vote. Voting for any office or appointment, including any paid appointment, where more than one person is nominated shall be by a vote conducted in accordance with Council Procedure Rules.

**44 Cabinet Committees/Sub-Committees and Task Groups**

44.1 The Leader or the Cabinet may appoint such Committees or Sub-Committees as are considered necessary and appropriate to assist in the discharge of executive functions. In making such appointments, the name of the Committee/Sub-Committee must be specified, along with its membership (including its Chairman and, if appropriate, Vice-Chairman) and its powers.

44.2 The Cabinet may also appoint whatever task or advisory groups it deems necessary, comprising some or all of its own membership, any other member or non-member of the Council.

**45 Decision Making By Individual Portfolio Holders**

45.1 Where the Leader has delegated decision making powers to individual Portfolio Holder they will exercise their powers and duties in accordance with these rules and Part 3 of this Constitution.

**46 Motion Under Procedure Rule 11**

46.1 A mover of a motion under Procedure Rule 11 which has been referred to the Cabinet for consideration may attend the meeting of the Cabinet when his/her motion is under consideration and explain the motion. The mover of the motion will be advised of the date and time of the meeting when the matter is to be considered and he/she will be sent a copy of the relevant papers. This does not affect the right of the mover or seconder of the motion to attend a Scrutiny body when his/her motion is being considered.

**47 Resolving Disputes**

47.1 In the case of any dispute during the proceedings of the Cabinet the relevant parts of this Constitution will apply and, after considering the application of the relevant provisions, the person presiding at the meeting will rule on the issue in question and his/her ruling will be final.

**48 Reserves/substitute members**

48.1 There shall be no reserve or substitute members of the Cabinet.

**49 Urgent Decisions – Executive Matters**

49.1 Where any matter is urgent and cannot await the next meeting of the relevant executive body or Portfolio Holder, the matter may be determined in accordance with [Appendix 4](#) of the Council Procedure Rules.

**50 The Forward Plan and Key Decisions**

50.1 The Leader will ensure that the requirements of the Access to Information Procedure Rules are met in relation to the publication of Key Decisions.

50.2 Those decisions which are Key Decisions are defined in Part 2 (A), paragraph 4 of this Constitution.

50.3 Where the Cabinet as a body is making Key Decisions, that meeting shall be held in public in accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. The requirements of these Regulations also apply to any body, Portfolio Holder or Officer to whom the relevant executive powers have been delegated.

50.4 When the Cabinet or a Portfolio holder exercising an executive function under delegated powers receives a report or background information which he/she intends to take into consideration when making a Key Decision (and the report or papers are not exempt or confidential) that decision shall not be taken until the report has been made available for inspection by the public for five clear working days following receipt of the report by the decision taker. A copy of such report must be supplied as soon as reasonably practicable to the Chairman of the relevant overview and scrutiny committee or, in his/her absence, the Vice-Chairman of the Committee. The report must also list any background papers.

50.5 Where the inclusion of a matter in the Forward Plan is impracticable (28 clear days' notice being required for private decisions) and the matter would be a Key Decision, that decision shall only be made:

- (a) where the Monitoring Officer has notified the Chairman of the relevant overview and scrutiny committee, or in his/her absence the Vice-Chairman of the committee, of the matter about which the decision is to be made;

- (b) where the Monitoring Officer has made available for public inspection a copy of the notice given under (a) above; and
- (c) where a period of five clear working days has elapsed since the Monitoring Officer made available the notice referred to in (b) above.

50.6 Where the date by which a Key Decision must be made makes compliance with the requirements under 54.5 above impracticable, the decision shall only be made where the decision maker has obtained agreement from:

- (a) the Chairman or, in his/her absence, the Vice-Chairman of the relevant overview and scrutiny committee; or
- (b) if there is no Chairman or Vice-Chairman of the relevant overview and scrutiny committee, or if neither is able to act, the Mayor or, in his/her absence, the Deputy Mayor

that the making of the decision is urgent and cannot reasonably be deferred. Such decisions when made are not subject to the provisions relating to call-in. All Members will be sent electronic notification of the agreement reached that compliance with the requirements of Rule 54.5 above was impractical.

50.7 The Leader shall submit a report to the Full Council containing details of each Key Decision taken during the preceding three months under 54.6 above and agreed as urgent. The report will include particulars of each such Key Decision and a summary of the matters in respect of which each decision was made.

50.8 Where an executive decision which was not classified as being a Key Decision has been made and the relevant overview and scrutiny committee is of the opinion that the decision should have been so classified, that Committee may require the Cabinet to submit a report to the Full Council within such reasonable period as the Committee may specify, containing the following details:-

- (i) the decision and the reasons for it;
- (ii) the decision maker; and
- (iii) if the Cabinet is of the opinion that the decision is not a Key Decision, the reasons for this view.

**PROCEDURE RULES: GENERAL PROVISIONS**

**51 Records of Attendance**

51.1 Members of the Council attending a meeting of which they are a Member must sign their name on the attendance sheet provided.

**52 Disclosure of Confidential/Exempt Matters**

52.1 Matters not open to the Public or Press

No Member shall disclose to any person the whole or any part of the contents of any agenda, report or other document which is marked “confidential” or “not for publication” unless and until the document has been authorised to be made available to the public or the press by or on behalf of the Council, the Cabinet, a Committee or Sub-Committee.

52.2 Matters which may prejudice the interest of the Council

No Member shall disclose to any person other than a Member of the Council any matter arising during the proceedings of the Council, the Cabinet, any Committee, Sub-Committee, Panel or Board and which comes to his/her knowledge by virtue of his/her office as a Member where such disclosure would prejudice the interest of the Council or would be contrary to law.

52.3 Decisions or Proceedings of the Council, the Cabinet, Committees, Sub-Committees, Panels and Boards

No Member shall, without the consent of the Chairman of the appropriate body, disclose to any person any decision or proceedings of that body except:

- (a) when a report on the matter has been circulated to the Council by that body; or
- (b) when the decision has become public knowledge; or
- (c) when the matter comes within the powers of that body and a final decision has been made upon it;

provided that this paragraph shall not authorise any disclosure which would contravene paragraphs 52.1 or 52.2.

52.4 Prohibited Disclosure

The press and public shall be excluded during the consideration of any item of business which would be likely to disclose information which:-

- (a) has been furnished to the Council by a Government Department on terms which forbid disclosure; or

- (b) would be prohibited by law or by an order of the Court.

### **53 Disorderly Conduct**

#### **53.1 Motion to end Disorderly Conduct**

If at a meeting any Member of the Council, in the opinion of the person presiding, misconducts themselves in any way, the person presiding or any other Member may move "That the Member be not further heard". The motion, if seconded, shall be put and determined without discussion.

#### **53.2 Persistent Misconduct**

If the Member continues the misconduct after a motion under the foregoing paragraph has been carried, the person presiding may: either move "That the Member do leave the meeting" (in which case the motion shall be put and determined without seconding or discussion); or adjourn the meeting.

#### **53.3 General Disturbance**

In the event of general disturbance at any meeting which, in the opinion of the person presiding, renders the due and orderly dispatch of business impossible, the person presiding, will have the power to adjourn the meeting.

### **54 Disturbance by Members of the Public**

- 54.1 If a member of the public interrupts the proceedings at any meeting, the person presiding shall warn him/her. If he/she continues, the person presiding shall order his/her removal from the meeting. In cases of general disturbance in any part of the meeting room open to the public, the person presiding shall order that part to be cleared.

### **55 Inspection of Documents**

#### **55.1 Supply of Agenda papers to Members of the body in question**

Members of Council decision-making and other bodies will be provided with hard copies of agenda papers.

#### **55.2 Supply of Agenda and Minutes to those Members who are not Members of that particular body**

To help a member perform his/her duties as a member, agenda papers and records of decisions, or minutes of decision-making bodies will be made available to them electronically. Private, confidential and exempt reports will not be made available but may be requested from the Monitoring Officer who will have discretion to provide or withhold such reports.

#### **55.3 Minutes of the decision making bodies - Open for Inspection**

Subject to Procedure Rules 56 and 49.1 the Minutes of the Council, Committees or Sub-Committees, and Cabinet Decision Records shall be open for inspection by any Member of the Council.

**56 Provisions relating to Personnel Matters**

56.1 The recruitment and appointment of staff and the responsibilities for Personnel matters will be governed by the Staff Employment Procedure Rules.

**57 Sealing of Documents**

57.1 Authority

The Common Seal of the Council shall not be affixed to any document unless the sealing has been properly and lawfully authorised. A resolution of the Council (or of a Committee or Sub-Committee where such body has the power) or a decision of the Cabinet authorising the acceptance of any tender, the purchase, sale, letting, or taking of any property, the issue of any stock, the presentation of any petition, memorial or address, the making of any rate of contract, or any other matter or thing, shall be a sufficient authority for sealing any document necessary to give effect to the resolution.

57.2 Attestation

The seal shall be attested by the Monitoring Officer or his/her authorised deputy, designated for this purpose, as required by this Constitution and a record of the sealing of every document shall be kept.

**58 Signature of Documents**

58.1 Subject to special requirements relating to Contracts, where any document will be a necessary step in any legal process or proceedings on behalf of the Council it shall, unless any enactment otherwise requires or authorises, or the Council shall have given the necessary authority to some other person for the purpose of such process or proceedings, be signed by the Monitoring Officer or his/her authorised deputy (designated for this purpose).

**59 Variation and Revocation of Procedure Rules**

59.1 Any motion to vary or revoke these Rules shall, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.

**60 Suspension of Procedure Rules**

60.1 Motion Required

Subject to Rule 64.2, any of the preceding Procedure Rules may be suspended in respect of any business at a meeting of the Council, a Committee or Sub-Committee where its suspension is moved and carried.

60.2 Notice of Motion

A motion to suspend Procedure Rules shall not be moved without notice (that is under Procedure Rule 10) unless there shall be present at least one-third of the Members of the Council or that Committee or Sub-Committee respectively.

**61 Interpretation of Procedure Rules**

61.1 The ruling of the person presiding as to the construction or application of any of these Procedure Rules, or as to any proceedings of the Council, shall not be challenged at any meeting.

**62 Submission of Notices by Members – Electronic Means**

62.1 A Member of the Council may communicate, by electronic means, any notice under any of the Constitution's Procedural Rules to initiate any process or procedure provided it is clear that the notice has been originated by that Member.

**63 Definition of 'Clear Working Days'**

63.1 Throughout these Procedure Rules, and the Constitution generally, there are references to 'clear working days'. A period of one or more working days means a period comprising one or several consecutive periods of 24 hours (excluding weekends and bank holidays) beginning and ending at midnight. A clear day excludes the date of dispatch and date of the meeting.

**64 Disclosable Pecuniary Interests – Requirement to Withdraw from Meeting**

64.1 A Member who declares a disclosable pecuniary interest in an item of business is required to withdraw from the meeting at the appropriate juncture.

**65 Petitions**

65.1 Petitions regarding matters affecting the area or the functions of the Council or relating to consultation exercises or pursuant to specific legislation may be accepted at the start of an Ordinary Council meeting. Petitions will not be considered at the Annual Meeting of Council or at Extraordinary Meetings of Council unless the

Extraordinary Council Meeting is convened to consider the subject matter of the petition.

- 65.2 Petitions must be 'signed' (in person or by name if electronic) by at least 10 petitioners and contain the name and contact details of the 'petition organiser'.
- 65.3 For a Petition to be reported to and debated at a meeting of the Council, it must contain at least 3000 signatories or petitioners (reduced to 1500 signatories or petitioners where the petition relates to a local issue, affecting no more than 2 electoral wards within the authority's area). The Petitions Officer will request the appropriate Chief Officer to prepare a report. This report together with the Petition will be presented to full Council for debate. Council may then refer the Petition to the appropriate decision making body for further consideration.
- 65.4 Petitions that are considered by the Monitoring Officer to be vexatious, frivolous, abusive, defamatory or otherwise inappropriate will not be accepted.
- 65.5 Petitions to hold an officer to account may be considered at a meeting of an Overview and Scrutiny Committee, where an officer, identified either by name or by post title, will be required to answer questions on the conduct of a particular matter. The petition must contain at least 2000 signatories/petitioners (reduced to 1000 signatories/petitioners where the petition relates to a local issue, affecting no more than 2 electoral wards within the authority's area). Such Petitions must relate to the Chief Executive, a Director or a Head of Service of the authority. Any petition that raises issues of competence or misconduct will be referred to the Chief Executive (or to the Head of Human Resources in respect of the Chief Executive) and will be considered under the authority's Disciplinary Procedures, and not under this Petitions Procedure Rule.
- 66.6 Where a petition organiser is not satisfied with the outcome of the authority's consideration of his/her petition, he/she may appeal to an Overview and Scrutiny Committee by notifying the Petitions Officer of his/her intention to appeal within 20 working days of being notified of the authority's decision on the petition.

**APPENDIX 1**

**MOTIONS WHICH MAY BE MOVED WITHOUT NOTICE**

1. Appointment of a Chairman of the meeting at which the motion is made.
2. Motions relating to the accuracy of the minutes of the Council, a Committee or Sub-Committee.
3. That an item of business specified in the summons should have precedence.
4. Reference to the Council, a Committee, Sub-Committee, or the Cabinet.
5. Appointment of or appointment to Committees, Sub-Committees, or the Cabinet occasioned by an item mentioned in the summons to the meeting.
6. Receipt of Records of Decisions and Minutes of Committees and Sub-Committees
7. Adoption of recommendations of the Cabinet, Committees and Sub-Committees and any consequent resolutions.
8. That leave is given to withdraw a motion.
9. Receipt of reports of officers and any consequent resolutions.
10. Extending the time limit for speeches.
11. Amendment to motions.
12. That the Council proceed to the next business.
13. That the question be now put.
14. That the debate be now adjourned.
15. That the Council do now adjourn.
16. Authorising the sealing of documents.
17. Suspending Procedure Rules, in accordance with Procedure Rule 64.
18. Motion under Section 100A(4) of the Local Government Act 1972 to exclude the press and public.

19. That a Member named under Procedure Rule 57 should not be heard further or should leave the meeting.
20. Giving consent of the Council where consent of the Council is required by these Procedure Rules.

## APPENDIX 2

### NOTICES OF MOTION

#### 1 Procedure before the Meeting

Notice of every motion (other than a motion which under Procedure Rule 10 may be moved without notice) shall be given in writing, signed by the Member(s) of the Council giving the notice, and delivered, at least seven clear working days before the next meeting of the Council, to the Director of Legal Services or the Head of Governance and Democratic Services by whom it shall be dated, in the order in which it is received.

Members are permitted to submit Notices of Motion in email and electronic form.

The Monitoring Officer shall, if need be, give a ruling as to whether the Motion is relevant.

If the Monitoring Officer considers the motion, amendment or question to be vexatious, irrelevant, defamatory, frivolous, offensive, defamatory, relates to employees or is otherwise improper the Director of Legal Services will return it to the Member who submitted it along with an explanation in writing to the Member about why it will not be included on the agenda circulated for the meeting.

#### 2 Motions to be set out in Summons

The agenda papers for every ordinary meeting of the Council will set out the full text of all motions of which notice has been duly given, unless the Member giving the notice has intimated in writing, when giving it, that he/she proposed to move it at some later meeting, or has since withdrawn it. The motions will be listed in the papers according to the order in which they have been received.

No notice of motion which, in the opinion of the Mayor, deals with the same or a similar matter to one which had come before Council during the previous 6 months, shall be included on the Council agenda.

#### 3 Withdrawal of Motion which is before the Council

A Notice of Motion will be regarded as withdrawn if:

prior to the Council meeting, an indication to this effect is given in writing to at least one of the above-named officers by the Member who submitted the Notice; or

at the Council meeting, oral notice to this effect is given by the Member who submitted the Notice; or

the Notice of Motion is not moved and seconded at the meeting of Council.

#### **4 Procedure at the Meeting**

When a Motion has been moved and seconded the mover and seconder shall not be entitled to make a speech if the Mayor decides that it shall stand referred without discussion to such of those bodies as the Mayor may determine, for determination. However, if the Mayor considers it conducive to the despatch of business, the motion may be dealt with at the meeting at which it is initially considered.

#### **5 Procedure after the Meeting**

Each motion will then be referred to the relevant decision-making body for determination, without the need for any reference back to Council except where:

- arising from consideration of the motion, the Constitution Committee recommends to the Council a change to the Constitution; or
- there is some other legal or Constitutional requirement for the matter to be referred back to Council.

Unless the chairman of the appropriate decision-making body agreed there were good reasons not to do so, notices of motion must be referred to that body within two meeting cycles, and that the proposer of the motion would be consulted before the Chairman decided the matter.

At the meeting of the body to which the motion has been referred for consideration, the proposer of the motion if present shall be invited to speak first, followed by the seconder. The matter will then be opened up to wider discussion. In the case of a Cabinet meeting, the relevant Portfolio Holder (or in his/her absence the Leader or Deputy Leader) will respond to the motion after the proposer and seconder have spoken.

## APPENDIX 3

### RULES OF DEBATE

#### 1 Motions and Amendments

No motion or amendment shall be discussed unless it has been proposed and seconded. Where required by the Chairman, motions or amendments shall be put in writing and handed to the Chairman before they are further discussed or put to the meeting. The Chairman may, at his/her discretion, allow a motion or amendment to be put which is not in writing, provided that the Chairman has concluded that the wording of the motion or amendment is understood by all members of the body concerned. This requirement does not apply to motions submitted under Procedure Rule 12.

#### 2 Seconder's Speech

When seconding a motion or amendment a Member may advise the Chairman that he/she will reserve his/her right to speak until a later period in the debate.

#### 3 Only One Member to Stand at a Time

When speaking at a Council meeting a Member would usually be required to stand and address the Mayor. However the Mayor may choose to relax this convention. While a Member is speaking the other Members will remain seated, unless rising on a point of order or in personal explanation.

#### 4 Content and Length of Speeches

A Member will confine his/her speech to the question under discussion, a personal explanation or a point of order. Except as indicated below, in the case of speeches made by Members when the Council is agreeing a budget, or where the Council, Committee or Sub-Committee otherwise agrees, no speech will exceed five minutes.

In advance of the meeting at which the Council is due to agree a budget, the Council's Political Groups may agree that a limited number of speeches will be made on behalf of each Political Group, which exceed the five minute limitation contained in these Rules. The Mayor will have discretion as to how this will be implemented at the meeting and, where no agreement can be reached between the Political Groups, whether and (if so) how any extension of the five minute limitation might be permitted to operate.

#### 5 When a Member may speak again

At a Council meeting a Member who has spoken on any motion shall not speak again whilst it is the subject of debate, except:

- (a) to speak once on an amendment moved by another Member;

- (b) if the motion has been amended since he/she last spoke, to move a further amendment;
- (c) if his/her first speech was on an amendment moved by another Member, to speak on the main issue, whether or not the amendment on which he/she spoke was carried;
- (d) in exercise of a right of reply given by paragraph 11 or 13 of this Appendix;
- (e) on a point of order referring to the specific Procedure Rule;
- (f) by way of personal explanation;
- (g) to move one of the motions specified in 12(b) to (j), below when the procedure in those paragraphs shall be followed.

At Committees or Sub-Committees Members may, at the discretion of the Chairman, speak more than once.

## **6 Amendments to Motions**

An amendment must be relevant to the motion and shall be either:

- (a) to leave out words;
- (b) to leave out words and add others;
- (c) to insert or add words;

but such amendment shall not have the effect of negating the motion before the Council.

## **7 Number of Amendments**

Only one amendment may be moved and discussed at a time. No further amendment shall be moved until the amendment under discussion has been disposed of, although the Chairman may allow two or more amendments to be discussed (but not voted on) together if this would facilitate the proper conduct of the business before the meeting.

## **8 Status of Amendments**

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

## **9 Alterations to Motions or Amendments**

A Member may alter a motion or amendment of which he/she has given notice and may also, with the consent of the seconder, alter a motion or amendment which he/she has moved. In both cases, the consent of the Council (the Committee or Sub-Committee) is required. There should be no discussion on whether consent should or should not be given.

## **10 Withdrawal of Motion**

A motion or amendment may be withdrawn by the mover provided the seconder and the meeting, without discussion, agree. Once the mover has asked for permission to withdraw, there should be no further discussion, unless the meeting refuses to agree to the request.

## **11 Right of Reply**

The mover of the motion shall have a right to reply at the close of the debate on the motion, immediately before it is put to the vote. If an amendment is moved, the mover of the original motion shall have a right of reply at the close of the debate on the amendment but shall not otherwise speak on it. The mover of the amendment shall have a right of reply to the debate on his/her amendment immediately before the mover of the original motion exercises his/her right of reply at the close of the debate.

## **12 Motions which may be moved during debate**

When a motion is under debate no other motion shall be moved except the following:

- (a) to amend the motion;
- (b) to adjourn the meeting;
- (c) to adjourn the debate;
- (d) to proceed to the next business;
- (e) to suspend Procedure Rules;
- (f) to refer a matter to the Council, Cabinet, a Committee or Sub-Committee for consideration or reconsideration;
- (g) that the question be now put;
- (h) that a Member be not further heard;
- (i) by the Chairman under Procedure Rule 57, that a Member do leave the meeting;
- (j) a motion under Section 100A(4) of the Local Government Act 1972 to exclude the public.

## **13 Closure Motions**

A Member may move, without comment, at the conclusion of a speech of another Member, "That the Council proceed to the next business", "That the question be now put", "That the debate be now adjourned", or "That the Council do now adjourn". When one of these Motions has been seconded the Mayor shall proceed as follows:

- (a) on a motion to proceed to next business - unless in his/her opinion the matter before the meeting has been insufficiently discussed, he/she shall first give the mover of the original motion the right of reply, and then put to the vote the motion to proceed to next business;
- (b) on a motion that the question be now put - unless in his/her opinion the matter before the meeting has been insufficiently discussed, he/she shall put to the vote the motion that the question be now put and, if it is passed, give the mover of the original motion the right of reply before putting the motion to the vote;
- (c) on a motion to adjourn the debate or the meeting - if in his/her opinion the matter before the meeting has been insufficiently discussed on that occasion he/she shall put the adjournment motion to the vote without giving the mover of the original motion the right of reply on that occasion.

#### **14 Points of Order**

A Member may rise on a point of order or in personal explanation and shall be entitled to be heard immediately. A point of order shall relate only to an alleged breach of a Procedure Rule or statutory provision, and the Member shall specify the Procedure Rule or statutory provision and the way in which he/she considers it has been breached. A personal explanation shall be confined to some material part of a former speech by him/her which may appear to have been misunderstood in the current debate.

#### **15 Ruling of Chairman on a Point of Order/Personal Explanation**

The ruling of the Chairman of the meeting on a point of order or on the admissibility of a personal explanation shall not be open to discussion and shall be final.

#### **16 Respect for the Chairman**

At the Council meeting whenever the Mayor rises during a debate a Member then standing shall sit down and the Council shall be silent. In Committee or Sub-Committee meetings, whenever the Chairman rises from his/her seat, the Members should remain in their seats and the Committee or Sub-Committee shall be silent.

## APPENDIX 4

### URGENT DECISIONS TAKEN OUTSIDE OF MEETINGS

#### Definition of an urgent decision

A decision will be urgent in the case of: civil emergency; natural or man-made disaster; matter of serious public health; matters regarding safeguarding of people; or where the Council is at risk of serious reputational damage; loss or claims; or any other matters where the CE or in his/her absence the CFO has declared that an urgent decision is required. If a decision is deemed an urgent decision caused by a failure to plan appropriately or work without due regard to timeliness, the circumstances giving rise to the need for the decision should be reported to the Audit and Governance Committee.

#### Urgent Decisions: Council (Procedure Rule 18)

If a decision would normally be required to be made by full Council the decision may be made by the Chief Executive or in his/her absence the Deputy Chief Executive (or in their absence their nominee) in consultation with Group Leaders and the Mayor (or in his/her absence the Deputy Mayor) subject to the following requirements being met:

- The decision-maker is satisfied that the matter is urgent and cannot await the next meeting of the Council, or an urgently convened Council meeting;
- The decision is reported for information to the next available meeting of the Council;
- The provisions of legislation are complied with;
- Advice has been taken from the Chief Executive, Council's Director of Legal Services and Section 151 Officer;
- All Members of the Council are notified of the decision taken by electronic means.

#### Urgent Decisions: Regulatory / Non-Executive matters (Procedure Rule 25)

The Chief Executive or in his/her absence the Deputy Chief Executive (or in their absence their nominee) in consultation with the Chairman and/or Vice-Chairman of the relevant committee or sub-committee has delegated authority to take any non-executive decision subject to the following requirements being met:

- The decision-maker is satisfied that the matter is urgent and cannot await the next meeting of the decision-making body, or an urgently convened meeting;
- The decision is reported for information to the next available meeting of the decision-making body;
- The provisions of legislation are complied with;

- Advice has been taken from the Council's Director of Legal Services and Section 151 Officer;
- All Members of the Council are notified of the decision taken by electronic means.

**Urgent Decisions: Cabinet / Executive Matters (Procedure Rule 53)**

The Leader of the Council, or in his/her absence the Deputy Leader of the Council, or in his/her absence the relevant portfolio holder has delegated authority to take an urgent executive decision in consultation with the Chief Executive subject to the following requirements being met:

- The decision-maker is satisfied that the matter is urgent and cannot await the next meeting of the Cabinet, or an urgently convened Cabinet meeting;
- The decision is reported for information to the next available meeting of the Cabinet;
- The provisions of legislation are complied with;
- The relevant overview and scrutiny committee Chairman has been notified of the matter and has been invited to make representations;
- The Leaders of all Opposition Groups have been notified of the matter and have been invited to make representations;
- Advice has been taken from the Council's Director of Legal Services and Section 151 Officer;
- All Members of the Council are notified of the decision taken by electronic means.

In addition the following provisions shall apply:-

- Rules 13, 14 and 15 of Access to Information Procedure Rules shall be adhered to, relating to the content of the Forward Plan, general exceptions to the requirement to list decisions on the Forward Plan, and circumstances of special urgency
- Rule 54 of the Executive Procedure Rules shall be adhered to, relating to the Forward Plan and Key Decisions
- Overview and Scrutiny Procedure Rules in relation to Call-in (Rule 12) shall not apply to urgent executive decisions taken under this procedure (see Rule 13).
- Rule 4 of the Budget and Policy Framework Procedure Rules shall be adhered to in relation to urgent executive decisions taken under this procedure.
- Overview and scrutiny committees can review the reasons for the urgency of a decision and the process adopted.

For the purposes of this urgency provision, the limit placed on the decision-making powers of individual Portfolio Holders in relation to decisions involving expenditure or savings of £1M or more would not apply.

**APPENDIX 5**

**SUBSTITUTION ARRANGEMENTS**

- 1 All Members of a Political Group will be regarded as being reserve Members, who may take the place of an appointed Member at a particular meeting of a committee or sub-committee, except in respect of the Planning and Licensing Committees.
- 2 In respect of the Planning and Licensing Committees, each Political Group will, by notice to the Monitoring Officer, nominate appropriately trained Members to be reserve Members for those Committees. Such reserve Members may take the place of an appointed Member at a particular meeting of the Planning or Licensing Committee in question. In addition to being appropriately trained, a substitute member for a planning committee meeting must be a member of another planning committee.
- 3 Members of the Cabinet shall not sit on or be nominated substitutes/reserve members for any Scrutiny bodies. This shall also apply to a Deputy Cabinet Member as referred to in Part 2, Chapter 7 of the Constitution.
- 4 Any reserve member acting as substitute shall inform the Chairman at the beginning of the meeting. The outgoing member shall cease to be the Political Group's representative on that Committee or Sub-Committee for the duration of that meeting or any adjournment of it, and that reserve Member shall become the representative on the Committee or Sub-Committee for the same period. At the end of the meeting, the outgoing Member shall resume his/her place on the Committee or Sub-Committee in question and the Member who had been appointed as substitute in his/her place shall revert to being a reserve Member.
- 5 The Monitoring Officer shall give notice and distribute agendas to all members of the Committee or Sub-Committee. Agendas will be made available to all other members by electronic means. Agendas will also be made available at the meetings in question.
- 6 For the avoidance of doubt, there are no substitution arrangements in respect of the Cabinet.

**AGENDA ITEMS SUBMITTED BY MEMBERS**

- 1 This facility does not apply to special meetings of Committees and Sub-Committees or to the Cabinet.
- 2 A Member of the Council may, by notice given to the Monitoring Officer no later than ten clear working days before the appropriate meeting, request that an item of business be included on the agenda of a Committee or Sub-Committee.
- 3 A Member may not give notice of more than one item of business for any one meeting. The notice shall state the nature of the business and shall include the signature of that Member.
- 4 This procedure shall not apply where the item of business, if agreed, would have the effect of rescinding or amending any resolution passed by a Committee or Sub-Committee of the Council within the preceding 6 months.
- 5 Items arising from such notices shall appear on the agenda at the end of the Part 1 or 2 business.
- 6 This procedure will apply to Members of overview and scrutiny committee or sub-committees exercising their rights under Section 9FC(1)(a) and (b) of the Local Government Act 2000 to have an item, within the remit of that particular body, included on the Agenda and discussed at the next meeting of that body. Where a Member is exercising their rights under Section 9FC, the restrictions in paragraph 3 on the number of items shall not apply.
7. Section 9FC also permits any member to request that an item of business is added to an agenda of a relevant overview and scrutiny committee provided it is not an excluded matter and is relevant to the functions of the overview and scrutiny committee.

**PUBLIC SPEAKING AND QUESTIONS**

1. A total period of 15 minutes will be allocated for members of the public to speak at Council meetings.
2. A total period of 10 minutes will be allocated for members of the public to speak at meetings of the Cabinet, committees and sub-committees. This does not apply to meetings of the Council's Planning, Licensing and overview and scrutiny committees and sub-committees, which have separate arrangements in place for public involvement. The arrangements for planning meetings are set out in the [Protocol on Public Speaking Rights at Strategic Planning Board and Planning Committees](#)
3. Subject to paragraph 7 below, members of the public are not required to give notice of their intention to make use of the public speaking facility (although as a matter of courtesy, a period of 24 hours' notice is encouraged).
4. Members of the public may speak on any matter relating to the work of the body in question, provided that the Chairman retains the discretion to rule a speech out of order and require the member of the public to cease speaking if the speech covers confidential issues or is derogatory or defamatory or inappropriate for any other reason.
5. Members of the public will normally be allowed up to 5 minutes each to speak, but the
6. The Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.
7. During public speaking time, members of the public may ask questions of the appropriate Cabinet Member or Chairman of the committee or sub-committee which has responsibility for the matter in question.
8. Where a member of the public wishes to ask a question of a Cabinet member, or of the Chairman of a committee or sub-committee, at least 3 clear working days' notice must be given in writing to the Head of Governance and Democratic Services, in order that an informed answer may be given.
9. The Member responding to the question may answer the question, may decline to do so, may agree to reply at a later date or may refer the question to an appropriate committee, or to the Cabinet. Questions will be asked and answered without discussion.
10. In addition to the general provisions for public speaking set out in Committee Procedure Rule 35 and this Appendix, the following specific

provisions apply to meetings of the [Public Rights of Way Committee](#) in relation to individual applications on the agenda:

- 1 For each application on the agenda, a total of 6 minutes is allocated for public speaking, with 3 minutes being allocated for objectors and 3 minutes being allocated for supporters. If there is more than one person wishing to speak as an objector or supporter, the 3 minutes shall be divided equally among them or they may appoint one of their number to speak for all.
- 2 No member of the public shall speak on a matter before the Chairman has introduced the report. Members of the public may not participate in the debate or ask questions of Officers or Members.
- 3 At the Chairman's discretion, Members of the Committee may, through the Chairman, ask questions of a speaker for clarification but should not enter into a discussion with them.
- 4 Any member of the public wishing to address the Committee must give notice of their intention, in writing, to the Head of Governance and Democratic Services by 12 noon one clear working day before the meeting.
- 5 These provisions may be varied at the discretion of the Chairman.

**MODEL AGENDAS FOR COUNCIL MEETINGS**

**AGENDA FOR ANNUAL COUNCIL MEETING**

**Standard Item**

- Prayers
- Apologies for Absence
- Declarations of Interest
- Election of Mayor and Appointment of Deputy Mayor
- Mayor's Announcements
- Approval of Minutes of previous meeting
- Receive notification of Leader's Appointments to the Cabinet
- Leader's Announcements
- Political Representation on the Council's Committees
- Allocation of Chairmanships and Vice-chairmanships of the Committees of the Council
- Appointments to non-executive Organisations and Panels

**AGENDA FOR ORDINARY COUNCIL MEETINGS**

**Standard Item**

- Prayers
- Apologies for Absence
- Declarations of Interest
- Approval of Minutes of previous meeting
- Mayor's Announcements
- Public Speaking Time/Open Session

- Recommendations from Cabinet
- Leader's Announcements
- Recommendation from Committees
- Notices of Motion
- Questions from Members

## **Part B – Access to Documents and Information**

### **Access to Information Procedure Rules**

#### **1.0 SCOPE**

- 1.1 These rules cover all meetings of the Council and its Committees, Sub-Committees, Advisory Panels, Cabinet (together called meetings) and (where specified) executive decisions made by individual Members and Key Decisions made by Officers.
- 1.2 These rules also cover Members' rights of access to information.
- 1.3 These rules do not cover public rights of access to information under the Freedom of Information Act 2000, and the Data Protection Act 1998. Details of these rights can here or obtained from the Council Offices, Westfields, Middlewich Road, Sandbach, CW11 1HZ.
- 1.4 These rules do not affect any more specific rights to information contained elsewhere in this Constitution in any Act.

#### **2.0 PUBLIC ACCESS TO MEETINGS**

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

#### **3.0 NOTICE OF MEETINGS**

- 3.1 The Council will give at least five clear working days' notice of any meeting by posting details of the meeting at Westfields, Middlewich Road, Sandbach, CW11 1HZ (the designated office) and on its website. The notice will specify the business proposed to be transacted at the meeting.
- 3.2 Members entitled to attend a meeting, will receive a summons giving five clear working days' notice to attend and specifying the business proposed to be transacted at the meeting. Except in the case of business required by law to be transacted at the annual meeting, or other business brought before the meeting as a matter of urgency in accordance with the Constitution, no business shall be transacted at a meeting other than that specified in the summons.

#### **4.0 PUBLIC ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING**

- 4.1 The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least 5 clear

working days before the meeting, except that where a meeting is convened at shorter notice, the copies of the agenda and reports shall be open to inspection from the time the meeting is convened.

- 4.2 Where an item is added to the agenda, and the report is open to the public, copies of any report for the meeting relating to the item, and the revised agenda shall be available for inspection from the time the item is added to the agenda.
- 4.3 Where copies of the agenda and reports open to the public are not made available for inspection in this way, an item of business will not be considered unless, by reason of special circumstances, which shall be specified in the minutes, the Chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency.

**5.0 PUBLIC ACCESS TO COPIES**

- 5.1 The Council will supply copies of:
  - (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
  - 2
  - (c) if the Proper Officer thinks fit, copies of any other documents supplied to Members in connection with an item to any person on payment of a charge for postage, copying and any other costs.
- 5.2 Copies of the agendas of Cabinet meetings will be circulated to all Members.
- 5.3 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.

**6.0 PUBLIC ACCESS TO MINUTES ETC AFTER THE MEETING**

- 6.1 The Council will make available for inspection copies of the following for six years after a meeting:
  - (a) the minutes of the meeting excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information (as defined in Rules 9 and 10);
  - (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.

## **7.0 PUBLIC ACCESS TO BACKGROUND PAPERS**

### **7.1 List of Background Papers**

The author of a 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 his/her opinion:

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

but this does not include published works or those which disclose exempt or confidential information (as defined in Rules 9 and 10), nor in respect of executive reports, does this include the advice of a political advisor, or any draft report or document.

In respect of Cabinet Meetings background papers will be published on the Website.

### **7.2 Public inspection**

- (a) A copy of each of the documents listed will be available for inspection at the same time as the report is available for public inspection.
- (b) The Council will make available for public inspection for six years after the date of the meeting one copy of each of the documents on the list of background papers.

## **8.0 EXCLUSION OF PUBLIC ACCESS TO REPORTS**

8.1 The Proper Officer will exclude access by the public to reports which in his/her opinion contain confidential information, (as defined in Rule 9).

8.2 If the Proper Officer thinks fit, access by the public may also be excluded to reports which in his/her opinion relate to items during which, in accordance with Rule 10 (Exempt Information) the meeting is likely not to be open to the public.

8.3 Such reports will be marked "Not for publication" together with "confidential information" or the exemption relied upon.

8.4 Where an exemption is relied upon, any such report must contain the reasons why, as in all in the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

**9.0 CONFIDENTIAL INFORMATION – REQUIREMENT TO EXCLUDE PUBLIC ACCESS**

9.1 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.

9.2 Confidential information means

- (a) information given to the Council by a Government Department on terms which forbid its public disclosure or
- (b) information the disclosure of which to the public is prohibited by or under another Act or by Court.

**10.0 EXEMPT INFORMATION – DISCRETION TO EXCLUDE PUBLIC ACCESS TO MEETINGS**

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

- (a) the meeting resolves so to exclude the public, and that resolution identifies the proceedings or part of the proceedings to which it applies;
- (b) that resolution states, by reference to the descriptions in Schedule 12A to the Local Government Act 1972 (paragraph 10.4 below), the description of the exempt information giving rise to the exclusion of the public; and
- (c) that resolution states, by reference to reasons given in a relevant report or otherwise, in all the circumstances of the case, that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

10.2 In these circumstances, public access to reports, background papers and minutes will also be excluded.

10.3 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

10.4 Exempt information means information falling within the following categories (subject to any condition):

Category	Condition
1. Information relating to any individual.	Information is exempt 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
2. Information which is likely to reveal the identity of an individual.	Information is exempt 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
<p>3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).</p> <p>“Financial or business affairs” includes contemplated, as well as past or current, activities</p>	<p>Information is exempt 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</p> <p>Information within paragraph 3 is not exempt if it must be registered under</p> <ul style="list-style-type: none"> <li>(a) the Companies Act 2006;</li> <li>(b) the Friendly Societies Act 1974;</li> <li>(c) the Friendly Societies Act 1992;</li> <li>(d) the Co-operative and Community Benefit Societies Act 2014;</li> <li>(e) the Building Societies Act 1986;</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>(f) the Charities Act 2011.</li> </ul>
<p>4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or officer-holders under the authority.</p> <p>“Labour relations matter” are as specified in paragraphs (a) to (g) of section 218(1) of the Trade Unions and Labour Relations (Consolidation) Act 1992, i.e. matters which may be the subject of a trade dispute within the meaning of that Act or any dispute about any such matter</p>	Information is exempt 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

Category	Condition
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	Information is exempt 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
6. Information which reveals that the authority proposes – (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment	Information is exempt 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
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	Information is exempt 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

**EXCEPT THAT**

Information falling within any of paragraphs 1-7 is not exempt information if it relates to 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.

Category	Condition
7A. Information which is subject to any obligation of confidentiality.	Information is exempt 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
7B. Information which relates in any way to matters concerning national security.	Information is exempt 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
7C. Information presented to a Panel or Sub-committee of the Audit and Governance Committee, set up to consider any matter under regarding a failure to comply with Code of Conduct.	Information is exempt 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

(Section 7C was created to allow complaints submitted under the Standards Committee (England) Regulations 2008 to be discussed in private. Although these Regulations have been repealed the subsequent changes to the Access to Information provisions remain in the constitution)

#### 10.5 Procedure at Panel or Sub-Committee of the Audit and Governance Committee

When a meeting of an Initial Assessment Panel is called this will be held in private. If a meeting of the Local Resolution Panel or a Hearing Sub-Committee of the Audit and Governance Committee is called they will normally meet in public.

#### 10.6 Disorderly Conduct – discretion to exclude public

The public may also be excluded from meetings, where the meeting so resolves, in the exercise of a lawful power of exclusion in order to maintain orderly conduct or to prevent misbehaviour at a meeting.

### 11.0 PUBLIC ACCESS TO CABINET MEETINGS

11.1 The Cabinet has decided that all of its meetings and its Committees are to be held in public whether or not a Key Decision is to be made and the preceding rules 1 – 10 therefore apply.

11.2 However if a Key Decision is to be made Rules 12 to 16 below also apply

11.3 If the Cabinet or its Committees meet to discuss a key decision that is due to be taken collectively and

- a) an Officer (other than a political adviser) is present at the discussion
- b) the discussion is within 28 days of the date by which, according to the Forward Plan, the decision is to be made

then Rules 1 – 11 must be complied with unless:

Rule 14 (general exception); or

Rule 15 (special urgency) applies; or

the principal purpose of the meeting is for the Officer to brief the decision maker on matters connected with the making of the executive decision.

### 12.0 PROCEDURE BEFORE TAKING KEY DECISIONS

Subject to Rule 14 (general exception) and Rule 15 (special urgency), a Key Decision may not be taken unless:

- (a) a notice (called here a Forward Plan) has been published in connection with the matter in question;
- (b) at least 5 clear days have elapsed since the publication of the Forward Plan;
- (c) where the decision is to be taken at a meeting of the Cabinet or its Committees, notice of the meeting has been given in accordance with Rule 3; and
- (d) where a decision is to be taken at a meeting of the Cabinet or its Committees, and the Cabinet believes that the matter will be considered in private, at least 28 clear days notice has been given in accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

### **13.0 THE FORWARD PLAN OF KEY DECISIONS**

#### **13.1 Period of Forward Plan**

Forward plans will be prepared by the Leader to cover a period of 28 clear days (longer where this is possible) beginning with the first day of any month. They will contain outstanding matters from the previous forward plan.

#### **13.2 Content of Forward Plan**

13.2.1 The Forward Plan will contain matters which the Leader has reason to believe will be subject of a Key Decision to be taken by the Cabinet, a Committee of the Cabinet, Officers, Area Committees or under joint arrangements in the course of the discharge of an executive function during the period covered by the plan. The Forward Plan must be published at least 28 clear days before the start of the period covered and made available to the relevant overview and scrutiny committees. It will describe the following particulars 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, his/her name and title, if any and where the decision taker is a body, its name and details of 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 Cabinet or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken;
- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter; and
- (h) where the decision is to be taken in private the reasons for this and the process for making representations in accordance with Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 .

13.2.3 Exempt information (as defined in Rule 10) and confidential information (as defined in Rule 9) and the advice of political advisers will not be included in a forward plan but the Forward Plan should contain particulars of the matter.

#### **14.0 GENERAL EXCEPTION**

14.1 If a matter which is likely to be a Key Decision has not been included in the Forward Plan, then subject to Rule 15 (special urgency), 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;
- (b) the Proper Officer has informed the Chairman of a relevant overview and scrutiny committee, or if there is no such person, each member of that committee in writing, by notice, 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 5 clear days have elapsed since the Proper Officer complied with (b) and (c).

14.2 Where such a decision is taken collectively, it must be taken in public.

#### **15.0 SPECIAL URGENCY**

15.1 If by virtue of the date by which a decision must be taken Rule 14 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chairman of the body making the decision, obtains the agreement of the Chairman of

a relevant overview and scrutiny committee that the taking of the decision cannot be reasonably deferred and the decision is urgent. If there is no Chairman of a relevant overview and scrutiny committee, or if the Chairman of the relevant overview and scrutiny committee is unable to act, then the agreement of the Mayor of the Council, or in his/her absence the Deputy Mayor will suffice.

- 15.2 As soon as reasonably practicable after agreement has been given the decision maker must make available a notice setting out the reasons for urgency and why the decision cannot be reasonably deferred and publish that notice on the website.

## **16.0 REPORTS TO COUNCIL**

- 16.1 The Leader will submit quarterly reports to the Council on the executive decisions taken in the circumstances set out in Rule 15 (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.

## **17.0 PUBLIC ACCESS TO CABINET DECISIONS - RECORD OF DECISIONS**

- 17.1 After any meeting of the Cabinet or any of its Committees, the Proper Officer or, where no officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as reasonably practicable and make it available for inspection by the public. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

## **18.0 DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET OR OFFICERS**

- 18.1 Where an Individual Cabinet Member or Officer receives a report which he/she intends to take into account in making any Key Decision, then he/she will not make the decision until the requirements of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 have been met

- 18.2 Provision of copies of reports to overview and scrutiny committees

On giving such a report to an individual decision maker, the person who prepared the report will give a copy of it to the chairman of every relevant overview and scrutiny committee as soon as reasonably practicable, and make it publicly available at the same time.

- 18.3 Public access to record of individual decision

As soon as reasonably practicable after any executive decision has been made by an individual member of the Cabinet or a Key Decision has been taken by an officer, he/she will prepare, or instruct the Proper Officer to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The provisions of Rules 6 and 7 (inspection of documents after meetings) will also apply to the making of Key Decisions by Officers. This does not require the disclosure of exempt or confidential information, or advice from a political adviser or assistant.

## **19.0 MEMBER ACCESS TO EXEMPT OR CONFIDENTIAL DOCUMENTS**

- 19.1 This section deals with Member access to documents which contain confidential or exempt information, including agenda papers, background documents and minutes.
- 19.2 Members of a committee or decision-making body of the Council or of the executive are automatically provided with, and entitled to receive, copies of confidential or exempt reports of that body.
- [19.3 In addition, the following categories of Member shall automatically receive copies of confidential or exempt executive reports:
- Group Leaders
  - Local Ward Members for the Ward affected, in accordance with the Ward Member Protocol
  - Relevant overview and scrutiny committee Chairmen and Vice-Chairmen
  - Members visiting the meeting in question (with the agreement of the Monitoring Officer and Chairman of the meeting) who would receive the papers upon arrival]
- 19.4 Subject to the provisions above, and to paragraph 19.5, any Member of the Council may, upon request, receive a copy of a confidential or exempt report or agenda, or inspect an associated background document, on any matter except where the report or document contains information relating to either of the following categories:
- Staffing information, where the identity of individual officers would be revealed
  - Information relating to vulnerable children and adults
- 19.5 Any Member wishing to receive or inspect a report or document containing information of the categories referred to in paragraph 19.4 must demonstrate a 'need to know' in accordance with the following process:
- The Member will submit to the Director of Legal Services, or to the Head of Governance and Democratic Services in writing, information in support of their claim to have a "need to know".

- The claim will be submitted to the relevant Chairman (or Vice Chairman, in his/her absence) of the non-executive committee or sub-committee in question, or to the Portfolio Holder (or the Leader, in his/her absence), in respect of an executive decision, for determination.
- The determination as to whether or not a “need to know” has been demonstrated will be based on officer advice and will include legal advice.
- Once a determination has been made, this will be communicated to the Member who has made the claim.

19.6 All Members of the Council shall have access to all minutes and records of decisions, subject to the provisions of paragraphs 19.4 and 19.5.

## **20.0 NATURE OF ADDITIONAL RIGHTS**

The members rights of access in Rules 19 and 20 are additional to any other statutory or common law rights they have including the right to access to information on a ‘need to know’ basis in order assist in the proper discharge of their duties as a member of the Council.

## **21.0 AUDIO RECORDING OF MEETINGS**

All decision-making meetings of the Council (including Executive meetings and overview and scrutiny committee meetings) shall be audio recorded except where the public and press have by resolution been excluded from the meeting. Informal non-decision-making bodies such as working groups are excluded from this requirement. The audio recordings of meetings shall be published on the Council’s website

## **Part C – Budget and Policy Framework Procedure Rules**

### **BUDGET AND POLICY FRAMEWORK PROCEDURE RULES**

#### **1 The Framework for Executive Decisions**

- 1.1 The Council will be responsible for the adoption of its budget and Policy Framework. Once the budget and Policy Framework are in place, it will be the responsibility of the Cabinet to implement them.
- 1.2 The Cabinet has responsibility for proposing to Council a budget and policies that will form part of the Policy Framework. It also has responsibility for making day-to-day decisions within that budget and Policy Framework.
- 1.3 This part of the Constitution is concerned with the process of developing the budget and Policy Framework and settling any differences between the Council and the Cabinet on those matters. Call-in and consideration of day-to-day decisions made by the Cabinet are dealt with in the Cabinet Rules of Procedure and the Overview and Scrutiny Procedure Rules.

#### **2 Process for developing the framework and budget**

- 2.1 The process by which the documents forming part of the Local Plan shall be developed and approved is set out in legislation.
- 2.2 The process by which all other aspects of the budget and Policy Framework shall be developed is:
  - (a) The Cabinet will draw up initial proposals regarding the adoption of any plan, strategy or budget forming part of the budget and Policy Framework. The Cabinet will consult on those initial proposals and publish a timetable in which responses to the consultation are to be received. The relevant Overview or Scrutiny Committees shall be asked to give their views as part of that consultation. The consultation period shall in each instance be determined by Cabinet but will not be less than four weeks.
  - (b) At the end of the consultation period, the Cabinet will draw up firm proposals having regard to the responses received from the consultation.
  - (c) Overview and Scrutiny Committees are responsible for fixing their work programmes and may investigate, research, or report in detail with

policy recommendations in response to any such consultations within the period specified.

- (d) The Cabinet will submit those firm proposals to the Council together with a report that will set out the comments made by consultees and, in particular the views of the Overview and Scrutiny Committees and the Cabinet's response to those views.
- (e) Once Cabinet has approved the firm proposals they will be referred at the earliest opportunity to Council for decision.
- (f) In reaching a decision, the Council may adopt the Cabinet's proposals, amend them, refer them back to the Cabinet for further consideration, or substitute its own "in principle proposals" in their place.
- (g) If it accepts the recommendation of the Cabinet without amendment, the Council may make a decision, which has immediate effect. Otherwise, it may only make an in-principle decision.
- (h) The decision will be published and, if an in-principle decision has been made, a written copy shall be given to the Leader as soon as possible for the Cabinet to consider.
- (i) An in-principle decision will automatically become effective 5 working days from the day following the date of written notification to the Leader of the Council's decision, unless the Leader informs the Chief Executive in writing within those 5 days that the Leader objects to the decision becoming effective and provides reasons why in writing.
- (j) Where notification of an objection is received under (i) above, a meeting of Council will be called to be held within 28 days of the objection being received by the Chief Executive, to reconsider the decision that is the subject of the objection. In reconsidering the decision the Council must take into account the objection of the Cabinet and reasons for it and any revised proposals submitted by the Cabinet and the Cabinet's reasons for those revised proposals. The Council may either:
  - approve the Cabinet's recommendation; or
  - approve a different decision which does not accord with the recommendation of the Cabinet.
- (k) The decision shall then be published and implemented immediately.

2.2.1 In approving its budget each year, the Council may specify in addition to such matters dealt within the Finance Procedure Rules, the extent to which the Cabinet can agree virements within the budget and the degree to which in-year changes can be agreed by Cabinet to the

Policy Framework. Any other changes to the policy and budgetary framework are reserved to the Council.

- 2.3 Where a new plan or strategy is required to be produced as part of the Policy Framework, either by Council of its own motion, or following a recommendation to Council by an Overview or Scrutiny Committee, Cabinet shall develop the plan or strategy in accordance with the process set out within rule 2.1.

### **3 Decisions outside the budget or Policy Framework**

- 3.1 Subject to the provisions of Rule 5 (virement), the Cabinet, or any decision-making arm of the Cabinet, may only take decisions that are in line with the budget and Policy Framework. If it wishes to make a decision which is contrary to the Policy Framework, or contrary to or not wholly in accordance with the budget approved by full Council, then that decision may only be taken by the Council, subject to the provisions of Rule 4 below.

- 3.2 If the Cabinet, or any decision-making arm of the Cabinet, wants to make a decision, advice shall be taken first from the Monitoring Officer and/or the Section 151 Officer as to whether the decision would be contrary to the Policy Framework, or contrary to or not wholly in accordance with the budget. If the advice of any of those Officers is that the decision would not be in line with the existing budget and/or Policy Framework, then the decision must be referred to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in Rule 4 (urgent decisions outside the budget or Policy Framework) shall apply.

### **4 Urgent decisions outside the budget or Policy Framework**

- 4.1 The Cabinet or an individual member of the Cabinet may take a decision, which is contrary to the Council's Policy Framework or contrary to or not wholly in accordance with the budget approved by full Council, in exceptional circumstances and if the decision is a matter of urgency. However, the decision may only be taken:

- (i) if it is not practical to convene a quorate meeting of the full Council; and
- (ii) if the Chairman of a relevant overview and scrutiny committee agrees that the decision is a matter of urgency.

- 4.2 The reasons why it is not practical to convene a quorate meeting of full Council and the consent of the Chairman of the relevant overview and scrutiny committee to the decision being taken as a matter of urgency must be noted on the record of the decision. In the absence of the Chairman of the relevant overview and scrutiny committee the consent

of the Vice Chairman or, in the absence of both, the Mayor, will be sufficient.

- 4.3 Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

## 5 **Virement**

- 5.1.1 The Council has set virement limits within which decision-makers can exercise discretion in approving or otherwise financial transfers within the Budget. The limits are set out in the table below.

- 5.2 Where the Cabinet or an individual is discharging executive functions to implement Council policy, then any decision to spend or make savings shall not exceed those budgets allocated to each budget head for which they have responsibility. However, the Cabinet or those individuals shall be entitled to vire across budget heads provided there is compliance with the financial limits in the table below and the Finance Procedure Rules.

## 6 **Policy Framework – In-year Changes**

- 6.1 The responsibility for agreeing the budget and policy framework lies with the Council, and decisions of the Cabinet or an individual member of the Cabinet must be in line with it. Changes (including modifications, revisions, variations, withdrawal or revocation) to Policy Framework plans or strategies must ordinarily be approved by the Council. However the Council may, at the time when the plan or strategy is approved, authorise the Cabinet, or a body or individual exercising Cabinet functions, to make such changes, provided that those changes will:

- (i) result in the closure or discontinuing of a service, in whole or in part to meet a budgetary constraint; or
- (ii) ensure compliance with the law, ministerial direction or Government guidance; or
- (iii) in relation to the Policy Framework in respect of a policy which would normally be agreed annually by the Council following consultation, determine matters where the existing policy document is silent on the matter under consideration.

## 7 **Call-in of decisions outside the budget or Policy Framework**

- 7.1 Where an overview and scrutiny committee is of the opinion that a decision of the Cabinet, or any decision-making arm of the Cabinet, is, or if made would be, contrary to the Policy Framework, or contrary to or not wholly in accordance with the Council's budget, then it shall seek advice from the Monitoring Officer and Section 151 Officer.

- 7.2 In respect of functions which are the responsibility of the executive, and where the decision has already been made and implemented, the Monitoring Officer/Section 151 Officer, shall report to the Cabinet on the advice that has been given to the overview and scrutiny committee and shall copy that report to each member of the Council. The Cabinet must consider the report of the relevant Officer and decide what action to take in respect of the report. Where the advice concluded that there was a departure from the Budget or Policy Framework, the Cabinet must report to Council on the action it intends taking. Where there was no such departure, the Cabinet must report to the overview and scrutiny committee on any action to be taken.
- 7.3 If the decision has yet to be made or, has been made but not yet implemented, and the advice of the relevant Officer is that the decision is or would be contrary to the Policy Framework or contrary to or not wholly in accordance with the budget, the overview and scrutiny committee may refer the matter to the Council. In such cases, no further action may be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council shall meet within 28 days of the request by the overview and scrutiny committee or sub-committee. At the meeting the Council will receive a report of the decision or proposals and the advice of the relevant Officer. If the Cabinet has prepared a report on the matter, this will also be submitted to the Council. The Council may either:
- (i) endorse the decision or proposal of the Cabinet, or its decision-making arm, as falling within the existing budget and Policy Framework of the Council. In this case, no further action is required other than the decision of Council be minuted and circulated to all Councillors; or
  - (ii) amend the Council's Finance Procedure Rules or the policy concerned to encompass the decision or proposal and agree to the decision with immediate effect. In this case, no further action is required other than the decision of Council be minuted and circulated to all Councillors; or
  - (iii) 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 framework or budget to accommodate it, require the Cabinet to reconsider the matter in accordance with the advice of the relevant Officer(s).

## **8 The Policy Framework**

The Council's Policy Framework comprises:

- Children and Young People's Plan
- Crime and Disorder Reduction Strategy

- Education Development Plan
- Local Transport Plan
- Local Development Framework
- Youth Justice Plan
- Licensing Policy
- Gambling Statement of Principles
- Food Law Enforcement Service Plan
- Housing Investment Programme

**Part D – Finance Procedure Rules**

**[TO FOLLOW]**

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## **Part E – Contract Rules**

### **Contract Procedure Rules**

#### **Why is this important?**

These Contract Procedure Rules are intended to set out clear rules and processes for the purchase of works, goods and services. Following these Contract Procedure Rules will promote good procurement practice, help ensure the Council obtains value for money and ensure the Council complies with Public Procurement Legislation. Compliance with the Contract Procedure Rules will also help to protect the Council's staff and Members from undue criticism or allegations of wrongdoing.

#### **What's covered in this Section?**

The roles and responsibilities of:

- The Cabinet
- All Officers procuring goods, services and works on behalf of the Council

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## **Definitions**

**Award Criteria** – the criteria set in order to examine the merits of each Bid received. Refer to Evaluation Matrix also.

**BAFO** – Best and Final Offer. This is a procedure to facilitate a final opportunity for Bidders to improve their Bids, which can include price, improvement in quality and/or a value added element.

**Bid** – a quotation or tender submitted in response to a Request for Quotation or Invitation to Tender issued by the Council.

**Bidder** – a contractor, supplier, provider or similar who submits a Bid.

**Central Purchasing Body** – A contracting authority (as defined in the Public Procurement Legislation) that provides centralised purchasing activities such as awarding contracts for works intended for other contracting authorities or the acquisition of supplies and/or services intended for use by other contracting authorities.

**Commissioning Officer** – an Officer who is requesting and / or is in need of the works, goods or services.

**Commissioning and Procurement Board** – a board of members and officers established to ensure a strategic commissioning approach in the Council and that procurement of goods, land and property achieves value for money in delivering the Council's corporate strategy and strategic priorities. The Board has detailed [Terms of Reference](#)

**Concession** – any agreement between the Council and one or more parties in respect of:

- The carrying out of works for the Council, in return for the right to exploit the works that are the subject of the contract with or without payment;
- The delivery of services to the Council, in return for the right to exploit the services that are the subject of the contract with or without payment.

**Contract** – any agreement between the Council and one or more parties in respect of:

- The carrying out of works for the Council;
- The purchase, leasing or hiring of goods or materials by the Council; or
- The delivery of services to the Council.

**Contract Manager** – an Officer of the Council (or in the case of a Contract where the service/goods/works are procured on behalf of another organisation an officer of that organisation) who has day to day responsibility for overseeing the delivery of the Contract requirements by the provider and

recording the performance of the provider against their performance criteria set out in the Contract.

**CPU** – Corporate Procurement Unit is the unit responsible for procurement activity within the Council.

**Dynamic Purchasing System** is similar to a Framework Agreement; however, the ability for providers to become party to the system and to be eligible to bid for Contracts awarded under it, remains open throughout its life.

**Electronic Tendering Portal (E-tendering Portal)** – a system for the issue and receipt of electronic tenders and quotations as designated by the Chief Operating Officer.

**EU Threshold** – the financial thresholds above which the Public Procurement Legislation applies to a proposed Contract. The Thresholds are updated every two years, with the next update being in January 2018. The Thresholds can be found at the following link: <https://www.ojeu.eu/thresholds.aspx> and are summarised below:

		Work Cont	
Central Government <sup>4</sup>	£106,047 €135,000	£4,104,394 €5,225,000	£589,148 €750,000
Other contracting authorities	£164,176 €209,000	£4,104,394 €5,225,000	£589,148 €750,000
Small Lots	£62,842 €84,000	£785,530 €1,000,000	n/a

1. With the exception of the following services which have different thresholds or are exempt:
  - Social and other specific services (subject to the light touch regime) Article 74.
  - Subsidised services contracts specified under Article 15.
  - Research and development services under Article 14 (specified CPV codes are exempt).
2. With the exception of subsidised works contracts specified under Article 13.
3. As per Article 74. Services are listed in Annex XIV. Applying in Scotland from March 2016.
4. **Schedule 1** of the Public Contracts Regulations lists the Central Government Bodies subject to the WTO GPA. These thresholds will also apply to any successor bodies.

**Evaluation Matrix** – A document setting out the Award Criteria and weightings for a procurement process which reflect what is material to the award of a particular Contract and its importance. This document will be updated to capture scores during the evaluation of Bids.

**Evaluation Panel** – a group of Officers set up to undertake the evaluation of Bids. The number of Officers and relevant disciplines required will vary for each procurement.

**Executive Director (or delegated representative)** – the Chief Executive or any Director of the Council to whom there has been specific delegation by the Council or Cabinet or in writing by the Chief Executive.

**Framework Agreement** – any agreement between one or more contracting authorities and one or more providers, that establishes defined terms governing contracts to be awarded during a given period for:

- The carrying out of works;
- The purchase, leasing or hiring of goods or materials;
- The delivery of services;

**Invitation to Tender (ITT)** – refers to an invitation to providers to submit tenders for Contracts to provide goods, services or works valued at or above the EU Threshold.

**Key Decision** – As defined in the Glossary to the Constitution.

**OJEU** – Official Journal of the European Union.

**Procurement Manager** – the manager of the CPU. All references to Procurement Manager in the below text shall include their delegated representatives unless otherwise instructed.

**Procurement Officer or Procuring Officer** – an Officer of the CPU who shall undertake the appropriate procurement activities to provide the Commissioning Officer with their requirements.

**Public Procurement Legislation** – Legislation which regulates the purchasing by public sector bodies and certain utility sector bodies of contracts for goods, works or services. The law is designed to open up the EU's public procurement market to competition, to prevent "buy national" policies and to promote the free movement of goods and services.

**Request for Quotation** – an invitation to providers to submit quotations for Contracts to provide goods, services or works valued between £25,000 and the relevant EU Threshold

**Social Value** – the duty under the Public Services (Social Value) Act to have regard to how what may be commissioned or procured will improve the economic, social and environmental wellbeing of the area.

**Verifying Officer** is an Officer who will confirm that the Form of Tender is signed and that terms and conditions are agreed by all providers. They may be an Officer of the CPU or an Officer of Legal Service.

**Waiver** – a process whereby approval may be granted to waive the requirements of competition (see Part 6).

## **Part 1: Contract Procedure Rules which apply to ALL Contracts**

### **1.1 Basic Principles**

#### **1.1.1 Introduction**

These Contract Procedure Rules (hereafter referred to as “these / the Rules”) are intended to promote good procurement and commissioning practice, transparency, public accountability and deter corruption in relation to the awarding of Contracts and Concessions and the conclusion of Framework Agreements and Dynamic Purchasing Systems. Following these Rules will result in open and transparent procurement processes and ensure compliance with Public Procurement Legislation.

Officers responsible for the procurement or commissioning of any goods, services, works or Concessions must comply with these Rules.

These Rules should be read in conjunction with the relevant parts of the Council’s Constitution and guidance issued by the Procurement Manager (and published on Centranet) following consultation and endorsement from the Commissioning and Procurement Board

All references to Contract(s) in the Rules below also include, Framework Agreements, Dynamic Purchasing Systems and Concessions unless otherwise instructed.

All Contracts, procurement documentation, and procurement processes shall be consistent with the Council’s Procurement Guides (available on Centranet), Procurement Strategy, and these Rules.

#### **1.1.2 Scope**

The Rules apply to all Contracts procured on the Council's behalf.

For the avoidance of doubt, these Rules shall **NOT** apply to any of the following:

- The sale, leasing or purchase of land or immovable property, or any interest in land;
- Any contract of employment;
- Loans;
- The issue, purchase or sale of securities or other financial instruments; (refer to the Section 151 Officer)

The competition and procedure elements of these Rules in Parts 2, 3 and 4 need not apply to any of the following situations, however, advice must be sought from Legal Services as to whether the arrangement meets the criteria set out below and to the most appropriate form of agreement to put in place:

- Contracts awarded to a contracting authority (as defined in relevant legislation) on the basis of an exclusive right which they enjoy pursuant to a law, regulation or published administrative provision compatible with the Treaty on the Functioning of the European Union (TFEU);
- Public-public co-operation, where the arrangement establishes or implements a

co-operation between the Council and one or more contracting authorities with the aim of ensuring that the public services they have to perform are provided with a view to achieving objectives they have in common, and implementation of the co-operation is governed solely by considerations relating to the public interest, and the parties concerned do not perform 20% or more of the activities concerned by the cooperation on the open market;

- Any contracts between the Council and any company that is controlled by the Council in a similar way to which it controls its own departments / services. Such companies must perform more than 80% of their activities for, or on behalf of, the Council (or other legal persons controlled by the Council or other contracting authorities e.g. for jointly owned companies). Such companies should also have no private capital participation in them other than where required by legislation (in which case the control must be non-controlling and non-blocking).

Commissioning additional supplies, services or works outside of the scope of any existing contractual arrangements from a company controlled by the Council should be subject to a business case and demonstrate value for money and steps must be taken to ensure the arrangement fits within the criteria detailed above. In the interest of best practice and demonstrating value for money, the Commissioning and / or Procuring Officer may wish to subject such contracts to competition.

### 1.1.3 **Legal Compliance**

All procurement procedures and Contracts shall comply with these Rules and all legal requirements and no Officer, or Member shall seek to avoid them.

The only exception is where a valid waiver is granted under Part 6 of these Rules.

If there is any dispute regarding these Rules, it should be taken up with the Procurement Manager who will seek appropriate advice to resolve the matter with Legal Services.

### 1.1.4 **Public Procurement Legislation**

All contracts must comply fully with the requirements of relevant Public Procurement Legislation.

### 1.1.5 **National and European Union Legislation (other than Public Procurement Legislation)**

Generally, National and European Union legislation must be adhered to and will override the application of these Rules. Where legislation contradicts these Rules (such as the de minimis provision within regulations issued under the Transport Act 1985 (as amended)), agreement should be reached between the Executive Director and Procurement Manager as to whether to apply the provision of that legislation ensuring that value for money is achieved.

**1.1.6 Applicable Principles**

In order to prevent the distortion of competition, the procurement and award of Contracts shall comply with the principles of transparency, equal treatment, non-discrimination and proportionality.

**1.1.7 Contracts where the Council acts as agent**

Where the Council acts as the agent for any of its wholly or partly owned companies or other local authority or public body or other company or organisation (Principal), these Rules shall apply unless the Principal in question instructs otherwise.

**1.1.8 Calculating the financial value of a procurement**

In determining the estimated value of the procurement, for the purpose of applying the relevant provisions within these Rules, the following should be taken into account:

- The total amount payable (net of VAT) for the lifetime of the Contract being procured including any proposed options or renewal periods;
- The aggregation of requirements with similar characteristics, or for the same type of goods, services or works, regardless of the number of Contracts that may be entered into or number of lots that the procurement may be split between for the duration of the Contract(s), especially where such aggregation means the value exceeds the relevant EU Threshold for goods, services or works;
- In the case of joint purchasing arrangements, the value shall be the aggregate of both parties' requirements that are the subject of the procurement.

No Officer or Member of the Council may seek to subdivide procurements, requisitions or individual spend amounts in order to avoid the application of these Rules or Public Procurement Legislation (in their entirety or in part).

**1.2 Officer and Member Responsibilities**

**1.2.1 Powers / authority**

All powers should be exercised through Officers and it should be noted that only Officers authorised in the relevant local scheme of delegation have the authority to commit the Council to any contractual obligations. (Members exercise their powers through Officers).

**1.2.2 Adequate Budget Provision**

Officers should not seek to enter into a Contract or purport to enter into a Contract, unless there is adequate provision in the agreed capital programme and/or agreed Revenue Budget for the relevant service.

**1.2.3 Corporate Contracts**

A Corporate Contract is a pre-existing Contract or Framework Agreement that has been set up for use by all Services (or specific Services) in the Council to address a

common or specific need and that allows Commissioning Officers to quickly and efficiently source those requirements without undertaking repetitive tendering exercises and to comply with aggregation rules of Public Procurement Legislation.

Prior to any procurement activity, the Commissioning Officer shall ascertain whether any Corporate Contract exists in relation to their requirements. Where such a Corporate Contract exists, it shall be best practice to utilise Corporate Contracts.

#### 1.2.4 **Performance Bond or Parent Company Guarantee**

The Commissioning Officer, in discussion with the Procurement Officer, shall in respect of all Contracts consider the need for a performance bond or parent company guarantee after assessing the following factors:

- Potential risk to the Council in the absence of a bond or parent company guarantee;
- Known technical difficulties associated with the project;
- The financial status of the provider(s);
- Whether it is relevant and proportionate to the Contract;
- The period of the contract; and
- Any costs associated with the provision of the bond.

#### 1.2.5 **Conflicts of interest**

A conflict of interest includes a situation where a relevant individual's financial, economic or personal interests might be perceived to compromise their impartiality and independence.

All Council employees (and third parties engaged on the Council's behalf) must take appropriate measures to effectively prevent, identify and remedy conflicts of interests. Any conflict of interest must be declared to the appropriate line managers within the Council as defined and in line with the Officer Code of Conduct.

### **1.3 Collaborative arrangements**

#### 1.3.1 **Framework Agreements**

Rules 2.1 and 3.1 will not apply where the requirements in question are to be procured by using a Framework Agreement which has itself been procured through compliance with these Rules or from a Central Purchasing Body or other Public Body.

Where a Framework Agreement is used, the Procurement Officer will undertake to check that the Framework Agreement is legally compliant and whether the Council is named in the OJEU notice for the Framework Agreement (either specifically or named within a grouping of regional local authorities) and therefore able to utilise that Framework Agreement.

The Procurement Officer must ensure that requirements are procured in accordance with the terms of the Framework Agreement (and where applicable Public

Procurement Legislation).

### 1.3.2 **Joint or partnering arrangements**

(a) Joint or partnering arrangements between the Council and other bodies shall be subject to the prior approval of the relevant Executive Director and in the case of arrangements with private entities also the Chief Executive.

(b) Advice from Legal Services must be sought as to the most appropriate form of agreement to put in place, especially where either party is undertaking work and / or tendering activity for the other, and entering into contracts on behalf of the other. Appropriate agreements may take many forms (for e.g. Memorandum of Understanding, Partnership Agreements, etc.) depending on the nature of the arrangements.

(c) Under any such agreement, where the Council is responsible for procuring any requirements, these Rules shall apply, regardless of who shall enter into the resultant contract.

(d) Under any such agreement, where another party is responsible for procuring any requirements, their contract procedure rules, or equivalent, shall apply, regardless of who shall enter into the resultant contract unless agreed otherwise. Where the other party has no such contract procedure rules, the procedure applied by the other body shall comply with the principles and safeguards contained in these Rules. The requirements of Public Procurement Legislation shall be adhered to where relevant.

(e) Under any such agreement, the terms and conditions for the arrangement shall include powers for the Council to have access to the records, assets, site, employees and sub-contractors of that party for the purposes of investigating or auditing compliance with the terms of the arrangement and with Public Procurement Legislation.

## **1.4 E-Procurement**

### 1.4.1 **Electronic Tendering**

All tendering above the relevant EU Threshold (and for Contracts which are below the EU thresholds but higher than £25,000 in value) must be undertaken via an electronic tendering method and shall use the eE-tendering Portal accessible through the CPU. Where it is necessary to use another portal, prior approval must be sought on a tender-by-tender basis from the Procurement Manager.

## **1.5 Records**

### 1.5.1 **Contracts Register**

As part of the Government's Transparency Agenda the Council is required to compile a contracts register to capture details of all live Contracts entered into by the Council ("Contracts Register"). The Contracts Register shall be controlled by the CPU and the Commissioning Officer must ensure that all Contracts above **£5,000** in value are

recorded.

## **1.6 Expenditure approval process**

### **1.6.1 Pre-Contract requirements**

All Officers requiring to commit expenditure in order to acquire goods, services or works on behalf of the Council must:

- Consider the Social Value implications
- Make sure that the appropriate authority is in place to start the process and spend the money in accordance with the appropriate local scheme of delegation;
- Make sure that there is enough money in the budget to cover the total whole life financial commitment being made (including any consultants or other external charges or fees);
- Make sure that the Forward Plan and publicity requirements have been followed where the purchase is a Key Decision.

## **1.7 Sustainable Development**

### **1.7.1 Sustainable development**

The Council endeavours to consider how it can help achieve sustainable development through its work including social, environmental, economic and other relevant issues.

### **1.7.2 Social value**

There is a duty to comply with the Public Services (Social Value) Act 2012. The Council will endeavour to consider and apply the provisions of the Act to all procurements regardless of their nature and value (although social value considerations (including any consultation) should be proportionate to the scale and nature of the Contract). Such consideration includes but is not limited to:

- a) How what is proposed to be procured might improve the economic, social and environmental well-being of the area of the Council; and
- b) How in conducting the process of procurement, the Council might act with a view to securing that improvement.

Officers must have regard to the Council's Social Value Policy available at [\[Cheshire East Council social value policy \(PDF, 350KB\)\]](#).

### **1.7.3 Community right to challenge**

The Localism Act 2011 provides that under the 'community right to challenge', the

Council is to consider an expression of interest (EOI) submitted by a ‘relevant body’ in relation to providing or assisting in providing a service provided by or on behalf of the Council.

When the Council accepts an EOI it must run a procurement exercise and award any Contract following these Rules.

**Part 2: Contract Procedure Rules concerning Contracts below the EU Threshold**

**2.1 Competition requirements**

**2.1.1 Advertising and procedure**

Where the estimated costs of any requirements to be ordered on behalf of the Council is **less than the applicable EU Threshold** then proposals shall be invited as outlined below:

a)	Up to £10,000	3 quotes are advisable but not mandatory (local firms being preferable where appropriate)
b)	Between £10,000 and £25,000	A minimum of three quotations shall be sought, together with advice from the CPU or Legal Services on the appropriate form of Contract
c)	Between £25,000 and the applicable EU Threshold	A minimum of three quotations shall be sought via the E-tendering Portal, and/or Contracts Finder together with advice from the CPU or Legal Services on the appropriate form of Contract

Where compliance with (c) above is not possible due to less than 3 providers responding, authority to proceed with a procurement process must be obtained from the Procurement Manager.

The requirement in (c) to use the E-tendering Portal to advertise may be waived where there is an urgent need to do so. However, the Procurement Manager's written approval must be given to any such waiver.

Officers are permitted to sign up for subscriptions for membership of industry associations without the need for competition provided they consider that the subscription offers value for money and available budget provision.

**2.1.2 Cross-border interest**

When issuing Requests for Quotations for below EU Threshold Contracts, Officers

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should consider whether the Contract may be of interest to organisations / individuals in other EU Member States and explain any concerns to the Procurement Manager.

### 2.1.3 **Award Criteria**

Below EU Threshold Contracts will generally be awarded on the basis of MEAT (Most Economically Advantageous Tender) defined on the basis of price or cost using a cost effectiveness approach, and may include the best price – quality ratio, however, awards on the basis of lowest price shall be acceptable in certain circumstances.

The Award Criteria and their relative importance must be set out in the competition Request for Quotation documents.

### 2.1.4 **Best and Final Offer (BAFO)**

In certain circumstances it may be possible to provide for a BAFO stage in the procurement process and should only be used in consultation with Legal Services. Where the Procurement Officer and Commissioning Officer consider that a BAFO stage would be beneficial and could be exercised fairly in a procurement process, they should explain the reasons for the use of the BAFO process to the Procurement Manager, and seek approval to proceed from the Procurement Manager (who shall consult Legal Services).

Where a BAFO stage is used, it must be conducted by the CPU through the E-tendering Portal, and should set a deadline for submission of BAFOs, to be returned via the E-tendering Portal.

Where a BAFO is submitted, any improvements in a Bidder's offer must be recorded in the applicable Evaluation Matrix with Bidder's submissions re-scored where appropriate. A record of both pre and post BAFO scoring must be maintained for audit purposes.

## **Part 3: Contract Procedure Rules concerning Contracts at or above the EU Threshold**

### **3.1 Competition requirements**

#### 3.1.1 **Advertising and procedure**

Procurement of Contracts over the EU Thresholds should be undertaken in accordance with the Public Procurement Legislation.

This includes the requirements in terms of advertisement of Contracts over the EU Threshold on Contracts Finder.

#### 3.1.2 **Award Criteria**

Contracts will be awarded on the basis of MEAT (Most Economically Advantageous Tender) defined on the basis of price or cost using a cost effectiveness approach, and may include the best price – quality ratio. Where possible full lifecycle costs should be considered as part of the financial evaluation.

The Award Criteria and weightings must be set out in the Invitation to Tender.

### **3.2 Forms of procurement**

- 3.2.1 The Public Procurement Legislation sets out the procedures which can be used to procure Contracts at or exceeding the EU Thresholds. These include:
- a) Open Procedure
  - b) Restricted Procedure
  - c) Competitive Procedure with Negotiation
  - d) Competitive Dialogue
  - e) Innovation Partnerships
  - f) Call Off from a Framework Agreement

Other procedures are possible for Contracts for Light Touch Regime Services (as defined in Public Procurement Legislation) and for Concessions Contracts.

- 3.2.2 The Procurement Officer in consultation with the Commissioning Officer and Legal Services shall select the most appropriate procedure having regard to the requirements of the Public Procurement Legislation.
- 3.2.3 This process shall not remove or modify the responsibility of the relevant Executive Director to take such steps as may be reasonably necessary to safeguard the Council's best interests.
- 3.2.4 In order to determine a suitable procurement approach to a specific market, Officers, in liaison with CPU, may first choose to carry out non-committal soft market testing in order to inform the market of the Council's procurement plans and to understand the likely level of interest. Any such testing should not have the effect of distorting competition or result in a violation of the principles of non-discrimination or transparency.

## **Part 4: Contract Procedure Rules: Procedures for ALL Requests for Quotation and Invitations to Tender**

### **4.1 Application and documentation**

#### **4.1.1 Application**

This Part 4 applies to all Contracts over £25,000 in value (including those at or above the relevant EU Threshold).

Procurement procedures for Contracts below £25,000 will follow any guidance issued by CPU and will be assessed on their risk.

#### **4.1.2 Documentation**

All Requests for Quotations (RFQs) and Invitations to Tender (ITTs) shall include the

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following:

(i) The Council must issue RFQs and ITTs and receive Bids via the E-tendering Portal. Bids submitted by any other means shall not be considered.

(ii) A requirement for Bidders to complete fully and sign or otherwise authorise the Form of Tender, which relates to canvassing and non-collusion before submission.

(iii) All electronic responses will be held within the E-tendering Portal in a restricted area that is only accessible by the appointed Verifying Officer after the specified fixed time and date.

(iv) All RFQs and ITTs must specify the goods, works or services that are required in sufficient detail to enable the submission of competitive Bids, together with the terms and conditions of the contract that will apply.

(v) A description of the award procedure and a definition of the Award Criteria and weightings in objective terms. Where it is not possible to provide weightings for objective reasons, Award Criteria should be stated in descending order of importance.

(vi) Notification that Bids are submitted to the Council on the basis that they are compiled at the Bidder's risk and expense (except where prior agreement is given to reimburse those Bidders / providers engaged in a competitive dialogue or competitive procedure with negotiation).

(vii) Notification that amendments must not be made to the contract documents by the Bidder (unless appropriate for the procurement procedure).

4.1.3 A record of Bids received in pursuance of these Rules shall be maintained by the CPU and retained in accordance with the Council's retention schedule.

4.1.4 An electronic contracts register will be maintained by the CPU and copies of Contracts are to be provided to Legal Services for retention.

## **4.2 Closing date for receipt of Bids**

4.2.1 Bids received after the fixed date and appointed time, shall NOT be opened or considered, unless there are exceptional circumstances as agreed by the Procurement Manager, who will consult with Legal Services where appropriate.

An exceptional circumstance could be a system problem (of which there must be demonstrable evidence) with the E-tendering Portal which has prevented potential Bidders from uploading their response documents.

## **4.3 Method of opening Bids**

4.3.1 In respect of Bids received electronically, ONLY a Verifying Officer as designated within the E-tendering Portal will have permission to open the Bids.

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- (i) Bids above £1,000,000 will be verified by Legal Services.
- (ii) Bids from the EU Threshold up to £1,000,000 will be verified by the Procurement Manager or a Category Manager that has not been involved in the tender in question.
- (iii) Bids between £25,000 and the EU Threshold will be verified by a Procurement Officer that has not been involved in the procurement process in question.
- (iv) Bids between £10,000 and £25,000 will be opened in accordance with any guidance issued by CPU from time to time.

## **4.4 Evaluation of Bids**

### **4.4.1 Evaluation and award**

Bids shall be evaluated and awarded on the basis of the value for money they offer to the Council.

For Bids over the EU Threshold this must be in line with:-

- (a) MEAT (*Most Economically Advantageous Tender*) Principles. Award Criteria must be relevant to the Contract and apportioned between cost and quality in a ratio reflecting the risk and value of the contract.
- (b) Bids shall be evaluated and awarded in accordance with Award Criteria and weightings determined, and documented in an Evaluation Matrix, which must not be changed at any time during the process.
- (c) The relevant Public Procurement Legislation should be considered in determining what shall be included in the evaluation of cost.

### **4.4.2 Evaluation Panel**

(a) Evaluation Panels should be established prior to the issue of the RFQ/ITT, to ensure that they are engaged with the process and understand the evaluation criteria and weightings.

(b) Evaluation Panels should include representation from the CPU, the commissioning department/key stakeholders, and should consist of a minimum of two Officers. However, should the risk be assessed as significant then the minimum number of people on the panel should be increased proportionately and in accordance with more detailed guidance from CPU.

### **4.4.3 Evaluation Matrix**

(a) The Evaluation Matrix will consist of defined evaluation criteria and weightings.

(b) All Bids must be scored consistently against the Award Criteria set out in the Evaluation Matrix in the RFQ/ITT using the scoring model also set out in the RFQ/ITT.

(c) All scores and notes made by the Evaluation Panel must be recorded in writing in the Evaluation Matrix and used for reference if further moderation is required.

### **4.4.4 Moderation**

(a) The Evaluation Panel will discuss their individual scores and must reach agreement on a consensus panel score and justifying comments.

(b) Any consensus scores and applicable justifying comments must be recorded in the Evaluation Matrix for the procurement process.

(c) All notes may be the subject of information requests or legal challenge against award of a Contract. It is crucial that accurate notes justifying awarded scores are maintained throughout and relate solely to the relevant Award Criteria.

#### 4.4.5 **Clarification**

(a) Where post Bid clarification is required, it must be requested (and responses returned) via the E-tendering Portal. Importantly, post Bid clarification may only be sought in relation to an element of the Bidder's submission that has been provided, and which needs further understanding. Post Bid clarification must be used in a non-discriminatory manner and so that Bidders are not being given an opportunity to improve their Bids.

(b) Evaluation scores can only be amended where specific clarification has been requested relating to the Award Criteria. Any decision to rescore must be discussed with the Procurement Manager.

(c) All clarification questions and returns must be noted and any amended scores which result from clarification are to be updated in the Evaluation Matrix.

(d) For above EU Threshold procurements, post Bid negotiation will not be accepted unless permitted within the procedure available within Public Procurement Legislation.

(e) For Contracts below the EU Thresholds in value, a best and final offer (BAFO) stage may be used. Refer to Rule 2.1.3.

### **4.5 Acceptance of Bids**

#### 4.5.1 **Approval process**

Bids may be accepted by the relevant Executive Director provided that all of the following apply:-

(i) the Bid complies with the requirements, conditions and criteria set down in any OJEU notice (where applicable) and in the RFQ/ITT including any applicable selection criteria and Award Criteria;

(ii) the Bid proposed to be accepted is the most economically advantageous tender (or, where appropriate for Contracts below the EU Threshold, is the lowest priced Bid);

(iii) where a Bid for a Contract above the EU Threshold appears abnormally low, the Bidder has been asked to explain the price or cost and the Council considers the explanation provided to satisfactorily account for the low price or cost; and

(iv) Cabinet approval has been given where the tender is a Key Decision.

#### 4.5.2 **Debrief – intention and award**

Once the award decision has been approved by the Officer with appropriate delegated authority, communication should be undertaken with all Bidders, providing details on

the outcome of the procurement process.

For Bids above EU Thresholds, the provisions of the Public Procurement Legislation shall be followed regarding the content of notifications to Bidders and including any mandatory standstill periods outlined.

#### **4.6 Errors in Tender**

- 4.6.1 If, before both parties have executed the Contract, it is discovered that an error has been made in the Bid it shall be dealt with as follows:-
- The Procurement Manager should be consulted (who should consult Legal Services as necessary);
  - The Bidder should be given the opportunity of confirming or withdrawing the Bid. In the case of genuine and obvious errors the Bidder may be given the opportunity to correct the error. The same approach should be taken to all Bids.
- 4.6.2 Clarification surrounding such errors shall be sought in writing via the E-tendering Portal.
- 4.6.3 Where the Bidder elects to withdraw the Bid the next highest scoring Bid shall be considered and the same rules shall be applied in considering that Bid.

#### **Part 5 Contract Procedure Rules - Contracts and post procurement requirements**

##### **5.1.1 Conditions of Contract**

Every Bid will be accompanied by the relevant conditions of contract which will either be supplied by CPU or Legal Services. In every written Contract there are certain clauses which must be inserted. These clauses are identified in the standard form contracts produced for use by the Council and may be amended by Legal Services from time to time. The removal of these clauses requires agreement by Legal Services.

##### **5.1.2 Signed Contracts**

Subject to 5.1.3, Contracts (with a value not exceeding £1,000,000) shall be signed on behalf of the Council by a duly authorised Officer in accordance with the local Scheme of Delegation.

##### **5.1.3 Contract Sealing**

A Contract must be executed under seal by Legal Services where any of the following apply to the Contract:

- It exceeds £1 million in value;
- Where the Contract is such that Legal Services consider that the extended limitation period of 12 years would be of value;
- Where it is required by statute or an external funding body that it is executed

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under seal;

- Where the price paid or received under the Contract is a nominal price and does not reflect the value of the goods, services or works;
- Where it is a construction-related or works Contract and it is required to be sealed in accordance with guidance issued by CPU.

#### 5.1.4 **Contract payments / settlements**

Contract payments / settlements shall be made in accordance with procedures referred to in the Finance Procedure Rules.

#### 5.1.5 **Authorisation of payments**

Payments shall be approved by an authorised Officer in accordance with the local Scheme of Delegation.

#### 5.1.6 **Modification to Contracts**

Modifications to a Contract shall be in writing and shall be authorised by the appropriate Executive Director or on their behalf by an authorised Officer with agreement from the Procurement Manager and Legal Services. Such agreement will be dependent upon commercial considerations as well as considering if the modification is permitted under Public Procurement Legislation and the completion of any required documents as issued by the CPU from time to time.

#### 5.1.7 **Payments before completion of formal Contract**

No payment shall be made by the Council to the provider without a formal purchase order or an appropriate Contract in place. Payments should normally be made following the receipt of the requirements / achievement of desired outcomes.

Staged payments are permitted. Any such payments should only be made upon receipt of the desired requirements for that stage / milestone. Should the desired requirements / outcomes not be achieved when the provider submits an invoice, a dispute should be raised to prevent payment until such time as the desired requirements / outcomes have been achieved.

Advance payments are generally not permitted and the only exceptions without further approvals being required, shall be for:

- Software Licences;
- Hardware and / or Software Support and / or Maintenance;
- Warranties;
- Deposits;
- Leases / Hires.

If any other reason arises for an advance payment to be made, approval must be sought from the relevant Executive Director and the Director of Legal Services.

#### 5.1.8 **Monitoring of Contracts**

All Contracts should be monitored throughout the period of the Contract, and the performance of providers should be reviewed regularly, including

- How savings might be achieved within the contract period;
- Compliance with the specification and contract;
- Performance;
- Any best value requirements;
- Levels of insurance,
- User satisfaction; and
- Risk Management;

Accurate records of Contract monitoring activity and meetings including any issues raised / dealt with must be kept by the Commissioning Officers responsible for monitoring the Contract.

### 5.1.9 **Contract extensions**

- a) Commissioning Officers and Contract Managers must consider a provider's performance throughout the period of a Contract when considering a contract extension. Officers should question whether the quality of goods or services being provided to the Council would continue to offer best value should an extension be agreed. When reviewing performance for the purpose of Contract extension, Officers should seek the views of the provider as to whether they have any suggestions or proposals which might improve value or delivery of service which might benefit the Council. These Officers should be aware of the market, the providers within the market, and the level of competition within the market.

Commissioning Officers should consider alongside the award of any optional extension period provided for in the Contract, what other alternatives may be available to the Council, and should offer reasoning as to why such alternatives are not proposed.

These Officers must ensure that prior to seeking approval of any proposed Contract extension; consultation is undertaken with the Procurement Manager and a Contract Extension Form is completed and signed by the Executive Director.

Contracts may be extended beyond the stated core Contract period, where provision for such extension was included in the RFQ/ITT, and in respect of above EU threshold Contracts, the relevant OJEU Notices.

- b) It is not possible to extend a Contract, after expiry. Any such requests will be viewed as new Contracts and the relevant provisions with these Rules must be followed.
- c) Any requests to extend a Contract where there is no provision to extend for the period requested constitutes a modification to the contract and the appropriate provisions at Rule 5.1.6 must be followed.

## **Part 6 Contract Procedure Rules: Waiver and breach**

### 6.1 **Waiver**

#### 6.1.1 **Waiver process**

It is strongly expected that these Rules will be followed in all cases with very limited exceptions, however, in the event a Commissioning Officer believes a waiver to these Rules is essential to the efficient running of the Service they must seek a waiver by producing a report that must be approved:

- a) In the case of contracts with a value up to £25,000 by the Head of Procurement, and
- b) In the case of contracts with a value in excess of £25,000 by the Chief Finance Officer and the Director of Legal Services.

The report must be in accordance with the prescribed format available from the CPU. The format of the report shall be determined by the Procurement Manager, and must be used in line with any associated guidance published:

- (a) Advice and guidance must be sought from the Procurement Manager prior to submission of the waiver form to the S.151 Officer and Director of Legal Services. If approval is granted, it is still required that an appropriate contract be entered into prior to any requirements being provided by the provider.
- (b) The waiver of these Rules and the reason(s) for waiver shall be clearly recorded and reported to the Commissioning and Procurement Board.
- (c) All notices of waiver reported to the Procurement shall be published retrospectively for information on the next appropriate Audit and Governance Committee agenda.

The only exception to the above is for instances of **extreme urgency**, where there is an **immediate** risk to **life, property** or an **individual's safety and wellbeing**, and any inaction by the Council (related to risks to safety and wellbeing) would be a breach of our statutory duty and obligations. The agreement of the Procurement Manager must be sought prior to any action being taken except where the nature of the urgency and risk renders this impractical. Such instances must be reported at the earliest opportunity, retrospectively, to the S.151 Officer and Director of Legal Services and the relevant Executive Director following the incident.

## **6.2 Breach of Contract Procedure Rules**

### **6.2.1 Breach**

No Officer or Member, may seek to actively avoid the application of these Rules without following the necessary waiver process outlined within these Rules.

Officers and Members must be aware that any non-adherence with these Rules is a breach of the Officer Code of Conduct / Member Code of Conduct and could result in disciplinary action being taken against them.

Service Directors are responsible for ensuring that their Commissioning Officers are made aware of the consequences of non-adherence and that they comply with these Rules.

### **6.2.2 Reporting and investigating breaches**

Any breach of, or non-adherence to these Rules, must, on discovery, be reported immediately to the Section 151 Officer. The Executive Director or his/her designated representative shall complete the waiver process (detailed at 6.1 above) outlining the reasons for the non-adherence and the steps taken to prevent a re-occurrence.

The Executive Director or his/her designated representative will be required to submit the form for sign off by the Section 151 Officer and the Director of Legal Services.

Any such breaches will be reported to the Commissioning and Procurement Board

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setting out the number of non-adherence instances in the previous period and broken down by service and exceptional instance, following which all such notices reported to the Commissioning and Procurement Board shall be published retrospectively for information on the appropriate Audit and Governance Committee agenda.

The S.151 Officer and Director of Legal Services shall consider whether each reported breach or non-adherence 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 relevant Executive Director and the Chief Executive.

## Part F – Employment Rules

### 1 General

1.1 Staff within the organisation are employed, appointed, designated or engaged on behalf of the whole Council and not by parts of the organisation or individuals.

1.2 The employment, appointment, designation or engagement of all staff will be in compliance with the law and any policies and practices of the Council.

1.3 Persons employed, appointed, designated or engaged by contractors under specific agreements or contracts are not staff of the Council, but are employees engaged by the contractor.

1.4 The Council will provide the necessary resources to support the appointed officer structure. Officers may be employees and other persons engaged on temporary contracts, consultancy arrangements or other appropriate terms.

1.5 Generally (except for certain senior staff appointments) the function of appointment and dismissal of, and taking disciplinary action against a member of staff of the Council must be discharged on behalf of the authority by the Head of the Paid Service or by an officer nominated by him/her.

### 2 Recruitment and Appointment of Staff

2.1 Any candidate for any designation or appointment with the Council who knows that he/she is related to a Member or employee of the Council shall, when making application, disclose, in writing, that relationship to the Head of Strategic HR. A person who deliberately fails to disclose such a relationship shall be disqualified from designation or appointment and, if designated or appointed, shall be liable to dismissal.

2.2 Every Member and employee of the Council shall disclose to the Head of Strategic HR any relationship known to him/her to exist between him/herself and any person he/she knows is a candidate for a designation or appointment by the Council.

2.3 Any candidate for designation or appointment who directly or indirectly seeks the support of a Councillor or officer of the Council in any designation or appointment shall be disqualified and, if designated or appointed, shall be liable to dismissal. A Councillor shall not solicit for any person in respect of any designation or appointment with the Council, but may give a written testimonial of a candidate's ability, experience or character.

2.4 Persons shall be deemed to be related to a candidate or officer if they are a spouse, partner (i.e. member of a couple living together) parent, parent-in-law, grandparent, child, stepchild, adopted child, grandchild, child of partner, brother, sister, uncle, aunt, nephew or niece or the spouse or partner of any of the preceding persons.

2.5 In the case of a dispute under paragraph 2.4 above about the status of a relationship in relation to an appointment, the Head of Strategic HR will rule and such ruling will be applied.

2.7 The Head of Strategic HR will ensure that the provisions of these Rules are reflected, as appropriate, in application forms or in any accompanying detailed procedures for each post, following advertisement.

### **3 Responsibility of the Staffing Committee**

3.1 In addition to these rules, the responsibilities of the Staffing Committee are set out in the Staffing Committee's Terms of Reference under the "Responsibilities for Functions" Section of this Constitution.

3.2 Subject to the provisions of these Rules, the Committee is responsible for hearing and determining appeals as set out in the Staffing Committee terms of reference under the Council's employment-related policies. In determining these matters the Committee will have regard to the appropriate provisions of this procedure. The Committee may agree to discharge some of these functions through a Sub-Committee.

3.3 The Cabinet Member with responsibilities for individual Departments or Services and the associated resources is required to ensure that corporate personnel policies and procedures are applied by the Council, including training, matters relating to discipline, workforce performance management, and grievance.

### **4 Appointment of Head of the Paid Service**

4.1 The appointment of Head of the Paid Service is subject to specific requirements as set out below.

4.2 Where the Council proposes to appoint to the Head of the Paid Service, the Staffing Committee will oversee the arrangements for filling the vacancy. For this purpose the Committee shall include at least one Member of the Cabinet in its membership.

4.4 The Staffing Committee shall:

- draw up a statement specifying the duties of the officer concerned and any qualifications or guidelines to be sought in the person to be appointed;
- where it is not proposed to appoint from existing employees, 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;
- make arrangements for a copy of the statement mentioned above to be sent to any person on request;
- where a post has been advertised as required above, the Committee will select from the applications a short list of qualified candidates and will then interview those included in the short list.

4.5 Following the interview of candidates, the Committee will come to a view as to the most suitable person to recommend for the position.

4.6 The Committee must advise the Head of Strategic HR of:

- the name of the person in question;
- any other particulars which the Committee consider are relevant to the appointment.

4.7 Within two clear working days of receiving the notification in 4.6 above, the Head of Strategic HR will notify each Member of the Cabinet of:

- the information notified under paragraph 4.6 above;
- the period within which any objection to the making of the offer is to be made by the Leader on behalf of the Cabinet to the Head of Strategic HR; such period shall not exceed five clear working days.

4.8 An offer of appointment must wait until:

- the Leader has, within the period of the notice under paragraph 4.6 above, notified the Committee through the Head of Strategic HR that neither he/she nor any Member of the Cabinet has any objection to the making of the offer; or
- the Head of Strategic HR has notified the Committee that no objections have been received by her within the period of the notice under 4.7 above; or
- the Committee is satisfied that any objection received from the Leader within the notice period is not material or is not well founded. In this regard, where necessary, the advice of the Director of Legal Services shall be sought.

4.5 Where following the above procedure there are no objections to the proposed appointment or any objections are not up-held, the Committee will recommend that person for appointment to the next meeting of the full Council or at a specially convened meeting of the Council. If the Council approve the recommendation, then a formal offer of appointment can be made.

4.6 Where following the interviews the Committee is of the view that there is no suitable candidate, it will re-advertise the post.

4.7 Where the Council does not approve the recommendation of the Committee, it shall indicate how it wishes to proceed.

## **5.0 Dismissal of Head of Paid Service, Statutory Chief Officers and Executive Director of Place**

5.1 The provisions of Clause 1.5 shall not apply to any proposal to dismiss the Head of Paid Service, Statutory Chief Officers or the Executive Director of Place. This shall be the responsibility of the Staffing Committee, save that any dismissal of Head of Paid Service, the Section 151 Officer or Monitoring Officer must be approved by full Council, following a decision of the Investigation and Disciplinary Committee and consideration by the

Independent Persons Panel. Any disciplinary action short of dismissal against the Head of Paid Service, Section 151 Officer, or Monitoring Officer shall be the responsibility of the Investigation and Disciplinary Committee.

5.2 For the avoidance of doubt, action short of dismissal against the Head of Paid Service, Section 151 Officer, or Monitoring Officer shall include a decision to suspend the same. Such a decision shall be the responsibility of the Investigation and Disciplinary Committee.

5.3 The Investigation and Disciplinary Committee is designated as the Committee discharging, on behalf of the Council, the function of discipline and dismissal of the Head of the Paid Service, Section 151 Officer, or Monitoring Officer. The full Council must however approve that dismissal before notice of dismissal is given to him/her.

5.4 Notice of dismissal of the Head of the Paid Service, Section 151 Officer, or Monitoring Officer must not be given until:

(a) the Investigation and Disciplinary Committee has notified the Head of Strategic HR that it wishes to dismiss the officer and any other particulars which the Investigation and Disciplinary Committee considers are relevant to the dismissal;

(b) the Head of Strategic HR has notified every member of the Cabinet of:

- (i) the fact that the Investigation and Disciplinary Committee wishes to dismiss the officer;
- (ii) any other particulars relevant to the dismissal which the Investigation and Disciplinary Committee has notified to the Head of Strategic HR;
- (iii) the period within which any objection to the dismissal is to be made by the Leader on behalf of the Cabinet to the Head of Strategic HR; and

(c) either –

- (i) the Leader has within the period specified in the notice under sub-paragraph (b) (iii), notified the Head of Strategic HR that neither he/she nor any member of the Cabinet has any objection to the dismissal;
- (ii) the Head of Strategic HR has notified the Investigation and Disciplinary Committee that no objection was received by him/her within that period from the Leader on behalf of the Cabinet to the Head of Strategic HR;
- (iii) the Investigation and Disciplinary Committee is satisfied that any objection received from the Leader within that period is not well founded or material. In this regard, where necessary, the advice of the Director of Legal Services (or, if appropriate an alternative legal adviser) should be sought.

5.5 Where following the above procedure there are no objections to the proposed dismissal or the objections are not upheld, the Investigation and Disciplinary Committee will:

- (a) follow the procedure set out in paragraph 5.6; and
- (b) recommend the dismissal to a meeting of the full Council.

5.6 (a) This procedure applies if the Investigation and Disciplinary Committee proposes disciplinary action involving the dismissal of the Head of Paid Service, Section 151 Officer or Monitoring Officer.

(b) Where this procedure applies, the Investigation and Disciplinary Committee will provide the Independent Persons Panel with the information and any other matters provided to members of the Cabinet and any other particulars relevant to the dismissal that the Investigation and Disciplinary Committee considers appropriate or that the Panel may reasonably require. The Investigation and Disciplinary Committee may invite the Independent Persons Panel to attend any disciplinary or capability hearing.

(c) The Independent Persons Panel will meet to consider what, if any, advice, views or recommendations to give to the full Council.

(d) The Council may pay such remuneration, allowances or fees to an Independent Person appointed to the Panel as it thinks appropriate but the payment must not exceed the level of remuneration, allowances or fees payable to that Independent Person in respect of his or her role as an independent person under the Localism Act 2011.

(e) Full Council will not meet to consider whether or not to approve the proposal of the Investigation and Disciplinary Committee to dismiss the officer until a period of at least 20 working days has elapsed from the appointment of the Independent Persons Panel.

(f) Before full Council takes a vote at a meeting on whether or not to approve such a dismissal, they must take into account, in particular—

- (i) any advice, views or recommendations of the Independent Persons Panel;
- (ii) the conclusions of any investigation into the proposed dismissal; and
- (iii) any representations from the officer.

5.7 If the full Council approve the recommendation of the Investigation and Disciplinary Committee, then notice of dismissal can be issued. Where the full Council do not approve the recommendation, they shall indicate how they wish to proceed

5.8 The requirements of the Local Authorities (Standing Orders)(England) Regulations 2001 as amended will be followed.

## **6.0 Other Chief Officers and Deputy Chief Officers**

6.1 The offer of appointment for:

- (a) a statutory chief officer within the meaning of section 2(6) of the 1989 Act;
  - (b) a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act;
- or
- (c) a deputy chief officer within the meaning of section 2(8) of the 1989 Act;

must not be made by the appointor until--

(a) the appointor has notified the Head of Strategic HR of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;

(b) the Head of Strategic HR has notified every member of the executive of the authority of--

- (i) the name of the person to whom the appointor wishes to make the offer;

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(ii) any other particulars relevant to the appointment which the appointor has notified to the Head of Strategic HR; and

(iii) the period within which any objection to the making of the offer is to be made by the executive leader on behalf of the executive to the Head of Strategic HR; and

(c) either--

(i) the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the appointor that neither s/he nor any other member of the executive has any objection to the making of the offer;

(ii) the Head of Strategic HR has notified the appointor that no objection was received by him/her within that period from the executive leader; or

(iii) the appointor is satisfied that any objection received from the executive leader within that period is not material or is not well-founded.

6.2 In this paragraph, "dismissor" means, in relation to the dismissal of an officer of the authority, the authority or, where a committee, sub-committee or another officer is discharging the function of dismissal on behalf of the authority, that committee, sub-committee or other officer, as the case may be, notice of the dismissal of:

(a) a statutory chief officer within the meaning of section 2(6) of the 1989 Act;

(b) a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act; or

(c) a deputy chief officer within the meaning of section 2(8) of the 1989 Act;

must not be given by the dismissor until--

(a) the dismissor has notified the Head of Strategic HR of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;

(b) the Head of Strategic HR has notified every member of the executive of the authority of--

(i) the name of the person who the dismissor wishes to dismiss;

(ii) any other particulars relevant to the dismissal which the dismissor has notified to the Head of Strategic HR; and

(iii) the period within which any objection to the dismissal is to be made by the executive leader on behalf of the executive to the Head of Strategic HR; and

(c) either--

(i) the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the dismissor that neither s/he nor any other member of the executive has any objection to the dismissal;

(ii) the Head of Strategic HR has notified the dismissor that no objection was received by him/her within that period from the executive leader; or

(iii) the dismissor is satisfied that any objection received from the executive leader within that period is not material or is not well-founded.

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# FINANCE PROCEDURE RULES



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**Foreword**

- 1 Finance and Contract Procedure Rules provide the framework for managing the Council's financial affairs. They apply to every Member and Officer of the Council and anyone acting on its behalf, including School Governors operating under local delegation arrangements. All decision makers need to ensure that they are not only empowered under the Constitution to make every decision that they propose to make, but that they are also authorised under these Rules to incur the financial consequences of every decision that they make.
- 2 The Rules identify the financial responsibilities of the full Council, Cabinet, Overview and Scrutiny Members, statutory officers and the Corporate Leadership Team.
- 3 All Members and staff have a general responsibility for taking reasonable action to provide for the security of the assets under their control, and for ensuring that the use of these resources is legal, is properly authorised, provides value for money and achieves best value.
- 4 The Chief Operating Officer is responsible for maintaining a continuous review of the Finance and Contract Procedure Rules and submitting any additions or changes necessary to the full Council for approval. The Chief Operating Officer is also responsible for reporting, where appropriate, breaches of the Finance and Contract Procedure Rules to Audit & Governance Committee.
- 5 Corporate Leadership Team are responsible for ensuring that all staff in their Services are aware of the existence and content of the Council's Finance and Contract Procedure Rules and other internal regulatory documents and that they comply with them, as required by the Council's Code of Conduct for Employees and this Constitution. Failure to comply with the Code of Conduct will be dealt with in accordance with the Council's Disciplinary Policy and Procedure. They must also ensure that an adequate number of copies are available for reference within their Services.
- 6 The Chief Operating Officer, as Section 151 Officer, is responsible for issuing advice and guidance to underpin the Finance and Contract Procedure Rules that Members, officers and others acting on behalf of the Council are required to follow.
- 7 The Rules are not intended to cover every eventuality, but the spirit of the Rules must always be followed. Where there is any uncertainty in matters of interpretation, advice should be sought from the Chief Operating Officer before decisions or actions are taken.

<b>A</b>	<b>Financial Management</b>
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**Why is this important?**

Financial Management covers all financial accountabilities in relation to the running of the Council, including the policy framework and budget.

**What's covered in this Section?**

The roles and responsibilities of:

-  The full Council
-  The Cabinet
-  The committees of the Cabinet
-  The statutory officers
-  The Corporate Leadership Team

Other financial accountabilities:

-  Virement
-  Supplementary estimates
-  Treatment of year end balances
-  Accounting policies
-  Accounting records and returns
-  The Annual Statement of Accounts

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## The Full Council

- A.1** The responsibilities of the full Council are set out in Part 2 and Part 3 of the Constitution. In respect of financial matters, this includes approving the Policy Framework and Budget within which the Cabinet operates. The Council has established an Executive Monitoring Board which provides oversight and assurance for the Council on all project based activity with a strong focus on areas of major change the most significant risk and/or high financial values (including those of any strategic partners the Council is working with).
- A.2** The Budget comprises the allocation of financial resources to different services and projects, proposed contingency funds, the Council Tax base and Council Tax rate, and decisions relating to the control of the

Council's borrowing requirement, the control of capital expenditure and the setting of virement limits.

## The Cabinet

**A.3** The Cabinet's responsibilities, in respect of financial matters include :-

- 🔑 Developing and reviewing the Council's plans and policies.
- 🔑 Advising on budget setting.
- 🔑 Ensuring proper arrangements exist for the effective and efficient management of the Council's executive affairs.
- 🔑 Monitoring and auditing the lawful, proper and efficient conduct of the Council's financial affairs, including the extent to which budgets and financial policies are being met and any appropriate remedial action.
- 🔑 Ensuring officers exercising delegated powers on behalf of the Cabinet discharge their responsibilities efficiently and effectively.

## Cabinet Members

**A.4** Individual Cabinet Members or Portfolio Holders have specific decision making powers which are set out in Part 2 of the Council's Constitution. Cabinet Members responsibilities in respect of financial matters include:

- The proper administration of the Council's services.
- Ensuring adequate staffing, premises and other resources to secure agreed standard and target outcomes within the scope of their portfolio.
- The efficient use and day to day maintenance of Council premises.
- Ensuring budget control and financial monitoring within the scope of their portfolio.
- Submitting to the Cabinet, annual estimates of expenditure and income in respect of services within their portfolio.
- Making recommendations to the Cabinet in respect of strategic policy concerning matters within their portfolio.

**A.5** Cabinet Members must consult with relevant officers before exercising their delegated decision making powers. In doing so, the individual Member must take account of legal and financial liabilities and risk management issues that may arise from the decision and that they have authority to incur the financial consequences of that decision.

## Committees

### Overview and Scrutiny Committees

**A.6** Overview and Scrutiny Committees are responsible for discharging the Council's functions under Section 9F to 9FI of the Local Government Act 2000, including:

- 🔑 scrutinising Cabinet decisions before or after they have been implemented;
- 🔑 establishing task and finish reviews as they see fit.

### **Audit and Governance Committee**

**A.7** The Audit and Governance Committee has right of access to all the information necessary to effectively discharge its responsibilities and can consult directly with internal and external auditors.

**A.8** The committee is responsible for :

- 🔑 Overseeing the Council's role and responsibilities in respect of Corporate Governance and Audit.
- 🔑 Supporting the Council's audit function, both internal and external.
- 🔑 Supporting the Chief Financial Officer in relation to the performance of their duties.
- 🔑 Approving any Council Statement of Accounts as may be required by the relevant Account and Audit Regulations.
- 🔑 Reviewing and approving the Annual Governance Statement.
- 🔑 Ensuring the Council's Risk Management arrangements are operating effectively.
- 🔑 Ensuring the Council has in place appropriate policies and mechanisms to safeguard resources.
- 🔑 Promoting and maintaining high standards of ethical behaviour by developing, maintaining and monitoring Codes of Conduct for Members of the Council

### **Statutory Officers**

#### **A.9 Chief Officers**

Chief Officers are the Chief Executive or any Director of the Council to whom there has been specific delegation in writing by the Council or the Chief Executive.

In accordance with the management structure of the Council, Chief Officers will be referred to as follows:

- Tier 1: Chief Executive (Head of Paid Service)
- Tier 2: Direct reports to Tier 1
- Tier 3: Direct reports to Tier 2

#### **A.10 Head of Paid Service (Chief Executive)**

The Chief Executive is the Head of the Council's Paid Service. The responsibilities of the Chief Executive are set out in full in Part 3 of the Council's Constitution, they include:-

- 🔑 Leading and directing the strategic management of the Council.

- 🔑 Ensuring the effective pursuit and achievement of the Council's objectives.
- 🔑 Ensuring the Council's activities are carried out with maximum effectiveness and efficiency.

**A.11** The Chief Executive must report to and provide information for the Cabinet, the full Council, the Overview and Scrutiny Committees and other committees.

**Monitoring Officer (Director of Legal Services)**

**A.12** The Director of Legal Services is the Council's Monitoring Officer pursuant to Section 5 and 5A of the Local Government and Housing Act 1989 (as amended) and is responsible for exercising the functions of that role. This includes reporting, in consultation with the Chief Executive and Chief Operating Officer to the full Council (or to the Executive in relation to an Executive function), if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to a finding of maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered by Cabinet.

**A.13** The Director of Legal Services must ensure that Cabinet decisions and the reasons for them are made public. He or she must also ensure that Council Members are aware of decisions made by the Cabinet and of those made by officers who have delegated responsibility.

**A.14** The Director of Legal Services is responsible for advising all Members and officers about who has authority to take a particular decision.

**A.15** The Director of Legal Services is responsible for advising the Cabinet or full Council about whether a decision is likely to be considered contrary or not wholly in accordance with the Policy Framework.

**A.16** The Director of Legal Services (together with the Chief Operating Officer) is responsible for advising the Cabinet or full Council about whether a decision is likely to be considered contrary to or not wholly in accordance with the budget. Actions that may be 'contrary to the budget' include:

- 🔑 initiating a new policy which may have financial implications that cannot be contained within existing budgets;
- 🔑 committing expenditure in future years that exceeds Medium Term Financial Plan assumptions;
- 🔑 agreeing budget transfers that exceed approved virement limits;
- 🔑 causing the total expenditure financed from Council tax, grants and corporately held reserves to increase, or to increase by more than a significant amount ("Significant" to be defined by the Chief Operating Officer or their representative).

**A.17** The Director of Legal Services is responsible for maintaining an up-to-

date Constitution.

**Responsible Financial Officer (Section 151 Officer)**

**A.18** The Chief Operating Officer is the financial adviser to the Council, the Cabinet and officers and is the Council's 'responsible financial officer' under the Accounts and Audit Regulations. He or she is responsible for the proper administration of the Council's affairs as specified in, and undertaking the duties required by, Section 151 of the Local Government Act 1972, Section 114 of the Local Government Finance Act 1988, the Local Government and Housing Act 1989, the Local Government Act 2003 and all other relevant legislation.

**A.19** The Chief Operating Officer is responsible generally, for discharging, on behalf of Cheshire East Council, the responsibilities set out in the CIPFA Statement on the Role of the Chief Financial Officer in Local Government , including:

- ✎ in conjunction with the other Corporate Leadership Team , the proper administration of the Council's financial affairs;
- ✎ setting and monitoring compliance with financial management 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 capital programme
- ✎ treasury management.

**A.20** Section 114 of the Local Government Finance Act 1988 includes a requirement for the Chief Operating Officer to report to the full Council, Cabinet and external auditor if the Council or one of its officers:

- ✎ has made, or is about to make, a decision which involves incurring unlawful expenditure
- ✎ has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficiency to the Council
- ✎ is about to make an unlawful entry in the Council's accounts.

Section 114 of the 1988 Act also requires:

- ✎ the Chief Operating Officer to nominate a properly qualified Member of staff to deputise should he or she be unable to perform the duties under section 114 personally. The designated deputy for this purpose is the Head of Finance and Performance.
- ✎ the Authority to provide the Chief Operating Officer with sufficient staff, accommodation and other resources – including legal advice where this is necessary – to carry out the duties under section 114.

### **Money Laundering Reporting Officer**

- A.21** The Chief Operating Officer is appointed as the Council's Money Laundering Reporting Officer and will maintain and advise on Anti-Money Laundering procedures.
- A.22** They will be responsible for notifying the Serious Organised Crime Agency (SOCA) of any suspected cases of money laundering committed within the accounts of the Council as soon as possible and fulfil other duties as defined by legislation or regulation related to the post. Simultaneously, the Portfolio Holder for Finance and Communications will be kept informed of any notifications to SOCA and of any issues arising from them.

### **Corporate Leadership Team**

- A.23** The officer management arrangements for the Council are overseen by a Corporate Leadership Team comprising the Chief Executive, Chief Operating Officer, Executive Director of People, Strategic Director of Adult Services, Executive Director of Place, and Director of Legal Services. Each member of the Corporate Leadership Team is accountable to the Chief Executive for leading the Services within his or her area of responsibility and ensuring that the Services are managed in accordance with the objectives, plans, policies, programmes, budgets and processes of the Council.
- A.24** Within these arrangements, powers are delegated to Corporate Leadership Team members, who will establish, operate and keep under review Local Schemes of Delegation, to cascade powers and responsibilities to Heads of Service and other subordinate officers. Every such sub-delegation will be recorded in writing within a Local Scheme of Delegation. The sub-delegation of functions shall not in any way diminish the overall responsibility and accountability of the delegator.
- A.25** Corporate Leadership Team members are responsible for financial management within their directorates. They shall manage the development of budget policy options with a detailed assessment of financial implications within the budget process and resource framework agreed by the Council.

### **Schemes of Financial Delegation**

- A.26** Corporate Leadership Team members will establish, operate and keep under review Local Schemes of Delegation, in consultation with the Chief Operating Officer, to ensure that:-

- The day to day financial management of services within their directorate is carried out in a secure, efficient and effective manner, and in accordance with the Finance Procedure Rules and associated relevant guidance.
- Expenditure is contained within the service's overall approved budget and that individual budget heads are not overspent, by monitoring the budget and taking appropriate and timely corrective action where significant variances are forecast and if necessary, seeking specific in year approval for the transfer of resources between budgets.
- Regular reports in an approved format are made to Cabinet on projected expenditure against budget and performance against service outcome targets set out in the business plan.
- Prior approval is sought at the appropriate level for new proposals that create financial commitments in future years, change existing policies, initiate new policies or materially extend or reduce the council's services.
- Resources are only used for the purposes for which they were intended.
- Compliance with the scheme of virement set out at A28 to A32 below.
- Risks are appropriately assessed, reviewed and managed.
- All members of staff are fully trained, aware of and comply with the requirements of Financial Procedure Rules, including the Contract Procedure Rules.
- All allegations of suspected fraud, corruption and financial irregularity are promptly reported to the Chief Operating Officer and Director of Legal Services , and that any local investigations are undertaken thoroughly, consistently and impartially.

**A27**

Schemes of Financial Delegation will set out all financial responsibilities and approval limits as delegated by the Corporate Leadership Team to Heads of Service, and any sub-delegations within services. Authorised Officers are those officers given specific delegated authority by their Head of Service as documented in that service's Scheme of Financial Delegation. The financial limits specified in the Scheme of Financial Delegation will be used to control access to financial systems and on-line transaction approvals.

## Managing Expenditure

### Scheme of Virement

- A.28** A virement constitutes the movement of existing approved budgets from one area to another and is not an increase in overall budgets through the addition of new monies.
- A.29** The Scheme of Virement is intended to enable the Cabinet, Corporate Leadership Team and their staff to manage budgets with a degree of flexibility within the overall policy framework determined by the full Council, and therefore to optimise the use of resources.
- A.30** The full Council is responsible for agreeing limits for virement of expenditure between budget headings.
- A.31** Corporate Leadership Team are responsible for agreeing in-year virements within delegated limits, in consultation with the Chief Operating Officer where required.

Key controls for the scheme of virement are:

- (a) It is administered by the Chief Operating Officer within guidelines set by the full Council. Any departure from this scheme requires the approval of the full Council.
- (b) The overall budget is agreed by the Cabinet and approved by the full Council. Corporate Leadership Team and budget managers are therefore authorised to incur expenditure in accordance with the estimates that make up the budget. Income received cannot be used to defray expenditure.
- (c) For the purposes of this scheme, a budget head is considered to be a division of service as identified in the approved Budget Report, or, as a minimum, at an equivalent level to the standard service subdivision as defined by CIPFA's Service Expenditure Analysis.
- (d) Virement does not create additional overall budget liability.
- (e) No virements are permitted from ring fenced budgets.
- (f) Some revenue virements are essentially of an administrative nature, for example, implementation of restructuring and reorganisation proposals that have already received the appropriate level of officer and member approval; routine changes to the structure of the chart of accounts; changes to notional accounting budgets which are required for reporting purposes but which do not impact on the Councils cash expenditure. Where the virement is of an administrative nature, Member approval is not required and approval limits will be based on the Scheme of Delegation. Administrative virements that exceed these

limits will be approved by the Chief Operating Officer.

(g) Corporate Leadership Team are expected to exercise their discretion in managing their budgets responsibly and prudently. For example, they should aim to avoid supporting recurring expenditure from one-off sources of savings or additional income, or creating future commitments, including full-year effects of decisions made part way through a year, for which they have not identified future resources. Corporate Leadership Team must plan to fund such commitments from within their own budgets.

**A.32**

Approval limits for virements are as follows:

Approval Level	Virement Amount/Percentage
Head of Service	Up to £100,000 (Revenue)
Corporate Leadership Team (Relevant Executive Director)	From £100,000 to £500,000 between net Service budgets (Revenue) within their area of responsibility.  From £100,000 to £1,000,000 funded from underspends within the approved Service budget (Capital)
Corporate Leadership Team (Relevant Executive Director) in consultation with Finance & Communications Portfolio Holder and relevant Portfolio Holder	£100,000 and up to £250,000 (Revenue/Capital)  £500,000 - £1m (Revenue)  £1m - £5m (Capital)
Cabinet (where virement is within budget and policy framework)	£1m+ (Revenue) £5m+ (Capital)
Council (where virement is outside the budget and policy framework)	£1m+ (Revenue) £5m+ (Capital)

**Supplementary Revenue Estimates**

**A.33**

Where services wish to undertake an activity not originally identified in the budget or incur additional revenue expenditure on an existing activity where this is fully funded (for example through additional specific grant allocations), approval must be sought for a supplementary revenue estimate in accordance with A34 below. The

Chief Operating Officer must be consulted to establish that the funding identified can be legitimately linked to the expenditure in question.

**A.34**

Approval limits for fully funded supplementary revenue estimates are as follows:

Approval Level	Supplementary Estimate Amount
Corporate Leadership Team (Relevant Executive Director)	Up to £100,000
Corporate Leadership Team (Relevant Executive Director) in consultation with the Portfolio	£100,000 and up to £250,000
Holder for Finance and Communications	
Portfolio Holders and (Relevant Executive Director) in consultation Portfolio Holder for Finance and Communications	Between £250,000 and up to £500,000
Cabinet	Between £500,000 and up to £1,000,000
Council with recommendation from Cabinet	£1,000,000 and over

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**A.35**

Approval limits for supplementary revenue estimates which are to be funded from earmarked reserves or contingencies are as follows:

Approval Level	Supplementary Estimate Amount
Chief Operating Officer	From earmarked reserves - Up to £250,000 From contingencies – Up to £500,000
Chief Operating Officer in consultation with the Portfolio	From earmarked reserves - Between £250,000 and £500,000 From contingencies – Between £500,000 and £1,000,000

Holder for Finance and Communications	
Cabinet	From earmarked reserves - Between £500,000 and £1,000,000 From contingencies – Over £1,000,000.
Council with recommendation from Cabinet	From earmarked reserves - £1,000,000 and over

- A.36** Supplementary revenue estimates which are to be funded wholly or in part from general reserves or general purpose funding (i.e. Council tax or non-ring fenced grant) must be approved by Council.

### Supplementary Capital Estimates

- A.37** Supplementary capital estimates which are fully funded from external resources (e.g., specific grant; developer's contributions) must be approved in accordance with A38 below.

- A.38** Capital budget increases funded wholly or in part from additional Council resources such as capital reserves, borrowing and capital receipts, **regardless of value**, must be approved by Council. Council approval is also required where there are significant revenue implications for future year's budgets.

Approval limits for supplementary capital estimates are as follows:

Approval Level	Supplementary Estimate Amount
Corporate Leadership Team	Up to £100,000
Corporate Leadership Team in consultation with the Portfolio	£100,000 and up to £250,000
Holder for Finance and Communications	
Portfolio Holders and Corporate Leadership Team in consultation Portfolio Holder for Finance and Communications	Between £250,000 and up to £500,000
Cabinet	Between £500,000 and up to £1,000,000
Council with recommendation from Cabinet	£1,000,000 and over

### Treatment of Year End Balances

- A.39** The full Council is responsible for agreeing procedures for carrying forward under- and overspendings on budget headings.
- A.40** A budget head is considered to be a division of service as identified in the approved Budget Report, or, as a minimum, at an equivalent level to the standard service subdivision as defined by CIPFA's Service Expenditure Analysis.
- A.41** Any residual overspending on a Service budget may be carried forward as the first call on the following year's budget.
- A.42** Any revenue underspending at the year-end may be carried forward, subject to the agreement of the Cabinet, and on the advice of the Portfolio Holder for Finance and Communications. All carry forward proposals must be supported by an appropriate business case demonstrating that the underspend was planned and that the resources carried forward will be earmarked for a specific and appropriate purpose. Corporate Leadership Team should include provisional indications of likely carry forward requests in their reports on the mid-year and three-quarter review of performance. Before approval is sought for a carry forward, Corporate Leadership Team should ensure that there are no unfunded overspends within their directorate. It is extremely unlikely that proposed carry forwards for a service will be approved if there are unfunded overspends elsewhere within the directorate.
- A.43** Capital block provisions are allocations within which the full starts value of approved schemes must be contained. Any uncommitted sum at the year-end may, be carried forward subject to consideration by the Portfolio Holder for Finance and Communications. Any uncommitted sum which is not justified on this basis will be returned to Council balances. Equally, any overspending will be carried forward as the first call on the following year's provision.

### Accounting Policies

The Chief Operating Officer is responsible for selecting appropriate accounting policies and ensuring that they are applied consistently; exercising oversight of financial and accounting records and systems; and preparing and publishing reports containing statements on the overall finances of the Council including the annual statement of accounts.

- A.44** The key controls for accounting policies are:
- 🔑 Systems of internal control are in place to ensure that financial transactions are lawful.

- 🔑 Suitable accounting policies are selected and applied consistently.
- 🔑 Accurate and complete accounting records are maintained.
- 🔑 Financial statements are prepared which present fairly the financial position of the Council and its expenditure and income.

**A.45** The Chief Operating Officer is responsible for:

- 🔑 selecting suitable accounting policies and ensuring that they are applied consistently.
- 🔑 exercising supervision over financial and accounting records and systems.
- 🔑 preparing and publishing reports containing the statements on the overall finances of the Council including the Council's Annual Report and Accounts.

**A.46** Corporate Leadership Team are responsible for ensuring that staff in their directorates are aware of and adhere to the accounting policies, procedures and guidelines set by the Chief Operating Officer .

### **Accounting Records and Returns**

**A.47** The Chief Operating Officer is responsible for determining the accounting procedures and records for the Council.

**A.48** All accounting procedures will be approved by the Chief Operating Officer

**A.49** All accounts and accounting records will be compiled by the Chief Operating Officer or under his/her direction. The form and content of records maintained in other directorates will be approved by the Chief Operating Officer.

**A.50** The key controls for accounting policies are:

- 🔑 calculation, checking and recording of sums due to or from the Council will be separated as completely as possible from their collection or payment.
- 🔑 officers responsible for examining and checking cash transaction accounts will not process any of these transactions themselves.
- 🔑 reconciliation procedures are carried out to ensure transactions are correctly recorded.
- 🔑 procedures are in place to enable accounting records to be reconstituted in the event of systems failure.
- 🔑 prime documents are retained in accordance with legislative and other requirements.

### **The Annual Statement of Accounts**

**A.51** The Chief Operating Officer is responsible for ensuring that the annual

statement of accounts is prepared in accordance with the *Code of Practice on Local Council Accounting in the United Kingdom* (CIPFA/LASAAC) and signing them in accordance with the Accounts and Audit Regulation 2015. Approval of the statutory accounts has been delegated by Council to the Audit and Governance Committee.

<b>B</b>	<b>Financial Planning</b>
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**Why is this important?**

The full Council is responsible for agreeing the Council's Policy Framework and Budget, which will be proposed by the Cabinet. In terms of financial planning, the key elements are:

**The Business Plan** – this sets out:-

- What the Council wants to achieve in the short and medium term
- How services will change in the light of priorities, performance, resources, workforce planning needs and consideration of risks.
- Investment required to deliver change
- How much services will cost in overall terms and to service users
- How much Council Tax will be levied

**The Budget** - this is the financial expression of the Council's Business Plan. It sets out the allocation of resources to services and projects, the level of contingency funding, the Council Tax base and Council Tax rate, borrowing limits and capital financing requirements.

**The Capital Programme** - Capital expenditure involves acquiring or enhancing fixed assets with a long-term value to the Council, such as land, buildings, and major items of plant, equipment or vehicles. Capital assets shape the way services are delivered in the long term and create financial commitments for the future in the form of financing costs and revenue running costs.

**The Treasury Management Strategy** – which sets out the arrangements for the management of the Council's borrowing, lending, cash flows and investments.

**Specific Service Plans and Strategies** which have a financial implications.

**What's covered in this Section?**

-  Policy Framework
-  Strategic Planning Framework

- 🔗 Budgeting
  - Format of the Budget
  - Revenue Budget Preparation, Monitoring and Control
  - Determination, Monitoring and Control of Affordable Borrowing
  - Resource Allocation
  - Capital Programmes
- 🔗 Leasing and Rental Agreements
- 🔗 Maintenance of Reserves
- 🔗 Reporting

### **Policy Framework**

- B.1** The full Council is required by law, to agree a Policy Framework. The Policy Framework is defined in Chapter 4 of the Council's Constitution.
- B.2** The full Council is also responsible for approving procedures for agreeing variations to approved budgets, plans and strategies forming the Policy Framework.
- B.3** The full Council is responsible for setting the level at which the Cabinet may reallocate budget funds from one service to another. The Cabinet is responsible for taking in-year decisions on resources and priorities in order to deliver the Policy Framework within the financial limits set by the Council.

### **Strategic Planning Framework**

- B.4** Each year the Council produces a Business Plan, including an approved budget, capital programme, treasury management strategy asset management strategy and reserves strategy detailing the financial and service scenario over a three year planning horizon and the policy and expenditure changes required to respond to this scenario.
- B.5** The Chief Operating Officer will advise the Council on the financial environment, financial policies (including the appropriate levels of reserves and contingencies, prudential borrowing and treasury management) and the policy and expenditure options to assist in the determination of its Budget. The Corporate Leadership Team and Heads of Service will support this process by assessing and advising on the service scenario and policy and expenditure options for revenue and capital, in their area of responsibility, in a form determined by the Chief Operating Officer.
- B.6** The Cabinet, advised by the Chief Operating Officer, Corporate Leadership Team and Heads of Service, will develop a budget package including financing options, policy and expenditure options and capital programme. This will be subject to scrutiny by the Overview and Scrutiny Committee before the Cabinet finalises its recommendations to Council. The final Budget policy and Council Tax will be determined by Council.

### **Budgeting**

#### **Format of the Budget**

- B.7** The format of the budget determines the level of detail to which financial control and management will be exercised. The format shapes how the rules around virement operate, the operation of cash limits and sets the level at which funds may be reallocated within budgets.

- B.8** The general format of the budget will be approved by the full Council and proposed by the Cabinet on the advice of the Chief Operating Officer. The draft budget will include allocation to different services and projects, proposed taxation levels and contingency funds.

### **Revenue Budget Preparation, Monitoring and Control**

#### **Revenue expenditure**

- B.9** Revenue expenditure is broadly defined as any expenditure incurred on the day to day running of the Council. Examples of revenue expenditure include salaries, energy costs, and consumable supplies and materials.

#### **Preparation**

- B.10** The Chief Operating Officer is responsible for ensuring that a revenue budget is prepared on an annual basis and a general revenue plan on a three-yearly basis for consideration by the Cabinet, before submission to the full Council. The full Council may amend the budget or ask the Cabinet to reconsider it before approving it in accordance with the Constitution.
- B.11** The Cabinet is responsible for issuing guidance on the general content of the budget in consultation with the Chief Operating Officer as soon as possible following approval by the full Council.
- B.12** It is the responsibility of Corporate Leadership Team to ensure that budget estimates reflecting agreed service plans are submitted to the Cabinet and that these estimates are prepared in line with any guidance or directions that may be issued by the Cabinet.
- B.13** The Cabinet will then submit a 'final budget' to the full Council for approval.
- B.14** The Chief Operating Officer is responsible for reporting to the full Council on the robustness of estimates contained within the budget proposed by the Cabinet and the adequacy of reserves allowed for in the budget proposals.
- B.15** The Council shall not approve amendments to either revenue or capital budgets without first having considered the advice of the Cabinet and the Chief Operating Officer on the financial implications arising.

#### **Monitoring and Control**

- B.16** The Chief Operating Officer is responsible for providing appropriate financial information to enable budgets to be monitored effectively. He or she must monitor and control expenditure against budget allocations at a corporate level and report to the Cabinet on the overall position on a

regular basis.

**B.17** It is the responsibility of Corporate Leadership Team to control income and expenditure within their area and to monitor performance, taking account of financial information and guidance provided by the Chief Operating Officer. They must report on variances within their own areas. They must also take any action necessary to avoid exceeding their budget allocation and alert the Chief Operating Officer to any potential overspending or under-achievement of income budgets in a timely manner.

**B.18** The Chief Operating Officer is responsible for the following:

(a) Establishing an appropriate framework of budgetary management and control which ensures that:

- ✎ budget management is exercised within annual cash limits unless the full Council agrees otherwise
- ✎ timely information on receipts and payments is made available, which is sufficiently detailed to enable officers to fulfil their budgetary responsibilities
- ✎ expenditure is committed only against an approved budget head
- ✎ all officers responsible for committing expenditure comply with relevant guidance, and Finance and Contract Procedure Rules
- ✎ each cost centre has a single named manager, determined by the relevant Head of Service. As a general principle, budget responsibility should be aligned as closely as possible to the decision-making processes that commits expenditure
- ✎ significant variances from approved budgets are investigated and reported by budget managers regularly.

(b) Administering the Council's scheme of virement.

(c) Submitting reports to the Cabinet and to the full Council, in consultation with the relevant Director or Head of Service, where they are unable to balance expenditure and resources within existing approved budgets under their control.

(d) Preparing and submitting reports on the Council's projected income and expenditure compared with the budget on a regular basis.

**B.19** Corporate Leadership Team are responsible for the following:

(a) Maintaining budgetary control within their Services, in adherence to the principles in B.17, and ensuring that all income and expenditure is properly recorded and accounted for.

(b) Ensuring that an accountable budget manager is identified for each item of income and expenditure under their control. As a general

principle, budget responsibility should be aligned as closely as possible to the decision-making that commits expenditure.

(c) Ensuring that spending remains within the service's overall approved budget, and that individual budget heads are not overspent, by monitoring the budget and taking appropriate and timely corrective action where significant variations from the approved budget are forecast.

(d) Ensuring that a monitoring process is in place to review performance levels/levels of service in conjunction with the budget and is operating effectively.

(e) Preparing and submitting to the Cabinet regular reports on the service's projected expenditure compared with its budget, in consultation with the Chief Operating Officer.

(f) Ensuring prior approval by the full Council or Cabinet (as appropriate) for new proposals, of whatever amount, that:

- ✎ create financial commitments in future years
- ✎ change existing policies, initiate new policies or cease existing policies or materially extend or reduce the Council's services.

(g) Ensuring compliance with the scheme of virement.

(h) Agreeing with the appropriate Director or Corporate Leadership Team member any budget proposal, (including a virement proposal) which impacts their respective service areas, after having consulted with the Chief Operating Officer and the Finance & Communications Portfolio Holder.

(i) Ensuring Schemes of Financial Delegation are maintained for all Services within their area of responsibility.

(j) Ensuring best value is obtained.

### **Determination, Monitoring and Control of Affordable Borrowing**

**B.20** Under the Local Government Act 2003 the Council is required by regulation to have regard to the Chartered Institute of Public Finance and Accountancy's (CIPFA) Prudential Code for Capital Finance in Local Authorities. The key objectives of the Prudential Code are to ensure that within a clear framework, the capital investment plans of local authorities are affordable, prudent and sustainable. A further objective is to ensure that treasury management supports prudence, affordability and sustainability.

**B.21** The Council is responsible for approving prior to the commencement of the financial year the prudential indicators for the forthcoming financial year and at least the two subsequent financial years required by the Code. The indicators required as a minimum are:

*For the three year period:*

- 👉 Estimates of the ratio of financing costs to net revenue stream
- 👉 Estimates of capital expenditure
- 👉 Estimates of the Council Tax that would result from the totality of the estimated capital expenditure
- 👉 Estimate of capital financing requirement (underlying need to borrow for a capital purpose)
- 👉 Authorised limit for external debt
- 👉 Operational boundary for external debt

*After the year end actual values are to be calculated for:*

- 👉 Ratio of financing costs to net revenue stream
- 👉 Capital expenditure
- 👉 Capital financing requirement
- 👉 External debt

**B.22** The Chief Operating Officer is responsible for:

- 👉 establishing procedures to both monitor performance against all forward looking prudential indicators and for ensuring that net external borrowing does not exceed the capital financing requirement.
- 👉 reporting to Council any significant deviations from expectations.
- 👉 ensuring that regular monitoring is undertaken in year against the key measures of affordability and sustainability, by reviewing estimates of financing costs to revenue and the capital financing requirement.
- 👉 reporting to Council, setting out management action, where there is significant variation in the estimates used to calculate these prudential indicators, for example caused by major overruns of expenditure on projects or not achieving in-year capital receipts.

### **Resource Allocation**

**B.23** The Chief Operating Officer is responsible for developing and maintaining a resource allocation process that ensures due consideration of the Council's Policy Framework.

**B.24** The Chief Operating Officer is responsible for:

- 👉 Advising on methods available for the funding of resources, such as grants from central government and borrowing requirements.
- 👉 Assisting in the allocation of resources to budget managers.

**B.25** Corporate Leadership Team are responsible for:

- 👉 Working within budget limits and to utilise resources allocated, and further allocate resources, in the most efficient, effective and economic way.

- Identifying opportunities to minimise or eliminate resource requirements or consumption without having a detrimental effect on service delivery.

### Capital Approvals

#### Capital Expenditure

- B.26** Capital expenditure is broadly defined as expenditure on the acquisition of a tangible asset, or expenditure which enhances (rather than merely maintains), the value of an existing asset and/or extends the useful life of an asset and increasing usability, provided that the asset yields benefits to the Council and the services it provides is for a period of more than one year.

#### Capital Approvals

- B.27** Capital approvals referred to in these Finance Procedure Rules relate to the total cost or “starts value” of each provision or scheme rather than the anticipated expenditure in each year. Individual items estimated to cost £250,000 and above will be treated as separate schemes or provisions. The Council has established a Project Gateway process to provide a strong quality assurance model for major Projects and Programmes which underpins these rules.

- B.28** A Business Case, in a format agreed by the Chief Operating Officer, must be prepared for all capital proposals, including the replacement of individual vehicles or items of equipment, before being submitted for inclusion in the Capital Programme or before approval is sought from Members in year. The Business Case format will be proportionate to the value and level of risk. Where there is a greater risk further detail in the Business Case may also be required, in a format agreed by the Chief Operating Officer. Officers must comply with the Project Gateway Process as determined by the Chief Operating Officer which is subject to review by the Executive Monitoring Board.

- B.29** A Business Case, must also be prepared for all revenue proposals with a significant financial impact, risk profile or policy change, as defined by the Chief Operating Officer. The template, in a form agreed by the Chief Operating Officer, must include an assessment of the Service consequences, risk and impact on users, and include any differential impact on particular groups or localities. The Project Gateway process applies to these proposals in the same way as set out in B28 above.

#### Capital Block Provisions

- B.30** As part of the annual policy and planning process, schemes in the capital programme which have not reached an advanced state will be periodically reviewed.

- B.31** Services are expected to develop reserve capital schemes which can be brought forward in the event of changes in the approved programme, subject to approval via the normal routes.
- B.32** Block provisions may be approved within the Capital Programme for individual schemes costing less than £250,000. A detailed breakdown of the expenditure proposed must be submitted as part of the policy and planning process.
- B.33** Where possible, all capital schemes contained within the block provision should be approved through the annual capital programme setting process, within the timetable set out by the Chief Operating Officer and approved by Council in February. Any subsequent further breakdown of block approvals must follow the appropriate approval route, with completion of a delegated decision template where necessary.

### **Capital Monitoring and Amendments to the Capital Programme**

- B.34** Any 'in year' approval sought for capital schemes, must be supported by a completed, detailed Business Case template, in the format prescribed by the Chief Operating Officer, which has been considered by the Technical Enabler Group prior to submission through the appropriate decision making route.
- B.35** Once the Capital Programme has been approved, Project managers must produce a more detailed Business Case and appropriate Project Initiation Document (PID) as required outlining in more detail how the Project or Programme will be delivered which must be approved by the relevant SRO at a Project Board. Where project outcomes or costs alter significantly from those set out in the original Business Case a revised and updated Business Case must be completed and submitted to the relevant Project Board. This process is subject to Executive Monitoring Board oversight and assurance. In the event that the Executive Monitoring Board reviews a particular Project and considers that it is not being managed effectively or has become unviable the Portfolio Holder for Finance and Communications is authorised, in consultation with the Leader of the Council, the Portfolio Holder for Corporate Policy and Legal Services and the relevant Portfolio holder for the Project to recommend remedial action or, in exceptional circumstances, the abandonment of the Project or Programme through the appropriate decision making route.
- B.36** The capital programme will distinguish between committed expenditure from schemes already approved, recurring programmes and new proposals, both medium and longer term.
- B.37** Where budget provision is included for feasibility work and option

development in the capital programme and subsequently the scheme does not progress the expenditure incurred will be charged to revenue.

**B.38** Wherever possible, expenditure in respect of Highways improvements funded by developers and Rechargeable works should be included in the Capital Programme. Where this is not possible Heads of Service may approve capital expenditure in respect of:

- 🔑 Highway improvements fully funded by developers under Section 278 of the Highways Act 1980, provided that a formal agreement has been completed with the developer
- 🔑 Other rechargeable reinstatement work
- 🔑 Urgent work to repair, replace or reinstate vehicles, buildings or equipment, where the work is to be fully funded from insurance monies following consultation with the Head of Finance and Performance.

**B.39** In addition, Heads of Service may authorise essential design work required in advance of the start of the financial year on capital schemes which are in the programme approved by Council in February.

**B.40** Council will approve the reprofiling of spend on approved capital schemes across financial years. Council will approve the carry forward of slippage/accelerated spend into future financial years.

### **Capital Receipts**

**B.41** The Chief Operating Officer must be informed of all proposed sales of land and buildings so that the effect on financial and property management can be assessed.

**B.42** On the advice of the Chief Operating Officer, the Council will determine how capital receipts will be applied when setting the annual revenue and capital budget.

### **Leasing and Rental Agreements**

**B.43** Leasing or renting agreements must not be entered into unless the service has established that they do not constitute a charge against the Council's prudential borrowing limits. Advice must be obtained from the Chief Operating Officer on general leasing arrangements and on whether the lease is a finance or operating lease. Chief Operating Officer approval must be obtained for all agreements which may involve a leasing charge.

**B.44** Leases relating to land or property also require the approval of the Chief Operating Officer. Only the Director of Legal Services or his/her authorised deputies, or persons specifically authorised by the Service Scheme of Financial Delegation, may sign such agreements.

## Maintenance of Reserves

**B.45** It is the responsibility of the Chief Operating Officer to advise the Cabinet and/or the full Council on prudent levels of reserves for the Council.

**B.46** The key controls are:

- 🔑 Professional standards as set out in the *Code of Practice on Local Authority Accounting in the United Kingdom*: and agreed accounting policies.
- 🔑 Clear agreement of the purpose for which reserves are held and the type of expenditure which they may be used to fund.
- 🔑 Clear processes for the authorisation of Appropriations to and from reserves.

**B.47** The Chief Operating Officer is responsible for:

- 🔑 Advising the Cabinet and/or the full Council on prudent levels of reserves for the Council, having due regard to any advice that may be offered by the Council's external auditor in this matter.

**B.48** Corporate Leadership Team are responsible for:

- 🔑 Ensuring that resources are used only for the purposes for which they were intended.

## Reporting

**B.49** Heads of Service are responsible for preparing regular reports on overall financial and non-financial performance and progress against service plan targets, and for submitting these to the Cabinet, and the Overview and Scrutiny Committee after consulting the Chief Operating Officer in accordance with procedures agreed from time to time. These reports must include specific reference to the implementation of policy changes and new developments agreed as part of the budget setting process and other specific requirements as notified in the reporting guidance. Capital Project Managers will report periodically to their relevant Cabinet Member on the progress and forecast of all capital expenditure and income against the approved programme.

**B.50** These regular reports are also to include specific reference to Service performance against the expected non-financial outcomes in the form of key performance targets. Heads of Service are expected to achieve value for money in the delivery of services and the reports should demonstrate how this has been achieved together with an analysis of how key policy and expenditure proposals have been implemented.

The key reporting stages are:

- 🔑 Approval of the service plan, including budget statement and

- performance targets.
- ☞ Approval of the Business Case, which will be in a form prescribed by the Chief Operating Officer before it can be included in the Capital Programme.
- ☞ Quarterly reviews of revenue and capital expenditure.
- ☞ Final outturn reports for both revenue and capital expenditure, including full post-implementation review, on all major capital schemes completed during the year. This will also include a report on the use of block provisions.
- ☞ Summary quarterly reviews and outturn position statements of both capital and revenue expenditure will also be reported to Council through its relevant subordinate bodies.

**B.51** In addition, the reports will be specifically required to give details in respect of the following:-

- ☞ Potential overspends and proposed remedial action, including any impact on balances and future year's budgets which may need to be factored in to future financial scenario planning
- ☞ Amendments to approved budgets (virements, supplementary capital estimates etc.) where Member approval is required.

<b>C</b>	<b>Risk Management and Control of Resources</b>
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**Why is this important?**

It is essential that robust, integrated systems are developed and maintained for identifying and evaluating all significant operational risks to the Council. This should include the proactive participation of all those associated with planning and delivering services.

**What's covered in this Section?**

- 🔑 Risk Management
- 🔑 Insurance
- 🔑 Internal Controls
- 🔑 Audit Requirements
  - Internal Audit
  - External Audit
- 🔑 Preventing Fraud and Corruption
- 🔑 Financial Irregularities
- 🔑 Assets
  - Property
  - Security
  - Inventories
  - Stocks and Stores
  - Cash
  - Intellectual Property
  - Asset Disposal
  - Write offs
- 🔑 Treasury Management
  - Treasury Management and Banking
  - Investments and Borrowings
  - Trust Funds and Funds held for Third Parties
- 🔑 Staffing
  - Salaries and Wages
  - Early Retirement/Severance
  - Travelling and Subsistence
  - Code of Conduct
- 🔑 Third Party Funds
- 🔑 Retention of Records

## **Risk Management and Insurance**

- C.1** The Cabinet is responsible for advising Council on an appropriate risk management policy statement and strategy, including risk appetite/tolerance levels, and for reviewing the effectiveness of risk management. The Cabinet is also responsible for ensuring that proper insurance exists where appropriate.
- C.2** The Corporate Manager Governance and Audit is responsible for preparing the Council's risk management policy statement and for promoting it throughout the Council.

### **Insurance**

- C.3** The Chief Operating Officer will maintain and administer the Council's insurances. The Chief Operating Officer is responsible for authorising the settlement or repudiation of insurance claims and associated costs acting on advice from the Council's solicitors, insurers, and claim handlers.
- C.4** Corporate Leadership Team and Heads of Service are responsible for informing the Chief Operating Officer immediately of:
- ✎ Any insurance claims received
  - ✎ Any events which may result in an insurance claim against the Council
  - ✎ The terms of any indemnity which the Council is required to give prior to entering into any contracts etc.
  - ✎ Any new risks which might require to be insured, together with any changed circumstances affecting existing risks. Consideration should be given to new projects, new ways of working, changes in legislation requiring new ways of delivery etc, where the insurance impact is often overlooked.
- C.5** No new insurances may be taken out without prior consultation with the Chief Operating Officer.
- C.6** Corporate Leadership Team must ensure that there is co-operation with the Insurance Team in providing the correct documentation and that the correct retention of documents is observed.
- C.7** Service budgets will be charged with the cost of legal penalties or losses incurred by the Council as a result of any failure to comply with the requirements of the Civil Procedure Rules and these Finance and Contract Procedure Rules relating to claims.

## Risk Management

- C.8** The Council's approach to Risk Management is that it should be embedded throughout the organisation at both a strategic and an operational level, through integration into existing systems and processes.
- C.9** The Corporate Manager Governance and Audit develops the strategy and supporting framework on behalf of the Corporate Leadership Team. The Audit and Governance Committee scrutinise the risk management process ensuring the Council's risks are managed effectively and that strategic decisions are informed by, and influence the Corporate Risk Register.
- C.10** Corporate Leadership Team are responsible for ensuring the Risk Management Strategy is implemented and that the full risk management cycle operates within their Service.

The full cycle consists of:

- ✎ Identification of risks, both negative and positive, in relation to the objectives of the Council.
- ✎ Evaluation of risks scored for likelihood and impact, both gross (before any controls) and net (with existing controls)
- ✎ Treatment of the risk either by: avoidance, mitigation, transfer or to consciously accept the risk.
- ✎ Actions and risks monitored and reviewed on a regular basis.
- ✎ The Council's Risk Register will be maintained and co-ordinated by the Corporate Manager Governance and Audit.

- C.11** There are two levels to the Risk Register:

**Corporate** - those risks that impact on the organisation's overall objectives either because of their frequency of occurrence or the significance of the impact.

**Service** - those risks that impact on the service objectives. There should be a movement of risks both upwards and downwards throughout the levels and treatment addressed at the most appropriate level of the organisation.

- C.12** Heads of Service are responsible for ensuring risk management is carried out at both an operational and strategic level in accordance with the agreed guidance and procedures.
- C.13** Service strategic risk assessments will be carried out annually to inform the service plan. These risk assessments will form the basis of the Service element of the Council's risk register.
- C.14** Heads of Service will take account of, and address, corporate risks where appropriate and inform the Corporate Manager Governance and Audit of any service risks that should be considered significant enough to raise to

the corporate level.

- C.15** Service risk registers, and associated actions, will be monitored and reviewed on a regular basis (at least quarterly) as part of the performance management process.
- C.16** The Corporate Risk Register will be reported to the Corporate Leadership Team and to the Audit and Governance Committee in accordance with the budget reporting cycle.

### **Business Continuity**

- C.17** The Civil Contingencies Act 2004 places a statutory requirement for Local Authorities to maintain plans for the continuation of services in the event of an emergency, so far as is reasonably practicable. Services are expected to have arrangements in place to ensure the effective identification, evaluation and management of business critical services. Further guidance is available on Centranet and from the Corporate Manager Governance and Audit.

### **Internal Controls**

- C.18** Internal Control refers to the systems of control devised by management to help ensure the Council's objectives are achieved in a manner that promotes economical, efficient and effective use of resources and that the Council's assets and interests are safeguarded.
- C.19** The Chief Operating Officer is responsible for advising on effective systems of internal control. These arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice. They should ensure that public funds are properly safeguarded and used economically, efficiently, and in accordance with the statutory and other authorities that govern their use.
- C.20** It is the responsibility of Corporate Leadership Team to establish sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve continuous improvement, economy, efficiency and effectiveness and for achieving their financial performance targets.

### **Audit Requirements**

#### **Internal Audit**

- C.21** The requirement for an internal audit function for local authorities is implied by section 151 of the Local Government Act 1972, which requires that authorities "make arrangements for the proper administration of their financial affairs". The Accounts and Audit Regulations 2015 more specifically require that a "relevant authority must ensure that it has a

sound system of internal control which facilitates the effective exercise of its functions and the achievement of its aims and objectives; ensures that the financial and operational management of the authority is effective; and includes effective arrangements for the management of risk.

- C.22** The Public Sector Internal Audit Standards define internal auditing as “an independent, objective assurance and consulting activity designed to add value and improve an organisation’s operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.”
- C.23** The Council’s Internal Audit function delivers this function within the Council and provides assurance to the Section 151 officer and the Audit and Governance Committee, with regard to the effectiveness of the Council’s internal control environment.
- C.24** The Council must, on an annual basis, produce an Annual Governance Statement. This statement must provide a description of the system of internal control within the Council, a description of any work undertaken to assess the effectiveness of the internal control framework, and any significant internal control weaknesses.
- C.25** To contribute to the production of the Annual Governance Statement, the Corporate Manager Governance and Audit, is responsible for planning and delivering a programme of independent review of the Council’s activities, the scope of the programme being based on the Council’s objectives and an assessment of the risk which may affect the achievement of these objectives.
- C.26** The Corporate Manager Governance and Audit is also responsible for reporting to those charged with Governance and currently satisfies this requirement by presenting an annual report to the Audit and Governance Committee, summarising the audit plans for the coming year and a commentary on audit activity which is completed or in progress. A mid-year report setting out progress against the annual audit plan is taken to the Audit and Governance Committee. In addition any matters of material importance in relation to audit matters are also reported to the Cabinet and Audit and Governance Committee.
- C.27** Audit staff will have, in accordance with the Accounts and Audit Regulations, and with strict accountability for confidentiality, and safeguarding records and information, full, free and unrestricted access to any and all of the Council’s premises, personnel, assets, records and third party fund transactions pertinent to carrying out any engagement, including those of the Council’s alternative service delivery vehicles. These rights of access should be documented in the management agreement.

With regards to organisations participating in partnering arrangements, Internal Audit staff shall have such access to the premises, personnel assets and records of the partner as is necessary for the purposes of the

partnering arrangement, as detailed in Procedure Rule E.15. Partners will be required to grant reasonable access when requested and details of such access should be agreed with the partner and set down in the Partnering Agreement. Where the right of access has not been specified in existing arrangements then appropriate discussions with partners should take place.

### **External Audit**

- C.28** The basic duties of the external auditor are governed by section 15 of the Local Government Finance Act 1982, as amended by section 5 of the Audit Commission Act 1998.
- C.29** The Local Audit and Accountability Act 2014 established new arrangements for the audit and accountability of relevant authorities. Under these new arrangements the Council has opted for its external auditors to be appointed by the Public Sector Audit Appointments Limited (PSAA), an independent company established by the LGA for this purpose.
- C.30** The Council may, from time to time, be subject to audit, inspection or investigation by external bodies such as HM Revenue and Customs, who have statutory rights of access.

### **Preventing Fraud and Corruption**

- C.31** The Chief Operating Officer is responsible for the development and maintenance of an anti-fraud and anti-corruption policy.
- C.32** The Council has an approved Anti Fraud and Corruption Policy which places responsibility for preventing fraudulent activity with all Members, Managers and individual Members of staff. Any matters which involve, or are thought to involve, any fraud or other significant irregularity involving Council assets or those of a third party fund, must be notified immediately to the Corporate Manager Governance and Audit Manager, in conjunction with other officers detailed in the Council's Anti Fraud and Corruption Strategy.
- C.33** In line with the Anti Fraud and Corruption Strategy the Monitoring Officer will, in consultation with the appropriate Corporate Leadership Team member and Corporate Manager Governance and Audit, decide whether any matter under investigation should be recommended for referral to the Police or the appropriate enforcement agency. The Council's External Auditor also has powers to independently investigate fraud and corruption.

### **Assets**

- C.34** In the context of these Rules, assets are defined as the resources, other than people, that the Council uses to deliver its service functions. Assets include buildings, land and infrastructure; furniture; equipment; plant; stores and "intellectual property" such as computer software, data and

information of all kinds.

- C.35** Corporate Leadership Team and Heads of Service are responsible for the care, control and proper and economical use of all assets used in connection with the operation and delivery of their Services. Proper records should be maintained for these assets, together with appropriate arrangements for their management and security. Information Assets should be recognised in line with the Council's guidance and recorded in the Information Asset Register.
- C.36** Heads of Service are responsible for ensuring that assets are used only for official purposes and that all appropriate rights, licenses and insurances are obtained.
- C.37** Heads of Service are responsible for ensuring that all computer software used is properly licensed.
- C.38** Corporate Leadership Team are expected to have policies in place for:
- 👉 the effective disposal of surplus assets
  - 👉 asset replacement programme
  - 👉 compilation of and regular review of Asset inventories.

### Property

- C.38** The Council's Asset Management Strategy sets out the vision, core values and objectives that form the context for the preparation of the Corporate Asset Management Plan and Service Asset Management Plans.

The Council has adopted a Corporate Landlord approach to the ownership and management of its property assets. The Corporate Landlord approach means that the ownership of property assets and the responsibility for their management and maintenance is transferred from service directorates to the Corporate Landlord, which is a centralised corporate function.

In this way the Corporate Landlord approach :

- C.39**
- 👉 Enables the Council to utilise its assets to deliver better, more efficient services to our communities.
  - 👉 Unlocks the value of assets, seeks efficiencies through joint arrangements with our public sector partners and maximises private sector investment.
  - 👉 Ensures the provision of a consistent, corporate and strategic approach to the management of the Council's property portfolio, consolidating resources, eliminating duplication, improving efficiency, procurement and the establishment of corporate property standards
  - 👉 Supports the delivery of the Council's Corporate Plan

- C.40** Individual services are occupiers of land and property for the purposes of delivering their functions. There are specific responsibilities that fall to both Corporate Landlord and occupiers depending on the nature of the asset and service. The occupier's priority is to plan and deliver their operational service. The Corporate Landlord's priority is to ensure the service is adequately accommodated and to maintain and manage the property asset.
- C.41** The Corporate Landlord's responsibility extends to the acquisition, development and disposal of land and property. This means that the Corporate Landlord is responsible for asset review, feasibility and options appraisal across all services.
- C.42** All property acquisitions, lettings and disposals must first be discussed with the Executive Director Place. Separate rules apply to specific processes, such as the use of capital receipts from property sales to pay for new schemes, and guidance should be sought from the Chief Operating Officer and the Executive Director Place where this arises.

### **Inventories**

- C.43** Heads of Service must ensure that proper arrangements are made to maintain inventories of all valuable and transportable items, including vehicles, furniture, computer and other equipment (including software), visual aids, expensive tools and sports equipment.
- C.44** The inventory must be updated for all acquisitions and disposals and checked at least annually. Items acquired under leasing arrangements must be separately identified for disclosure in the published final accounts.

### **Stocks**

- C.45** Stock is defined as consumable items constantly required and held by a Service in order to fulfil its functions. Heads of Service are responsible for the control of stocks. They must ensure that stocks are appropriately secured and recorded, do not exceed reasonable requirements and that all significant stock is accounted for in the year end accounts. Stocks should be checked at least once a year, more frequently in the case of expensive items.

### **Cash**

- C.46** Cash held on any Council premises should be held securely, and should not exceed any sums for which the Council is insured. If retention of cash on site is unavoidable in exceptional circumstances, the Head of Service is responsible for making appropriate security arrangements. All cash should be banked as quickly as possible.

### **Asset disposal/Write-off**

- C.47** The Chief Operating Officer may authorise the write off of losses up to £5,000, or disposals, of obsolete or surplus equipment, materials, vehicles or stores up to a disposal value of £5,000. Where the sum exceeds £5,000 approval must be sought from the Portfolio Holder for Finance and Communications. Any write off which arises as a result of theft or fraud must be notified to the Corporate Manager Governance and Audit immediately.

### **Treasury Management**

- C.48** The Council has adopted CIPFA's *Code of Practice for Treasury Management in Local Authorities*.
- C.49** The full Council is responsible for approving the treasury management policy statement setting out the matters detailed in paragraph 15 of CIPFA's *Code of Practice for Treasury Management in Local Authorities*. The policy statement is proposed to the full Council by the Cabinet. The Chief Operating Officer has delegated responsibility for implementing and monitoring the statement.
- C.50** All money in the hands of the Council is controlled by the Chief Operating Officer as designated for the purposes of section 151 of the Local Government Act 1972, referred to in the code as the finance director.
- C.51** The Chief Operating Officer is responsible for proposing to the Cabinet a treasury management strategy for the coming financial year at or before the start of each financial year.
- C.52** All Cabinet decisions on borrowing, investment or financing shall be delegated to the Chief Operating Officer, who is required to act in accordance with CIPFA's *Code of Practice for Treasury Management in Local Authorities*.
- C.53** The Chief Operating Officer is responsible for reporting to the Cabinet not less than four times in each financial year on the activities of the treasury management operation and on the exercise of his or her delegated treasury management powers. One such report will comprise an annual report on treasury management for presentation by 30 September of the succeeding financial year.

### **Banking**

- C.54** It is the responsibility of the Chief Operating Officer to operate such bank accounts as are considered necessary. Opening or closing any bank account shall require the approval of the Chief Operating Officer.

### **Investments and Borrowings**

- C.55** It is the responsibility of the Chief Operating Officer to:

- ☞ To ensure that all investments of money are made in the name of the Council or in the name of approved nominees.
- ☞ To ensure that all securities that are the property of the Council or its nominees and the title deeds of all property in the Council's ownership are held in safe custody
- ☞ To effect all borrowings in the name of the Council.
- ☞ To act as the Council's registrar of stocks, bonds and mortgages and to maintain records of all borrowing of money by the Council.

### **Trust Funds and Funds Held for Third Parties**

**C.56** It is the responsibility of the Chief Operating Officer to:

- ☞ To arrange for all trust funds to be held, wherever possible, in the name of the Council (e.g. 'Cheshire East Borough Council on behalf of.....'). All officers acting as trustees by virtue of their official position shall deposit securities, etc relating to the trust with the Chief Operating Officer , unless the deed otherwise provides.
- ☞ To arrange, where funds are held on behalf of third parties, for their secure administration, approved by the Chief Operating Officer, and to maintain written records of all transactions.
- ☞ To ensure that trust funds are operated within any relevant legislation and the specific requirements for each trust.

### **Staffing**

#### **Salaries and Wages**

**C.57** Corporate Leadership Team and Heads of Service are responsible, in consultation with the Head of Strategic Human Resources, for providing accurate and appropriate information and instructions to the Employee Service Centre to enable the calculation and prompt payment of salaries, expenses and pensions, including details of appointments, promotions, regradings, resignations, dismissals, retirements and absences from duty. Human Resources will advise the Employee Service Centre of relevant changes in respect of employee's pensions. The Employee Service Centre manager will make arrangements for payment to the appropriate bodies, of all statutory, including taxation, and other payroll deductions.

**C.58** Time sheets and other pay documents which are used to generate payment of salaries, wages or other employee-related expenses must be on official forms or via authorised electronic inputs. Heads of Service are responsible for ensuring that they are certified by an authorised officer and that they are submitted to the Employee Service Centre in accordance with the specified timetable. This includes on-line input entered locally. The names and specimen signatures of authorised officers must be secured by Corporate Leadership Team and Heads of Service and included in the service Scheme of Financial Delegation notified to the Chief Operating Officer.

**C.59** The Head of Strategic Human Resources will implement national and local

pay agreements as soon as possible after their notification from the appropriate body. Arrangements for funding such awards will be determined each year as part of the budgetary process.

### **Early Retirement/Severance**

- C.60** Where Heads of Service wish to bring forward proposals under the Council's policies on severance and early retirement, they must be accompanied by a full cost and affordability assessment, in a form agreed by the Chief Executive, the Chief Operating Officer and the Head of Strategic Human Resources. The Portfolio Holder and Portfolio Holder for Finance and Communications shall be consulted for proposals relating to SM1 and above.
- C.61** The Chief Executive or Chief Operating Officer must approve all requests up to £100,000 including pension strain. All requests in excess of £100,000 including pension strain must be approved by the Staffing Committee.
- C.62** Heads of Service will generally be required to meet the costs of severance and early retirement from within their approved budget, subject to phasing over an agreed period. A corporate budget may also be established for this purpose and access to this budget will be subject to the agreement of the Chief Operating Officer and the Head of Strategic Human Resources.

### **Travelling and Subsistence**

- C.63** Heads of Service are responsible for instructing the Head of Strategic Human Resources and for providing appropriate and accurate information to enable the prompt and accurate payment of travelling, subsistence and other expenses to authorised employees in accordance with the terms of employment agreed by the Council.
- C.64** Heads of Service are responsible for ensuring that Council employees who use their cars for official business are properly insured to indemnify the Council against any loss and for ensuring that payments are only made in respect of journeys which are necessary and actually undertaken. Heads of Service should ensure that the most economical available means of transport is used, including pool cars, hire cars and car sharing.
- C.65** All claims for reimbursement must be made using appropriate official claim forms, always using electronic processing where available.

Further guidance is available via the Centranet>Working for us>Pay and Expenses

### **Code of Conduct**

The Code of Conduct for Employees applies to, and will be followed by all officers. It covers standards, disclosure of information, political neutrality,

relationships, appointments and other employment matters, outside commitments, personal interests, equality issues, separation of roles during tendering, gifts and hospitality, use of financial resources and sponsorship.

- C.66** Where an outside organisation wishes to sponsor or is asked to sponsor a Council activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts and hospitality applies, as detailed in the Code of Conduct for Employees.

Further guidance is available via the Centranet>Working for us>Performance and Conduct

### **Third Party Funds**

- C.67** A third party fund is defined as any fund financed other than by the Council, controlled wholly or partly by a member of the Council's staff in connection with the clients, establishments or activities of the Council such as School Funds, Amenity Funds or Criminal Injuries Compensation Payments for children in care.
- C.68** Officers maintaining Third Party Funds are responsible for informing the Corporate Manager Governance and Audit of their nature and purpose.
- C.69** Money or goods belonging to the Third Party Fund must be kept completely separate from other money or goods belonging to the Council. Similarly, completely separate records must be kept of the money or goods involved.
- C.70** An independent auditor must be appointed who has suitable qualities though not necessarily professionally qualified, to audit the Third Party Fund on an annual basis. The Corporate Manager Governance and Audit will advise on such appointments. Annual Statements of Account and Audit Certificates must be formally presented to a Management Committee or other appropriate governing body.
- C.71** Corporate Leadership Team are responsible for ensuring that any Third Party Funds controlled by Council staff are:-
- 🔗 formally declared to the Corporate Manager Governance and Audit as part of a register kept by the Service/Service
  - 🔗 maintained separately and correctly in accordance with these Finance Procedure Rules, and
  - 🔗 subject to the same standards of stewardship and probity as Council funds.
- C.72** The Returning Officer will be responsible for maintaining complete and accurate records and for reconciliation with regard to elections accounts.

## Retention of Records

- C.73** The Council, in common with other public and private organisations, has certain statutory obligations it has to meet for the retention of its records. It also has to fulfil the requirements of HM Revenue and Customs, other legislative requirements and the external auditors in respect of its financial records.
- C.74** All records held should have an appropriate retention period assigned to them, which meet the statutory obligations to retain financial records, but also takes into account legislative requirements such as the Limitation Act and Data Protection Act; Freedom of Information requirements; and the business needs of the Service.
- C.75** The majority of financial records must be kept for 6 years from the end of the tax year to which they relate. Some records however, may need to be kept for longer periods e.g. if required to defend future insurance claims. It is possible others can be destroyed within shorter periods. Guidance on the appropriate retention period is given in the Council's Retention Policy and its Information Asset Register.

**D Financial Systems and Procedures**

**Why is this important?**

Sound systems and procedures are essential to an effective framework of accountability and control.

**What's covered in this Section?**

- 🔑 Income and Expenditure
  - Income
    - Banking Arrangements
    - Generating Income - Charging for Income
    - Collection of Income
    - Bad Debts
  - Ordering and paying for work, goods and services
    - General Principles
    - Payment of Invoices
    - Non-invoice payments
    - Purchase Cards/Credit Cards
    - Imprest Accounts
  - Payments to Members
- 🔑 Taxation
- 🔑 Trading Accounts and Business Units

## **Income and Expenditure**

### **Banking Arrangements**

- D.1** The Council will approve the terms under which banking services, including overdraft facilities, are provided.
- D.2** All bank accounts must be titled impersonally in the name of Cheshire East Borough Council.
- D.3** Subject to any directions given by the Council, all arrangements with the Council's bankers must be made solely through the Chief Operating Officer. No bank accounts may be opened or arrangements made with any other bank except by agreement with the Chief Operating Officer .
- D.4** Bank transfers from the General Fund and subsidiary accounts must be authorised by the Chief Operating Officer, or those officers authorised to sign through the agreed Scheme of Financial Delegation or in accordance with the Treasury Management Practice Statements.
- D.5** Cheques drawn must bear the mechanically impressed signature of the Chief Operating Officer or be signed by the Chief Operating Officer or other officer authorised to sign through the agreed Scheme of Financial Delegation.

### **Income**

#### **Generating Income**

- D.6** The Chief Operating Officer is responsible for developing and maintaining standards, procedures, systems and reports to facilitate the effective and efficient identification, collection, receipting, banking and recovery of income due to the Council in accordance with current relevant UK legislation.

Corporate Leadership Team are responsible for ensuring that the appropriate legal authority for all income generating activities has been identified and for maintaining an Income and Charging Strategy in a format specified by the Chief Operating Officer.

- D.7 Charging for Income**

Corporate Leadership Team, in consultation with the relevant Portfolio Holder, shall determine the level of fees or charges payable in respect of any chargeable goods or services supplied, work undertaken or the loan or use of plant, equipment or machinery.

**D.8** Charges must be reviewed annually in the light of all relevant information, to the service area, including consideration of appropriate inflation factors.

**D.9 Collection of Income**

The Council operates a Sundry Debt Collection policy to secure invoiced sundry debt income for the provision of services. All debt owing to the Council must be collected promptly, effectively, efficiently and economically, while ensuring fair treatment of those that owe money, including consideration of any financial difficulties.

**D.10** Council officers must comply with guidelines issued by the Chief Operating Officer for the safe and efficient collection and recording of all money due to the Council.

**D.11** Corporate Leadership Team are responsible for ensuring that accounts for income due to the Council, including grant claims, reimbursements and third party contributions, are raised immediately and accurately in a form approved by the Chief Operating Officer . These must include VAT where appropriate.

**D.12** The cost of collection should be taken into account when raising accounts. Corporate Leadership Team must ensure that the method of collection is the most cost effective relative to the value of the transaction.

**D.13** Payment shall be collected before the service or goods are provided unless explicitly agreed or stated otherwise in the fees and charges register.

**D.14** Corporate Leadership Team are responsible for ensuring that all income received is receipted, where required, recorded correctly against the appropriate budgets, and in the case of cash and cheques, banked with the minimum of delay. The frequency of banking should follow guidelines provided by the Chief Operating Officer Services should avoid incurring disproportionate banking charges on relatively low value transactions, taking into account local security arrangements.

**D.15** Corporate Leadership Team are responsible for monitoring income collection and ensuring appropriate recovery action is taken. A summary of the position on the level of outstanding debt and collection issues should be included in quarterly financial updates and the final outturn report. Full provision for income still outstanding six months after the due date should be made in Service accounts. This should not however preclude pursuit of the debt.

**D.16** The Chief Operating Officer will monitor compliance with Finance Procedure Rules D.14 and D15 and may, in circumstances where

avoidable adverse cash flow has resulted, determine an appropriate interest charge against Service budgets.

**D.17** Credit notes must be authorised by appropriate officers nominated in the local Scheme of Financial Delegation.

**D.18** Any receipts, tickets or other documents used as receipts should be in a format agreed by the Chief Operating Officer. All controlled stationery issued to a Head of Service must be recorded in a register, which is held by a single officer within each Service.

### **Bad Debts**

**D.19** Bad debts may be written off by Authorised Officers as contained in the Scheme of Financial delegation in consultation with the Chief Operating Officer, Director of Legal Services, the Portfolio Holder for Finance and Communications and the relevant Portfolio Holder.

**D.20** Corporate Leadership Team are responsible for ensuring that an adequate provision for bad debt is made in the Council's accounts at year end and that contributions to this provision are included in budgetary projections and outturn reports.

### **Ordering and paying for work, goods and services**

#### **General Principles**

**D.21** Corporate Leadership Team and Heads of Service are responsible for providing all appropriate information and instructions to Transactional Services to allow for prompt and accurate payment for goods and services provided and for the analysis of expenditure.

**D.22** Except for purchases by visa purchase card, all purchases must be supported by an official requisition and purchase order unless previously agreed with the Procurement Manager. All purchases must have regard to these Finance Procedure Rules.

**D.23** All requisition and purchase orders must be authorised in accordance with the relevant service Scheme of Financial Delegation to ensure that funds are available to pay for the purchase.

**D.24** Where a requisition for the purchase of goods or services exceeds £5,000 in value Contract Procedure rules Part 2.1 apply.

**D.25** All official purchase orders must include, as a minimum, the order number, the price agreed with the supplier, description of the goods or services to be provided, the delivery address, the address where invoices must be received and a link to the standard terms and conditions for the goods and services to be provided.

- D.26** Heads of Service must ensure that there is adequate separation of duties in the raising and authorisation of requisitions, authorising of purchase orders, receipt of goods and authorisation of payments to creditors.
- D.27** Heads of Service must ensure robust processes to continually maintain computer records and accesses, and Schemes of Financial Delegation so that electronic workflows associated with core financial systems are not compromised.
- D.28** All purchasing activity must be carried out in accordance with the Council's Procurement Strategy & Contract Procedure Rules and advice issued about efficient and effective use of the Council's core financial and e-procurement systems and processes. Such processes will include the deployment of VISA purchase cards.
- D.29** Approval of the Procurement Manager must be sought in advance of entering into any supply agreement with a commercial creditor who has not been set up on the Council's core financial system.
- D.30** Heads of Service must consult the Chief Operating Officer on appropriate arrangements for purchases of goods and services which cannot be accommodated within standard ordering and payment processes.

#### **Payment of Invoices**

- D.31** All invoices must be sent directly by the creditor to the address stated on the official purchase order to enable prompt payment.
- D.32** All invoices, as a minimum, must include the official purchase order number, the description of the goods or services provided, the quantity delivered, the delivery address, the date of the invoices and/ or date of delivery of the goods or services, the address and VAT registration number of the supplier and the price and VAT at the prevailing rate.
- D.33** Invoices received without a valid purchase order number will be returned to the creditor as unauthorised for payment.
- D.34** The Council's standard payment terms are 30 days from receipt of a correct invoice by BACS (Bankers Automated Clearing System). Alternative terms may not be negotiated or agreed with suppliers without the explicit approval of the Procurement Manager. Heads of Service are responsible for notifying suppliers of these terms and for ensuring that they are observed by all those involved in the purchasing and payment processing.
- D.35** Payment will only be made for goods and services which have been formally receipted in accordance with receipting procedures set out by the Chief Operating Officer.

- D.36** All purchasing activity must be carried out in accordance with the Council's Procurement Strategy & Contract Procedure Rules and any advice or guidance that may be issued from time to time by the Procurement Manager regarding the efficient and effective use of the Council's core financial and e-procurement systems and processes. Invoices received for payment must comply with the Council's best practice processes.

**Non-invoice payments**

- D.37** Where Heads of Service wish to initiate a payment to a third party without a supporting invoice, an official request for payment must be submitted in a form approved by the Procurement Manager.
- D.38** Any such requests must be authorised by an officer designated with an appropriate approval limit in the relevant service Scheme of Financial Delegation. They are responsible for ensuring that all payment details provided are accurate and that supporting records and documentation are available to substantiate the payment, including an official VAT receipt to allow for the reclaim of any VAT element.
- D.39** Appropriately authorised requests for payment will be processed and paid by BACS. Cheques will only be used in exceptional cases and by prior agreement.
- D.40** Non-invoice payments should be requested on an exceptional basis only. Where payments of this type need to be made on regular basis Heads of Service must consider, in conjunction with the Procurement Manager, other alternative options which may be more appropriate. For the full list of exceptional payment types check the guidance available via the Centranet>Tasks and Tools>Buying Products and Services>Procurement>Payment Methods
- D.41** Payments or reimbursements in respect of salaries and wages, travelling expenses or other employment allowances must be processed through the Payroll system and not treated as a non-invoice payment.

**Purchase Cards**

- D.42** Purchase Cards are an effective method of payment for goods and services of low value and for one off purchases. Heads of Service are responsible for the appropriate deployment and management of VISA purchase cards within their service in accordance with the financial scheme of delegation.

Further guidance is available via the Centranet> Tasks and Tools>Buying Products and Services> Procurement>Purchase Cards

**Imprest Accounts**

- D.43** Imprest accounts may only be used as alternatives to purchase orders and VISA purchase cards by prior consent and in accordance with specific

guidance and instructions issued by the Procurement Manager.

**D.44** Heads of Service are responsible for ensuring that where local arrangements are in place:

- ✎ Local Schemes of Financial Delegation set out clearly the responsibilities and approval limits of individual officers in respect of these arrangements; and that these are reviewed and updated regularly.
- ✎ They are operated in accordance with guidance issued and that appropriate management supervision and compliance monitoring is undertaken.
- ✎ Adequate records are maintained to allow for the verification and reconciliation of all payments made to the Council's general ledger and bank accounts, and to allow for the proper treatment of VAT.
- ✎ Arrangements are being operated for legitimate Council business only.

**D.45** Local arrangements may not be used in any circumstances to circumvent either the Council's Corporate Procurement Strategy & Contract Procedure Rules or agreed approval and authorisation procedures, nor must they be used for any payments in respect of salaries and wages, travelling or other employment expenses, or payments for work carried out under the Construction Industry Tax Deduction Scheme.

### **Payment to Members**

**D.46** The Chief Operating Officer is responsible for paying all allowances to Members.

**D.47** The Chief Operating Officer will make payments to any Members entitled to claim allowances on receipt of the proper form, completed and certified in accordance with the approved scheme for allowances.

### **Taxation**

**D.48** It is the responsibility of the Chief Operating Officer, in conjunction with Transactional Services to:

- ✎ To complete all Inland Revenue returns regarding PAYE.
- ✎ To complete a monthly return of VAT inputs and outputs to HM Revenue and Customs.
- ✎ To provide details to HM Revenue and Customs regarding the construction industry tax deduction scheme.
- ✎ To maintain up-to-date guidance for Council employees on taxation issues.

**D.49** It is the responsibility of Corporate Leadership Team to:

- ✎ To ensure that the correct VAT liability is attached to all income due

and that all VAT recoverable on purchases complies with HM Revenue and Customs regulations.

- ☞ To ensure that, where construction and maintenance works are undertaken, the contractor fulfils the necessary construction industry tax deduction requirements.
- ☞ To ensure that all persons employed by the Council are added to the Council's payroll and tax deducted from any payments, except where the individuals are bona fide self-employed or are employed by a recognised staff agency.
- ☞ To follow the guidance on taxation issued by the Chief Operating Officer.

### **Trading Accounts and Business Units**

**D.50** As a general rule, separate trading accounts are required when services are provided to either internal or external clients, on a basis other than a straightforward recharge of full cost. It is the responsibility of the Chief Operating Officer to advise on the establishment and operation of trading accounts and business units.

**D.51** It is the responsibility of Corporate Leadership Team to:

- ☞ To consult with the Chief Operating Officer and Director of Legal Services where a business unit wishes to enter into a contract with a third party where the contract expiry date exceeds the remaining life of their main contract with the Council. In general, such contracts should not be entered into unless they can be terminated within the main contract period without penalty.
- ☞ To observe all statutory requirements in relation to business units, including the maintenance of a separate revenue account to which all relevant income is credited and all relevant expenditure, including overhead costs, is charged, and to produce an annual report in support of the final accounts.
- ☞ To ensure that the same accounting principles are applied in relation to trading accounts as for other services or business units.
- ☞ To ensure that each business unit prepares an annual business plan.

### **Alternative Service Delivery Vehicles**

**D.52** The Council has moved to a commissioning model and the creation of a series of alternative service delivery vehicles (ASDV's) forms an essential part of this strategy.

A framework has been developed to enable the Council to set up a series of new delivery vehicles in a way which enables the risks to be managed thoroughly and effectively. The aim of the framework is to ensure that all vehicles are given the best chance of succeeding, whilst safeguarding the interests of local tax payers.

The framework covers the approach to the key issues including: Strategic - The formation of new vehicles will drive the Council's

Plan. The strategic direction and agreed priorities of new vehicles and the Council will align with each other.

#### Financial

- The creation of several new vehicles will ensure that the overall financial position of the Council is improved. Where ever possible, new vehicles will offer more for less and reduce their call on funding from the Council.

#### Innovation

- New vehicles will contribute to the economic growth and prosperity of Cheshire East. They will promote a culture of enterprise and help create local jobs.

#### Governance and Control

- The decision making process undertaken by new vehicles will be accountable to the Council and protect the public of Cheshire East.

#### Performance

- New vehicles will deliver or improve on the standards of service specified by the Council. Where ever possible vehicles will promote self reliance and focus on meeting need over want.

#### Staff

- Staff employed by new vehicles will be motivated and encouraged to be entrepreneurial.

#### Competition and Procurement

- New vehicles will be competitive and offer improved Value for Money for the public.

The complete framework document is available on the Cheshire East website.

The wholly owned companies currently operate within the Financial Procedure Rules of Cheshire East Council, it is within the responsibility of the companies to determine if this approach is to be continued.

<b>E</b>	<b>External Arrangements</b>
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**Why is this important?**

The Council provides a distinctive leadership role for the community and brings together the contributions of the various stakeholders.

**What's covered in this Section?**

- 👉 Partnerships and Jointly Funded Projects
- 👉 Support to Other Organisations

**Partnerships and Jointly Funded Projects**

- E.1** The Council is involved in a wide range of different 'Partnership' arrangements involving joint/external funding. The main reasons for this are:
- 👉 The ability to provide new and better ways of delivering services.
  - 👉 The ability to access new resources
  - 👉 The desire to find new ways to share risk
  - 👉 The ability to forge new relationships
- E.2** The Cabinet will agree periodically a policy in respect of joint/external funding, which will establish the general framework within which proposals and bids should be developed. Any financial impact falling on the Council through such an arrangement should be met through existing budgetary resources without any overspending resulting from the Council's involvement.
- E.3** Any partnership arrangement which involves the creation of, or participation in, separate legal entities such as joint ventures, trusts or limited companies requires the prior agreement of the Chief Operating Officer and the Director of Legal Services. Officers should also consider the need for a business case and compliance with the Project Gateway Process. Cabinet approval will also be required where any agreement requires the Council to act as guarantor for a third party or accountable body. **The creation of any new ASDVs will be in accordance with the ASDV Framework.**

**Definitions**

- E.4** Legally a partnership is an arrangement entered into under the Partnership Act, and is heavily regulated as to the liabilities of partners. However, the majority of the partnerships entered into by the Council are more correctly

called partnership arrangements and are, at their simplest, where the Council agrees to work with one or more external agencies to deliver common aims and objectives. These partner agencies could potentially be from a government department, any public, private, community or voluntary sector body or related party.

- E.5** The nature and scope of Partnership arrangements can be very different. To define their roles in terms of these Rules the definitions listed below have been used. These definitions apply to all partnerships, whether the Council is contributing financially or not, including the use of fully funded grants or grants that have been earmarked for a specific purpose or are time limited.
- E.6** The Rules set out in this section deal with the approach to Partnerships. Detailed guidance can be obtained within the “Partnerships Protocol”.

### **Public/Public Partnerships**

- E.7** Officers should consider whether the partnership is such that it establishes or implements a co-operation between the parties with the aim of ensuring that the public services they have to perform are provided with a view to achieving objectives they have in common as otherwise it may be that the Public Contracts Regulations 2015 apply and a call for partners should be advertised in accordance with the Contract Procedure Rules. Certain arrangements set out under E11 below are subject to public procurement legislation. Further advice should be sought from the CPU or Legal Services.

Defined as above as involvement with another public sector body or bodies or with the voluntary/not for profit sector. Within this category it is important to recognise that the Council can have a different role, outlined below, depending on the exact nature of the Partnership.

### **Contributing Partner**

- E.8** Where the Council is contributing funding or other resources, to a wider partnership involving a partner or group of partners and where the ‘Accountable Body’ role is undertaken by another partner.

### **Lead Authority or Lead Partner**

- E.9** Where the Council leads on behalf of the Partnership or consortium and is responsible for the wider management of the Partnership.

### **Accountable Body**

- E.10** The Council may, in certain circumstances, need to act as the ‘Accountable Body’; even when the Council will not directly incur expenditure on behalf of the Partnership. The role assumes the responsibility for ‘looking after another parties monies’ and will require the

putting in place of appropriate and robust financial accounting and monitoring systems with the aim of safeguarding resources and minimising any risks and potential liabilities falling to the Council.

### **Public/Private Partnerships**

- E.11** Defined as involvement with a private sector organisation or commercial enterprise, excluding those where a formal contract has been agreed when the Contract Procedure Rules will apply. Those contracts known as 'Partnering Contracts' and those funded by Private Finance Initiatives (PFIs) are not covered by this rule and fall under the Contract Procedure Rules.

### **Key Controls**

- E.12** The key controls to be considered before the funding of partnerships or other joint projects is agreed consist of:
- ☞ ensure that the key conditions of funding and any statutory requirements are complied with and that the responsibilities of the accountable body are clearly understood.
  - ☞ ensure that funds are acquired only to meet the priorities, aims and objectives approved by the Council, and to add value to the services provided to the local community.
  - ☞ ensure any finance (including any match funding), staffing, legal and audit requirements are given due consideration prior to entering into long term arrangements and that revenue budgets reflect these requirements.
  - ☞ These arrangements should be documented in the form of a Business Case in the format prescribed by the Chief Operating Officer and be subject to the same Project Gateway process as all other Council proposals.

Further guidance can be found in the Partnerships Protocol.

### **Responsibilities of Officers**

#### **Chief Officers**

- E.13** Chief Officers are responsible for ensuring that all funding notified by external bodies is received and properly recorded in the Council's accounts and that appropriate standards of probity, stewardship and best value are secured. This will include ensuring that all appropriate claims and returns are promptly and accurately submitted.
- E.14** Chief Officers are responsible for developing a policy framework for partnership working and joint funding, identifying key principles to ensure probity and value for money and obtaining the appropriate Member approval. The annual policy submission should identify any potential future partnerships and a risk assessment of the potential impact on services and

budgets that may arise.

### **Heads of Service**

**E.15** Before entering into any Partnership agreement involving joint funding, Heads of Service must consult the Director of Legal Services and the Chief Operating Officer, who will advise on the appropriate form of agreement or contract taking into account the nature and scale of the proposed arrangement and the extent of the legal and financial commitment involved. As a measure of good practice and as a minimum requirement, Heads of Service need to consider and apply all the following points, which are not exhaustive, to the agreement:

- 🔑 the overall purpose and objectives of the arrangement, including appropriate performance standards and output measures;
- 🔑 the constitutional and representational arrangements including procedures for decision making and the extent to which Cabinet powers and financial authority are to be delegated to individual officers;
- 🔑 the period of the agreement, exit strategies, notice and termination arrangements including redundancy costs and other potential liabilities on termination;
- 🔑 roles and responsibilities of the various parties including arrangements for banking, taxation and VAT matters, employment contracts, insurances and ownership of assets;
- 🔑 auditing and reporting requirements and the applicability of these Finance Procedure Rules, other Council Regulations and Codes of Conduct;
- 🔑 financial and non-financial contributions to be made by the respective parties and, where the arrangement is to extend beyond one year, the method for calculating and collecting payments in future years;
- 🔑 the named contact officer or project manager who will be responsible (within specified limits) for the Council's rights and obligations under the terms of the agreement and accountable for overall outcomes;
- 🔑 A clear exit strategy, for example, in terms of any residual ongoing costs;
- 🔑 Default procedures to be applied where the terms of the agreement are broken;
- 🔑 Arrangements for Internal Audit staff to have sufficient access to partner's premises, assets and records as is necessary for the purposes of the partnership;
- 🔑 As a measure of best practice, all partnership agreements should be subject to a complete review at least every four years.
- 🔑 Add to partnership section of contracts register held by the CPU

### **Approval Routes**

- E.16** The Council's gross contributions to Partnerships may include capital and revenue expenditure, cash flow costs, support in kind (including staff time) and the cost of preparing and submitting bids. It is particularly important to identify support in kind, both to ensure that all such costs are recovered, where grant conditions allow, and to enable service and corporate managers to plan effectively. Capital funding must also meet the specific capital appraisal requirements as set out in Section B of these Rules.
- E.17** Following the officer consultation process and prior to entering into any agreement, appropriate Member approval, based on the Council's gross contribution over the life of the partnership,\* should be sought by the Head of Service as listed below.

*\* For the purpose of this Rule the assumption is that a lifespan of no more than 4 years should be the norm, consistent with the Council's financial planning cycle.*

- E.18** The approval of partnership proposals will be subject to the same financial limits as other contractual arrangements:

### **Additional Funding Allocations or Policy Variations**

- E.19** Partnerships often attract additional funding over and above their original levels of funding. If additional funding is made available which will result in the aggregate value remaining within the original approval limit then no further approval is required. Conversely if the additional funding increases the aggregate value to more than the original approval limit, then further approval is required in line with the routes identified in E.18 above. Where the additional funding constitutes a variation from the policy originally agreed by the Cabinet, then further approval from the Cabinet is required.
- E.20** If the contribution is to come from Council sources it will constitute a virement and Section B applies. Where the additional funding comes from an external source then approval for a fully funded supplementary estimate is required and Section B applies.

### Bidding for grant funding

- E.21** In some circumstances there may be specific grant funds available, where these are aligned with the Council's priorities, accessed through some form of bidding process. Officers must seek the appropriate Member approval prior to any bid being submitted. Approval for 'in principle' Supplementary Revenue or Capital Estimates should be sought at the same time. Officers must ensure that they understand and are aware of the grant conditions attaching to any funding and consider whether the Council's processes and procedures are sufficient to comply with these conditions or whether more detailed processes need to be followed.

### Reporting requirements

- E.22** Where the Council participates in any partnership or external funding arrangement either as a contributor or as an Accountable Body, an annual report must be presented to the appropriate Cabinet Member, outlining how sums have been used and the key outcomes and achievements. The report should also review the affordability and continued relevance of the arrangement to Service policies and objectives and seek appropriate Business Plan approval.
- E.23** Notwithstanding any statutory reporting requirement, the Head of Service will be required to provide, regular reports on progress and outcomes, financial and non-financial, for each significant partnership to the relevant Cabinet Member. Partnership projects should comply with the same regular reporting processes as other Council projects.

### Support to Other Organisations

- E.24** The Cabinet Member for Finance and Communications will on a periodical basis, agree a policy setting down the approach to be taken to the allocation of grants, donations and other contributions to outside bodies, in consultation with the Chief Operating Officer and Head of Legal Services.
- E.25** Grants, donations and contributions will be paid by the Council in accordance with the policies determined under Finance Procedure Rule E.24 above, subject to there being adequate provision in service budgets and the appropriate approvals being sought.

Approval level	Amount
Officers	Up to and including £50,000 (where grant is within approved grant policy)
Portfolio Holder	Between £50,000 and £100,000 (where grant is within approved grant policy))

Cabinet	All Grants of £100,000 or more. All grants which do not fall within existing approved grant policy require Cabinet Approval.
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- E.26** The Grant Funding Protocol sets out further guidance on grant funding, consideration of state aid implications, the process for allocation and any conditions that should apply to any grant funding.
- E.27** Heads of Service will report on the outcomes achieved through the provision of support to outside bodies on an annual basis to the appropriate Member Group and Cabinet Member, with interim reporting on an exception basis or where the sums involved are significant.
- E.28** The rules in this section (E24- E28) and the Grant Funding Protocol shall not apply to grant funding arrangements relating to Capital Funding for School Places applied for by the Council on behalf of Academies, Foundation, Voluntary Aided and Free schools as these arrangements are delegated in the Constitution to the Executive Director People in accordance with the Council's educational functions under the Education Acts.

**Annexe 1**  
**Glossary of Terms/Definitions**

**Appropriation** – Amounts transferred between the Revenue account and revenue or capital reserves.

**Bad Debt** - A debt becomes bad if it has not been collected within 6 months. Full provision for all bad debts has to be made within the revenue account, but the debt is still pursued until it is either recovered or written off as unrecoverable.

**Balances (Revenue Account)** - The accumulated surplus of income over expenditure. Members may agree that Balances be used to reduce future Council Tax precepts although a minimum level, consistent with prudence and best practice will be maintained. Amounts in excess of that required for day-to-day cash management and to finance working capital can be invested to generate interest income to the Council.

**Block Provisions** - Annual capital allocations made to cover minor schemes with starts values of less than £250,000.

**Business Case Template** – This is a proforma to be completed for all Capital schemes and all significant Revenue proposals. It will provide details on the expected outcomes falling from the proposed investment and identify how the proposal will meet corporate objectives.

**Capital Approval** - The capital programme provision as amended by any supplementary estimates or virements.

**Capital Expenditure** - Expenditure on the purchase, construction or replacement of capital (fixed) assets or expenditure which adds to the life or value of an existing fixed asset.

**Capital Programme** - The Council's plan of capital projects and spending over future years. Included in this category are the purchase of land and buildings, the erection of new buildings and works, Highway Improvement schemes and design fees, and the acquisition of vehicles and major items of equipment.

**Capital Project / Scheme** - These terms mean the same thing and are used interchangeably within these Rules. A project/scheme may be separately identified in the capital programme or be an item within a block provision.

**Capital Receipts** - Income received from the sale of capital assets and available, subject to rules laid down by the Government, to finance new capital expenditure or to repay debt.

**Carry-forward** - An increase or reduction in a Service's new financial year budget, stemming from either an under or overspend in the previous year. All carry-forwards (except for Schools) need the approval of the Cabinet upon the

presentation of a business case.

**Chief officers** - Chief officers are the Chief Executive or any Director of the Council to whom there has been specific delegation in writing by the Council or the Chief Executive. Chief officers must operate efficient systems of financial control.

**Contingencies** - Sums set aside to meet either:

- the potential costs of activities expected to occur during the year over and above those costs included in Service budgets (pay and price contingency); or
- 🔗 items which are difficult to predict in terms of financial impact or timing (contingency for uncertain items).

**Contract** - An agreement to supply goods, services or works for a price. A contract is normally in writing however a contractual arrangement may, inadvertently be entered into orally.

**Contractor** - Any person or organisation awarded a Contract. This includes any consultant appointed by the Council to advise on any project.

**Corporate Procurement Unit (CPU) /Procurement** – The corporate procurement unit is the department responsible for procurement activity within the Council.

**Council Fund** - The Council's main revenue fund to which all revenue receipts are credited, and from which revenue liabilities are discharged. The movement on the fund in the year represents the excess of income over expenditure within the Consolidated Revenue Account. The level of balances held is based on the Council's assessment of the level of risk and uncertainty and the potential call on such reserves.

**Debt Write-Off** - Realising the cost of debt which is considered to be "bad" (unrecoverable) by writing it off against the revenue account or bad debt provision.

**Earmarked Reserves** – these reserves represent monies set aside that can only be used for a specific use or purpose.

**Financial Schemes of Delegation** – Financial Schemes of Delegation are the documents that set out, for each Service, all specific financial authorisations and approval limits as delegated by the Heads of Service to Authorised Officers within their Service. Heads of Service are responsible for maintaining up to date and accurate Financial Schemes of Delegation.

**Financial Year** - The Council's accounting period covers the 12 months from April 1 to March 31.

**Forward Plan** – as defined in the Constitution.

**Internal Control** - A procedural system designed to manage risk to an acceptable

level whereby different staff members perform different parts of a task, so that no one person is entirely responsible for processing a transaction from start to finish.

**Key Decision** - as defined in the Constitution.

**Leases** – Agreements covering the hire/rental of equipment or buildings, generally for a specified period of time and at a specified rate. There are two types of leases:

Operating Leases – where the risks and rewards of ownership remain with the lessor.

Finance Leases – most of the risks and rewards associated with ownership are transferred to the lessee (responsibility for maintenance, insurance etc will fall to the Council)

**Option Appraisal/Business Case** – This is required for all Capital schemes and all significant revenue proposals and takes the form of a Business Case Template. This will be used to assess whether the scheme is affordable and deliverable. Consequences to the Service are considered and evaluated and it will also provide a basis for monitoring and reporting progress. In the case of revenue proposals it will also take into account the risk and impact on users.

**Policy and Expenditure Planning** - The Council's annual cycle of planning for the medium and short-term future, aimed at achieving optimal allocation of available resources.

**Policy and Expenditure Proposals** - Proposals, including new policies, which have resource implications and will be subject to appraisal by Members, Management Board and consultees before inclusion in annual budget preparation.

**Project Board** – A group of senior officers, led by the Senior Responsible Owner (SRO) who are accountable for the success of a Project and represent specific business, user and supplier interests. More information on the make-up and operation of a Project Board can be found in the Project Management Handbook which is published and maintained by the Authority's Programme Management Office.

**Project Gateway process** – A series of control measures put in place to ensure that all projects are instigated, approved, managed and delivered effectively. The Project Gateway process is overseen by the Executive Monitoring Board and described in detail in the Project Management Handbook.

**Provision** - An amount set aside by the Authority for any liabilities of uncertain amount or timing that have been incurred.

The main category is estimates of liabilities or losses already incurred but whose exact amount will be determined in the future (e.g. bad debts, obsolete stock). See also Capital Provision and Provision for Doubtful Debt.

**Provision for Doubtful Debt** - An allocation of funds set aside from Service

revenue budgets to cover amounts which may not be recoverable from debtors.

**Prudential Borrowing Limits** – is the maximum amount of borrowing that the Council can enter into at any one point in time during the year. This limit is set by Council prior to the start of the year to which it relates and cannot be breached under any circumstances.

**Revenue Account** - The Account which sets out the Council's income and expenditure for the year for non-capital spending.

**Revenue Expenditure** - Spending on the day-to-day running expenses of the Council. It includes expenditure on employees, premises, transport and supplies and services.

**Ring Fencing** - Certain budgets agreed by the Borough Treasurer and Head of Assets are "ring-fenced". This means that under-spends on these budgets will return to balances and overspends will be met centrally. This is to reflect the fact that certain items of expenditure are either demand-led or so significantly influenced by extraneous factors that they are beyond the direct control of managers. Ring-fenced budgets include planning levies, external audit fees and election expenses.

**Schemes of Delegation** - Schemes of Delegation are the documents that set out, for each Service, all authorisations and approval limits as delegated by the Heads of Service to Authorised Officers within their Service. Heads of Service are responsible for maintaining up to date and accurate Schemes of Delegation. (See also: Financial Schemes of Delegation)

**Service Plan** - A plan which outlines measurable Service aims for the year ahead, encompassing both core purpose and specific key objectives for any given year. The Plan will consider both inputs and outputs.

**"Starts value"** - represents the full value of the Council's contribution to a Capital Scheme irrespective of the timing of the payments.

**Supplementary Capital Estimate (SCE)** - Additional resources approved by Members with funds either provided by a third-party (e.g. developer contributions, receipts, government grant), by the use of Council reserves or from the Revenue budget.

**Supplementary Revenue Estimate (SRE)** - An approved increase to a Service revenue budget during the financial year, funded centrally from reserves, contingencies or external funding sources such as grants or partner contributions.

**Third Party Fund(s)** - Funds provided by outside bodies or individuals in support of Council activities, establishments or clients. Can sometimes be known as trust funds.

**Underspend** - An underspend results when the net costs of a budget holder are

lower than the net budget for the year.

**Virement** - A Revenue virement is a transfer of amounts from one budget heading to another within, or between, Heads of Service. Capital virements cover any changes to Capital budgets funded from within the existing Capital programme.

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## Review of financial levels within Cheshire East Council's Constitution

Overall we would recommend that the financial levels be streamlined and made more consistent across the whole Council to make decision-making clearer and more consistent – there are too many different delegations that are not all consistent.

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
	<b>Part 2, Chapter 12 Decision Making</b>				
1.	Chapter 12, para 4,	Threshold for an executive decision being likely to be a "key decision"	£1m	This compares well. Most Unitary/Met Councils are £250-500k and larger Councils e.g. Birmingham £1m £1m provides consistency with virement level to seek further Council approval and portfolio holder spend	This level is about right, and can remain at £1m.
	<b>Part 3 Executive Functions</b>				
2.	Executive Functions – Scope of, and limitations to, Portfolio holder Decision Making	Individual Portfolio Holders are empowered to make all executive decision in respect of their own portfolio area of responsibility except decisions involving spending over £1m	£1m	This is a reasonable level (although could be higher). £1m provides consistency with virement level to seek further Council approval & key decisions	This level can remain the same.
	<b>Part 3 Staffing Committee TOR's</b>				
3.	Staffing Committee Terms of Reference, para 5.3	Staffing Committee to make recommendations to Council in relation to decisions affecting remuneration of any new post whose remuneration is or is proposed to be or would become more than £100,000	£100,000 pa	There is no legal requirement to do this, but DCLG statutory guidance in February 2013 recommends it for transparency reasons – and only necessary when the remuneration changes from what is stated in the approved Pay Policy Statement	This limit should remain at £100,000 but the restriction should <b>only apply</b> where the remuneration departs from the approved Pay Policy Statement.
4.	Staffing Committee Terms of Reference,	Staffing Committee to make decision in relation to proposed severance packages	£100,000 or more	The same guidance suggests that severance payments in excess of	No change from current arrangements - Staffing Committee

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
	para 5.4	with a value of £100,000 or more		this level (including pension strain etc) should be considered and approved by members at full Council, however, where there are good reasons e.g. personal circumstances, confidentiality, speed the Council may consider that a report to Council is not appropriate having considered the guidance.	to make decision in relation to proposed severance packages with a value of £100,000 or above.
	<b>Part 3, Officer Scheme of Delegation</b>	<b>NB Revised delegations may not reflect all of these functions and are likely to be more general in scope</b>			
5.	Scheme of Delegation to senior Officers, paragraph 1.21	The making of grants to voluntary and community to be approved by (a) Portfolio Holders and (b) Cabinet	(a) £0-50,000 (b) £50,000+	This in effect doesn't delegate any powers. A grant of £1 would need Portfolio Holder's approval. There may be political sensitivity around grants. This could be staggered with small grants made by Officers; Portfolio Holders up to a higher level; and Cabinet above. Limits to be discussed but could be up to £50k; up to £100k; £100k+ This would be more consistent with the £50k limit in point 44 below	Suggested approach: Within approved grant policy: (a) Grants of up to £50,000 can be made by officers in consultation with relevant portfolio holders; (b) Grants of between £50,000 and £100,000 require Portfolio Holder(s) Approval; (c) Grants in excess of £100,000 require Cabinet Approval. All grants which do not fall within existing approved grant policy require Cabinet Approval.
6.	Scheme of Delegation, Chief Executive, para 2.14	Chief Executive can make decisions affecting the remuneration of any existing post whose remuneration is or is proposed to be or would become £100,0000 p.a. or more in consultation with the Leader and Chairman of the Staffing Committee	£100,000	Appropriate in light of guidance above – will need full Council approval if changes are outside the agreed Pay Policy Statement for the time being.	This level can stay the same.
7.	Scheme of Delegation, Chief Operating Officer,	COO to authorise improvements to roads, including grass verges, street furniture etc not exceeding £30,000 for which provision	£30,000	How does this sit with other delegations and limits in the Contract Procedure rules?	Take this line out. If the spending is within budget then it should not require further approval.

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
	para 3.11	has been made in the budget and capital programme.		Suggest an increase (£50 or £100k?)	
8.	Scheme of Delegation, Chief Operating Officer, para 3.17	COO on the advice of the Assets Manager or District Valuer to settle claims for borehole damage up to £1,500.	£1,500	Suggest an increase to at least £5k to be consistent with lowest level of Ombudsman claims	Take this out. It can be dealt with under a delegation to Director of Legal to settle claims.
9.	Scheme of Delegation, Chief Operating Officer, para 3.24	COO To accept land for road improvements by dedication subject to the total consideration not exceeding £30,000	£30,000	This should not be politically controversial and should be higher e.g. £100k	Seems reasonable
10.	Scheme of Delegation, Chief Operating Officer, para 3.71	COO is not authorised to write off debt. Approval must be sought from the Portfolio Holder or Cabinet.	£0	This is very unusual. It also doesn't fit with Financial Planning, C47 below - £5k	Suggest that up to £5,000 should be the CFO, £5,000-£25,000 should be CFO in consultation with Portfolio Holder, £25,000+ should be Portfolio Holder.
11.	Scheme of Delegation, Chief Operating Officer, para 3.84	Level of salary below which COO can apply early retirement/redundancy scheme without agreement of the relevant Portfolio Holder	£48,000	Inconsistent with 2.14 above – should be up to £100k (including pension strain etc) – could be in consultation with the Leader and/or portfolio holder in any event for CO's Deputy CO's but otherwise no requirement for consultation as members should not be seen to influence decisions below DCO? Apply to HPS and Executive Director level (ED)	This level should be £100,000
12.	Scheme of Delegation, Chief Operating Officer, para 4.6	ED Place can accept any tender in consultation with the COO and after having notified the Portfolio Holder up to £200,000	£200,000	How does this sit with Contract Procedure Rules? Above/Below threshold? – Consider limits in CPR	Take this line out.
13.	Scheme of Delegation, Chief Operating Officer, para 4.6	ED Place can accept any tender in consultation with the COO and with the approval of the Portfolio Holder between £200,000 and £500,000	£200,000-£500,000	Ditto	Take this line out.
14.	Scheme of Delegation, Chief	ED Place to authorise the acquisition of an interest in Land in consultation with the	£200,000	This is low for an acquisition – suggest £500k above which it	£500,000

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
	Operating Officer, para 4.7	COO and after having notified the Portfolio Holder up to £200,000		goes to Cabinet – will depend on budget provision in any event?	
15.	Scheme of Delegation, Chief Operating Officer, para 4.7	ED Place to authorise the acquisition of an interest in Land in consultation with the COO and with the approval of the Portfolio Holder between £200,000 and £500,000	£200,000-£500,000	£500k - £1m?	£500k - £1m
16.	Scheme of Delegation, Chief Operating Officer, para 4.18	To manage the Farms estate, serve all statutory notices, to negotiate and approve all matters and grant all consents required in order to do so provided that investment in improvements to farms will not exceed £20,000	£20,000	Not very high these days – increase?	£50,000
17.	Scheme of Delegation – Director of Adult Social Care and Independent Living – Para 6.21(d)	DASCIL can only write-off debt where it is felt that the individual would be at risk in consultation with the portfolio holder.	No cap.	Consultation with Portfolio Holder is required. Inconsistent with other limits for debt write off.	Should be in consultation with Portfolio Holder for ASC and Portfolio Holder for Finance. There should be a limit of £5k.
18.	Scheme of Delegation, MO, para 9.6	Authorise settlement of up to £5,000 in respect of potential uninsured claims or Local Government Ombudsman cases (which after settlement shall be reported to Cabinet)	£5,000	Relatively low – if these develop into legal claims then covered by below	£25,000, and would include boreholes.
19.	Scheme of Delegation, MO, para 9.6	Authorise settlement in respect of potential uninsured claims or Local Government Ombudsman cases above £5000 and below £50,000 in consultation with the Portfolio Holder and the Chief Operating Officer, (which after settlement shall be reported to Cabinet)	£5,000 to £50,000	Reasonable - £100k would be more consistent with other officer delegations – what is uninsured level?	£25,000-£100,000 in consultation with the Portfolio Holder and the Chief Operating Officer
20.	Scheme of Delegation, MO, para 9.6	Claims in respect of potential uninsured claims or Local Government Ombudsman cases in excess of £50,000 require Cabinet approval	£50,000	£100k flows from above	£100,000+
	<b>Council Procedure Rules</b>				

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
21.	Procedure Rules, General Provisions – Appendix 4, Urgent Decisions taken outside of meetings	For the purposes of this urgency provision, the limit placed on the decision-making powers of individual Portfolio Holders in relation to decisions involving expenditure or savings of £1M or more would not apply	No cap on emergency decision making powers for Portfolio Holders.	Correct, unless Council needs to approve more funds because outside of the budget or policy framework	This should set out the circumstances under which it would apply: "...in the case of: civil emergency; natural or man-made disaster; matter of serious public health; matters regarding safeguarding of people; or where the Council is at risk of serious reputational damage; loss or claims; or any other matters where the CE in his/her access the CFO has declared that an urgent decision is required".
22.	Access to Information Procedure Rules	Threshold for an executive decision being likely to be a "key decision"	£1m		
	<b>Finance Procedure Rules</b>				
23.	Financial Management A32	Approval Limits for Virements: Head of Service	Up to £100,000 or 10% of their net Service budget, whichever is the lowest. (Revenue)	For certainty and consistency suggest £100k rather than % of net budget	Up to £100,000 (Revenue)
24.	Financial Management A32	Approval Limits for Virements: Corporate Leadership Team	Greater than 10% of a net Service budget but less than £100,000 (Revenue) Up to £100,000 between net Service budgets (Revenue) within their area of responsibility. Up to £100,000 funded from	CLT should be higher – if there is to be any distinction – e.g. CLT up to £250k? If not subsume first one into above. Again an amount may be better than a %  Capital limits should be higher than revenue - compare how this would fit with capital spend proposed above on land  <b>NB</b> Most Councils do not require	£100,000 - £500,000 – Relevant Executive Director (Revenue)  £100,000-£1,000,000 – Relevant Executive Director (Capital)

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
			underspends within the approved Service budget (Capital)	any further approval to spend capital where any amount has been approved against designated projects as part of the annual budget process - Member approval may still be required to acquire a particular piece of land or to commence a procurement process etc.	
25.	Financial Management A32	Approval Limits for Virements: Corporate Approval Limits for Virements: Leadership Team in consultation with Finance & Assets Portfolio Holder	£100,000 and up to £250,000 (Revenue/Capital)	Again capital expectations would be higher than revenue £250k - £500k CLT	Executive Directors in consultation with Finance and Assets Portfolio Holder and relevant Portfolio Holder: <ul style="list-style-type: none"> <li>£500,000 - £1m (Revenue)</li> <li>£1m - £5m (Capital)</li> </ul>
26.	Financial Management A32	Approval Limits for Virements: Portfolio Holders and Corporate Leadership Team in consultation with Portfolio Holder for Finance and Assets	£250,000 and up to £500,000 (Revenue/Capital)	Ditto – suggest covered by above - delete	Delete if above agreed
27.	Financial Management A32	Approval Limits for Virements: Cabinet	£500,000 and up to £1,000,000 (Revenue/Capital)	Consistent with above	Cabinet: <ul style="list-style-type: none"> <li>£1m+ (Revenue)</li> <li>£5m+ (Capital)</li> </ul>
28.	Financial Management A32	Approval Limits for Virements: Council	£1,000,000 or more; and/or significant ongoing financial implications; and/or significant policy change. (Revenue/Capital) “Significant” to be defined by the Chief Operating Officer or their representative.	Suggest definite limit of £1m	As above if outside budget and policy framework
29.	Financial Management	Approval limits for supplementary capital and revenue estimates:	Up to £100,000	£250k or £500k would be consistent with recommendations	Executive Director up to £500,000

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
	A36	Corporate Leadership Team		above	
30.	Financial Management A36	Approval limits for supplementary capital and revenue estimates: Management Group Board in consultation with the Portfolio Holder for Finance and Assets	£100,000 and up to £250,000	Delete	Executive Director in consultation with Portfolio Holder for Finance and Assets £500,000 - £1m.
31.	Financial Management A36	Approval limits for supplementary capital and revenue estimates: Portfolio Holders and Corporate Leadership Team in consultation Portfolio Holder for Finance and Assets	Between £250,000 and up to £500,000	Delete, subject to above	Delete
32.	Financial Management A36	Approval limits for supplementary capital and revenue estimates: Cabinet	Between £500,000 and up to £1,000,000	OK?	Delete
33.	Financial Management A36	Approval limits for supplementary capital and revenue estimates: Council with recommendation from Cabinet	£1,000,000 and over	OK – consistent with above	Keep
34.	Financial Planning B26	Amount below which expenditure is not treated as capital expenditure	£10,000	CFO to advise	Alex to check CIPFA guidance as to whether there is a limit. Suggested delete 30/10/17 – no need for a limit in the constitution
35.	Financial Planning B27	Block provisions will be approved within the Capital Programme for individual schemes costing less than £250,000	£250,000	Could be higher £500k?	Take this line out
36.	Financial Planning B38	In respect of highways improvements, heads of Service may approve capital expenditure in respect of other rechargeable reinstatement work costing £10,000 and above	£10,000	Who approves below £10k No upper level?	Take this line out - Will be covered by general delegations
37.	Financial Planning C47	CLT, Heads of Service and officers specified in a Scheme of Financial Delegation may authorise the write off of losses up to £5,000, or disposals, of obsolete or surplus equipment, materials, vehicles or stores up to a disposal value of £5,000. If this threshold is exceeded, approval must be sought from the Finance Portfolio Holder.	£5,000	Increase to be consistent with general write-offs	CFO should authorise all write offs up to £5,000.

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
38.	Financial Planning D24	If a requisition for the purchase of goods or services exceeds £5,000 in value Contract Procedure rules Part 2.1 apply (these relate to competition law and the number of bids which should be sought etc)	£5,000	Review	£10,000, and needs to be in line with the revised Contract Procedure Rules.
39.	Financial Planning D50	Separate Trading Accounts are required when services are provided to either internal or external clients, on a basis other than a straightforward recharge of full cost. These accounts are also required where there is a minimum turnover of £1,000,000	£1,000,000	This is inconsistent with legislation – e.g. a separate account needs to be kept for all Goods and Services Act 1970 trading irrespective of value?	Remove. The law requires all G+S to be recorded separately, so there is no need to deviate from this position.
40.	Financial Planning E18	Approving partnership proposals: Chief Officers	Up to and including £100,000	Why are these decisions different from other decisions above?	Remove
41.	Financial Planning E18	Approving partnership proposals: Chief Officer In consultation with Cabinet Member	Over £100,000 and up to £500,000	Ditto	Remove
42.	Financial Planning E18	Approving partnership proposals: Cabinet	Over £500,000 and up to and including £1,000,000 or if the Authority is undertaking an accountable body role;	Ditto	Remove
43.	Financial Planning E18	Approving partnership proposals: Council	£1,000,000 or more.	This is an example of Council taking the "big" decisions – not appropriate if an Executive function and there is budget provision	Remove
44.	Financial Planning E25	Approval levels for the paying of grants, donations and contributions: Cabinet Member	Up to and over £50,000	Suggest this level should be delegated to officers	This should be cross referenced to the grant approval levels in Line 5.

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
45.	Financial Planning E25	Approval levels for the paying of grants, donations and contributions: Cabinet	Over £50,000	Or could be portfolio holder	Cross reference to line 5.
	<b>Contract Procedure Rule</b>				
46.	Definitions	Request for Quotations	£10,000 to EU Threshold	EU Threshold changes – now defined. There is a link to the Europa Website at 1.1.8 but if this approach is continued, it should be more clearly signposted. If a link is preferred, it should be to: <a href="https://www.ojeu.eu/thresholds.aspx">https://www.ojeu.eu/thresholds.aspx</a> as the current link in the Constitution doesn't work. We recommend including the Thresholds in a table. They are updated once every two years, in January. The next update is January 2018.	Agreed
47.	Part 2 – Below EU Threshold 2.1.1	3 quotes are advisable but not mandatory (local firms being preferable)	Up to £5,000	Many local authorities would have a higher threshold of £10k, but require 3 quotes	Advisable to obtain 3 quotes up to £10,000.
48.	Part 2 – Below EU Threshold 2.2.1	Minimum of three quotes shall be obtained, subject to a procurement risk assessment being carried out. All quotations should be sent to Procurement to ensure compliance with the Government Transparency Code.	£5,000 to £25,000	reasonable	£10,000 to £25,000
49.	Part 2 – Below EU Threshold 2.2.1	Minimum of three quotations sought via e-tending portal. Procurement must carry out a procurement risk assessment and will determine the route to market.		It is not clear if this is £25k to EU threshold.	£25,000 to EU Threshold
50.	Part 4 – Invitations to Quote <£25k	Invitations to Quote below £25,000 will follow any guidance issued from the CPU and will be assessed based on their own risk.	Up to £25,000	Merge with above	
51.	Part 4 – Invitations to Quote >£25k	All invitations to Quote/Tender over £25,000 shall include the following:			Amend so that all invitations to Quote/Tender

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
	4.1.1	<ol style="list-style-type: none"> <li>1. All quotes to be issued and received via the e-tendering portal;</li> <li>2. Bidders must sign the Form of Tender which includes non-collusion provisions;</li> <li>3. Responses are restricted to access by the Verifying Officer;</li> <li>4. Invitations must have sufficient detail for a competitive tender and must contain T&amp;Cs of the contract;</li> <li>5. Must contain a description of the award criteria.</li> <li>6. Bidders told that preparation of tenders is at their risk and expense;</li> <li>7. Bidders told that they must not amend the contract documents.</li> </ol>			
52.	Part 4 – Invitations to Quote >£25k 4.3.1	Tenders above £1,000,000 will be verified by Legal Services.	£1,000,000		Merge with line below.
53.	Part 4 – Invitations to Quote >£25k 4.3.1	Tenders from the 'EU Threshold' up to £1,000,000 will be verified by the Procurement Manager or a Procurement Category Manager that has not been involved in the tender in question.	EU Threshold to £1,000,000		Tenders above the EU Threshold will be verified by the Procurement Manager or a Procurement Category Manager that has not been involved in the tender in question.
54.	Part 4 – Invitations to Quote <£25k 4.3.1	Tenders/Quotations below the 'EU Threshold' will be verified by a Procurement Officer that has not been involved in the tender in question.	Tenders below EU Threshold	Should the lower limit for this be £25,000 so that it sits with the line below?	Tenders from £25,000 to EU Threshold.
55.	Part 4 – Invitations to Quote >£25k 4.3.1	Quotations from £5,000 to £25,000 will be opened in accordance with any guidance issued by CPU from time to time.	Tenders £5,000 to £25,000.		Tenders £10,000 to £25,000.
56.	Part 5 – Contracts and Post Competition	Contracts can be executed by a duly authorised officer in accordance with the local scheme of delegation.	Up to £1,000,000		Take this line out

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
	Requirements 5.1.2				
57.	Part 5 – Contracts and Post Competition Requirements 5.1.3	Contracts must be executed under seal.	Where the contract exceeds £1,000,000.	MO to advise	
58.	Part 5 – Contracts and Post Competition Requirements 5.2.1	Waiver of the Contract Procedure Rules. Currently all waivers must be approved by the Chief Operating Officer and Director Legal Services	All waivers	We recommend that below £25,000 a waiver can be signed approved by the Head of Procurement.	Above £25k approval by CFO and DoLS,

Additional points raised on the call:

1. Reference to COO in this table should be to the CFO. The roles can be performed by different people.

**DRAFT TABLE FOR INSERTION INTO THE FINANCE PROCEDURE RULES**

No	Reference	Reference in Draft Constitution	Issue	Financial Limit
	<b>Part 2, Chapter 12 Decision Making</b>	<b>Part 2</b>		
1.	Chapter 12, para 4,	Part 2, para 4.2	Level of Key Decisions	Threshold for an executive decision being likely to be a "key decision" is £1m
	<b>Part 3 Executive Functions</b>	<b>Part 2</b>		
2.	Executive Functions – Scope of, and limitations to, Portfolio holder Decision Making		Portfolio Holder decision making	Individual Portfolio Holders are empowered to make all executive decision in respect of their own portfolio area of responsibility except decisions involving spending over £1m
	<b>Part 3 Staffing Committee TOR's</b>	<b>Part 2</b>		
3.	Staffing Committee Terms of Reference, para 5.3	Part 2, para 5.3	Remuneration of officers	Staffing Committee to make recommendations to Council in relation to decisions affecting remuneration of any new post whose remuneration is or is proposed to be or would become more than £100,000 unless the remuneration for the post is already included within the Council's annually approved Pay Policy Statement,
4.	Staffing Committee Terms of Reference, para 5.4	Part 2, para 5.4	Severance packages	Staffing Committee to make decision in relation to proposed severance packages with a value of £100,000 or more
	<b>Part 3, Officer Scheme of Delegation</b>	<b>Part 2</b>		<b>NB Revised delegations may not reflect all of these functions and are likely to be more general in scope</b>
5.	Scheme of Delegation to senior Officers, paragraph 1.21	To be added to Part 2 if agreed.	Payment of Grants	<p>Within approved grant policy:</p> <ul style="list-style-type: none"> <li>(a) Grants of up to £50,000 can be made by officers in consultation with relevant portfolio holders;</li> <li>(b) Grants of between £50,000 and £100,000 require Portfolio Holder(s) Approval;</li> <li>(c) Grants in excess of £100,000 require Cabinet Approval.</li> </ul> <p>All grants which do not fall within existing approved grant policy require</p>

No	Reference	Reference in Draft Constitution	Issue	Financial Limit
				Cabinet Approval.
6.	Scheme of Delegation, Chief Executive, para 2.14	Part 2, Para 4.4.10	Remuneration level for existing posts	Chief Executive can make decisions affecting the remuneration of any existing post whose remuneration is or is proposed to be or would become £100,000 p.a. or more in consultation with the Leader and Chairman of the Staffing Committee subject to council approval if outside agreed Pay Policy Statement.
7.	Scheme of Delegation, Chief Operating Officer, para 3.24	To be added to local scheme of delegations	Acceptance of land for Road Improvements	COO To accept land for road improvements by dedication subject to the total consideration not exceeding £100,000
8.	Scheme of Delegation, Chief Operating Officer, para 3.71	To be added to s151 Officer delegation and Portfolio Holder delegation	Writing of debts	The decision to write of debts of up to £5,000 is delegated to the CFO. The decision to write of debts of between £5,000 and £25,000 is delegated to the CFO in consultation with the Finance Portfolio Holder. The decision to write of debts in excess of £25,000 lies with the Finance Portfolio Holder.
9.	Scheme of Delegation, Chief Operating Officer, para 3.84	To be added to Head of Paid Service delegation and COO delegation	Approval of retirement/redundancy schemes	The COO can apply early retirement/redundancy scheme without agreement of the relevant Portfolio Holder up to a value of £100,000 (including pension strain).
10.	Scheme of Delegation, Chief Operating Officer, para 4.7	To be added to Executive Director Place delegation	Approval of acquisition of land	Executive Director Place is to authorise the acquisition of an interest in Land in consultation with the COO and after having notified the Portfolio Holder up to £500,000
11.	Scheme of Delegation, Chief Operating Officer, para 4.7	To be added to Executive Director Place delegation	Approval of acquisition of land	Executive Director Place to authorise the acquisition of an interest in Land in consultation with the COO and with the approval of the Portfolio Holder between £500,000 and £1m
12.	Scheme of Delegation, Chief Operating Officer, para 4.18	To be added to Chief Operating Officer delegation	Management of Farms estate	The Chief Operating Officer has delegated authority to manage the Farms estate, serve all statutory notices, to negotiate and approve all matters and grant all consents required in order to do so provided that investment in improvements to farms will not exceed £50,000
13.	Scheme of Delegation – Director of Adult Social Care and Independent	To be added to Director Adult Social Care and Independent Living delegation	Writing off debt by the Director Adult Social Care and Independent Living	Director Adult Social Care and Independent Living can write-off debt where it is felt that the individual would be at risk in consultation with the Finance Portfolio Holder and the Adult Social Care Portfolio Holder.

No	Reference	Reference in Draft Constitution	Issue	Financial Limit
	Living – Para 6.21(d)			
14.	Scheme of Delegation, MO, para 9.6	Monitoring Officer delegation, para 9.4.1	Settlement of claims	The Monitoring Officer can authorise settlement of up to £25,000 in respect of potential uninsured claims, borehole claims, and Local Government Ombudsman cases (which after settlement shall be reported to Cabinet)
15.	Scheme of Delegation, MO, para 9.6	To be added to Monitoring Officer delegation	Settlement of claims	Authorise settlement in respect of potential uninsured claims or Local Government Ombudsman cases above £25,000 and below £100,000 in consultation with the Finance Portfolio Holder and the Chief Operating Officer, (which after settlement shall be reported to Cabinet)
16.	Scheme of Delegation, MO, para 9.6	To be added to Monitoring Officer delegation	Settlement of claims	Claims in respect of potential uninsured claims or Local Government Ombudsman cases in excess of £100,000 require Cabinet approval
	<b>Council Procedure Rules</b>			
17.	Procedure Rules, General Provisions – Appendix 4, Urgent Decisions taken outside of meetings	Part 3, Appendix 4	Urgent Decisions	For the purposes of this urgency provision, the limit placed on the decision-making powers of individual Portfolio Holders in relation to decisions involving expenditure or savings of £1M or more would not apply. Urgency is defined as: "...in the case of: civil emergency; natural or man-made disaster; matter of serious public health; matters regarding safeguarding of people; or where the Council is at risk of serious reputational damage; loss or claims; or any other matters where the CE in his/her access the CFO has declared that an urgent decision is required".
	<b>Finance Procedure Rules</b>			
18.	Financial Management A32	Financial Management	Virements	Approval Limits for Virements: Head of Service is up to £100,000 (in respect of Revenue).
19	Financial Management A32	A32	Virements	Approval Limits for Virements by Members of the Corporate Leadership Team are as follows: (a) £100,000 - £500,000 – Relevant Executive Director (Revenue) (b) (c) £100,000-£1,000,000 – Relevant Executive Director (Capital)
20	Financial Management A32	Financial Management A32	Virements	Approval Limits for Virements: Approval by Executive Directors in consultation with Finance and Assets Portfolio Holder and relevant Portfolio Holder:

No	Reference	Reference in Draft Constitution	Issue	Financial Limit
				(a) £500,000 - £1m (Revenue) (b) £1m - £5m (Capital)
21.	Financial Management A32	Financial Management A32	Virements	Approval limits for Virements (where within the budget and policy framework): Approval by Cabinet: (a) £1m+ (Revenue) (b) £5m+ (Capital)
22.	Financial Management A32	Financial Management A32	Virements	Approval limits for Virements (where outside the budget and policy framework): Approval by Council: (a) £1m+ (Revenue) (b) £5m+ (Capital)
23.	Financial Management A36	To be added changed agreed	Supplementary capital and revenue estimates	Approval limits for supplementary capital and revenue estimates: Executive Director up to £500,000
24.	Financial Management A36	To be added changed agreed	Supplementary capital and revenue estimates	Approval limits for supplementary capital and revenue estimates: Executive Director in consultation with Portfolio Holder for Finance and Assets £500,000 - £1m
25.	Financial Management A36	To be added changed agreed	Supplementary capital and revenue estimates	Approval limits for supplementary capital and revenue estimates: Council with recommendation from Cabinet where over £1m
26.	Financial Planning C47	Financial Planning C47	Write off of losses and disposal of equipment	Chief Operating Officer may authorise the write off of losses up to £5,000, or disposals, of obsolete or surplus equipment, materials, vehicles or stores up to a disposal value of £5,000. If this threshold is exceeded, approval must be sought from the Finance Portfolio Holder.
27.	Financial Planning D24	Financial Planning D24	Purchase of goods and services	If a requisition for the purchase of goods or services exceeds £10,000 in value Contract Procedure rules Part 2.1 apply (these relate to competition law and the number of bids which should be sought etc)
28.	Financial Planning E18	Financial Planning E18	Payment of Grants	Within approved grant policy: (a) Grants, contributions and donations of up to £50,000 can be made by officers in consultation with relevant portfolio holders; (b) Grants contributions and donations of between £50,000 and £100,000 require Portfolio Holder(s) Approval; (c) Grants contributions and donations in excess of £100,000 require Cabinet Approval. All grants contributions and donations which do not fall within existing approved grant policy require Cabinet Approval.

No	Reference	Reference in Draft Constitution	Issue	Financial Limit
	<b>Contract Procedure Rule</b>			
29.	Definitions	Definitions	Link to EU Thresholds	Request for Quotations £10,000 to EU Threshold which is at the following link: <a href="https://www.ojeu.eu/thresholds.aspx">https://www.ojeu.eu/thresholds.aspx</a>
30.	Part 2 – Below EU Threshold 2.1.1	Part 2 – Below EU Threshold 2.1.1	Tender process	3 quotes are advisable but not mandatory (local firms being preferable) for contracts with a value of up to £10,000
31.	Part 2 – Below EU Threshold 2.2.1	Part 2 – Below EU Threshold 2.2.1	Tender process	Minimum of three quotes shall be obtained, subject to a procurement risk assessment being carried out for contracts with a total value of £10,000 to £25,000 All quotations should be sent to Procurement to ensure compliance with the Government Transparency Code.
32.	Part 2 – Below EU Threshold 2.2.1	Part 2 – Below EU Threshold 2.2.1	Tender process	Minimum of three quotations sought via e-tending portal for contracts with a total value of £25,000 to EU Threshold. Procurement must carry out a procurement risk assessment and will determine the route to market.
33.	Part 5 – Contracts and Post Competition Requirements 5.1.3	Part 5 – Contracts and Post Competition Requirements 5.1.3	Execution of Contracts	Contracts must be executed under seal where the contract exceeds £1,000,000.
34.	Part 5 – Contracts and Post Competition Requirements 6.1	Part 5 – Contracts and Post Competition Requirements 6.1	Waiver of Contract Procedure Rules	Waiver of the Contract Procedure Rules must be approved by the Chief Finance Officer and Director of Legal Services

## Constitution Sub-Committee

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**Date of Meeting:** 17<sup>th</sup> November 2017

**Report of:** Acting Director of Legal Services & Monitoring Officer

**Subject/Title:** Review of the Constitution – Work Package 5:  
**Codes & Protocols**

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### 1.0 Report Summary

- 1.1 To consider the draft revised Constitution for Work Package 5 and Explanatory Note (Schedule of Substantive Issues).
- 1.2 The Explanatory Note (Schedule of Substantive Issues) is attached at Appendix A. The redrafted element of the Constitution: Work Package 5 – Codes & Protocols (New Constitution Section 4) is attached as Appendix B. Members are asked to consider both documents and make appropriate recommendations to the Constitution Committee.
- 1.3 The completed section presented in this report is a 'final draft' and ready for approval for submission to Constitution Committee on 30<sup>th</sup> November 2017.

### 2.0 Recommendations

- 2.1 That the Constitution Sub-Committee:
  - 2.1.1 Notes the content of this report and the significant progress made
  - 2.1.2 Recommends that the Constitution Committee approves the proposed Substantive Issues as set out in Appendix A: Explanatory Note (Schedule of Substantive Issues) Sections I & II
  - 2.1.3 Makes a recommendation to Constitution Committee in respect of each individual issue as set out in Appendix A: Explanatory Note (Schedule of Substantive Issues) Section III
  - 2.1.4 Recommends that the Constitution Committee approves the revised draft of Section 4 of the Constitution (Work Package 5) as set out in Appendix B and the accompanying Explanatory Note (Schedule of Substantive Issues), subject to the specific responses to 2.1.2 and 2.1.3 above.

### **3.0 Reasons for Recommendations**

- 3.1 To implement the decision of the Constitution Committee on 4<sup>th</sup> August 2017.

### **4.0 Detailed Proposals**

- 4.1 It was agreed at Constitution Sub-Committee on 23<sup>rd</sup> August 2017 to break the review of the Constitution into five 'Work Packages', with a Lead Member and Lead Officer to lead each relevant working groups, as set out below:

- 4.1.1 Work Package 1 – The overall style and presentation of the Constitution

This Work Package was approved by the Constitution Sub-Committee on 15<sup>th</sup> September 2017 without the need for a separate Working Group.

- 4.1.2 Work Package 2 – Decision-making: Terms of Reference of Member Bodies

Lead Member: Cllr. Gordon Baxendale

Lead Officer: Daniel Dickinson

- 4.1.3 Work Package 3 – Decision-making: Officer Scheme of Delegation

Lead Member: Cllr. Nick Mannion

Lead Officer: Daniel Dickinson

- 4.1.4 Work Package 4 – Procedure Rules

Lead Member: Cllr. Andrew Martin

Lead Officer: Brian Reed

- 4.1.5 Work Package 5 – Codes & Protocols**

**Lead Member: Cllr. Barry Burkhill**

**Lead Officer: Brian Reed**

- 4.2 As agreed at Constitution Committee on 5<sup>th</sup> October 2017, this report makes recommendations in respect of the proposed redrafted Constitution with regard to Work Package 5. The redrafting has been conducted by the Council's independent legal advisor, Bevan Brittan, based upon its own expertise and experience as well as detailed feedback obtained through a wide-ranging Member and officer engagement process.

- 4.3 A comprehensive Explanatory Note (List of Substantive Issues) to the redrafted section has also been prepared, attached at Appendix A. This summarises the Substantive Issues being recommended in that section as part of the redrafting process, and the reasons for them.

4.4 Bevan Brittan, in consultation with officers on the project team, has used its discretion, exercised with caution, in listing those matters considered substantive and worthy of inclusion in the Explanatory Note (List of Substantive Issues). In doing so, it has been mindful of comprehensive feedback from Members received through the consultation process (including the joint Member/officer workshop on 31<sup>st</sup> August 2017, participation in the Working Groups and several informal 'drop-in' sessions), all of which has been logged and considered.

4.5 Changes have been classified as follows:

- Section I – Substantive Issues required by law for approval
- Section II – Substantive Issues based on best practice recommended for approval
- Section III – Substantive Issues for consideration by the Sub-Committee

4.6 The redrafted element of the Constitution is presented as follows:

- Work Package 5 – Codes & Protocols (New Constitution Section 4)

4.7 This is attached at Appendix B.

## **5.0 Wards Affected and Local Ward Members**

5.1 All wards are affected.

## **6.0 Policy Implications**

6.1 Policy Implications are unchanged from the position set out in the report to Constitution Committee on 4<sup>th</sup> August 2017.

## **7.0 Access to Information**

7.1 The Constitution Committee papers of 4<sup>th</sup> August 2017 and 5<sup>th</sup> October 2017 relate.

## **8.0 Contact:**

Name: Daniel Dickinson

Designation: Acting Director of Legal Services & Monitoring Officer

Tel No: 01270 685814

Email: [daniel.dickinson@cheshireeast.gov.uk](mailto:daniel.dickinson@cheshireeast.gov.uk)

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## Cheshire East Council – New Constitution

## Explanatory note to new Part 4 – Codes &amp; Protocols

## Structure of Part 4

Part	Title	Contents
A	<a href="#">Member Code of Conduct</a>	<p>This sets out the ways in which elected Members of the Council must conduct themselves. It covers such things as:</p> <ul style="list-style-type: none"> <li>• General obligations</li> <li>• Registering and declaring interests</li> <li>• Pre-determination and bias</li> </ul>
B	<a href="#">Officer Code of Conduct</a>	<p>This sets the ways in which all employees of the Council must conduct themselves. It covers such things as:</p> <ul style="list-style-type: none"> <li>• The Values of the Council</li> <li>• The Council's Core Principles</li> <li>• The Council's Core Standards</li> <li>• Additional standards relevant to particular groups of employees</li> <li>• Guidance on compliance with the Code</li> <li>• Associated forms and referral points</li> </ul>
C	<a href="#">Member / Officer Protocol</a>	<p>This Protocol is to guide Members and Officers of the Council in their relations with one another in such a way as to ensure the smooth running of the Council.</p>
D	<a href="#">Whistleblowing Policy</a>	<p>Although not a formal part of the Council's Constitution, it is considered useful to provide a link to the Whistleblowing Policy in this document.</p>

**Note:** The redrafting of Part 4 has been conducted by CEC officers, with advice from Bevan Brittan. The commentary on proposed changes has been prepared by those CEC officers.

## Substantive Changes

This Part largely follows the form of the current constitution and contains sets of various Procedure Rules dealing with the operation of the Council and its decision making.

We describe the changes that we have made in three categories:

- I. Substantive changes required by law for approval
- II. Substantive changes based on best practice recommended for approval
- III. Substantive changes for consideration by the Sub-Committee

### I. Substantive changes required by law for approval

There are no such substantive changes.

### II. Substantive changes based on best practice recommended for approval

Page	Section	Comment and/or area for consideration
Codes and Protocols		
N/A	Whistleblowing Policy	This does not have to be in the Constitution and is up-to-date and already accessible on the Council's internet and intranet sites. It was recommended by Sub-Committee on 3 <sup>rd</sup> November that it be referenced in the document and hyperlinked as a "Tier Two" hyperlink with ownership and responsibility for reviewing/updating passing to the Audit & Governance Committee.
N/A	Planning Protocol of Conduct in relation to the determination of planning matters	This does not have to be in the Constitution. It was recommended by Sub-Committee on 3 <sup>rd</sup> November that it be referenced in the document and hyperlinked as a "Tier Two" hyperlink within Section 2 of the Constitution with ownership and responsibility for reviewing/updating passing to the Strategic Planning Board.
N/A	Protocol on Public Speaking Rights at Strategic Planning Board and Planning Committee	This does not have to be in the Constitution. It was recommended by Sub-Committee on 3 <sup>rd</sup> November that it be referenced in the document and hyperlinked as a "Tier Two" hyperlink within Section 2 of the Constitution with ownership and responsibility for reviewing/updating passing to the Strategic Planning Board.
N/A	Councillor Call for Action Protocol	Our current Constitution contains a Protocol which seeks to "provide Members with a means of escalating matters of ward concern to a scrutiny committee...". The Protocol is 5 pages long. Our legal advisers, Bevan Brittan, query the

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Page	Section	Comment and/or area for consideration
		<p>necessity of the Protocol. They point out that “the basic right is for members to put something on the agenda of an overview and scrutiny committee, and have it discussed” (unless it is an excluded matter under legislation). They further advise that “The Protocol is very repetitive and seeks to curtail the statutory right of a member to put something on the agenda for scrutiny”.</p> <p>Bevan Brittan advise that the right of members to put items on scrutiny committee agendas could be mentioned in an appropriate procedure rule, and also that a link should be provided to the relevant Centre for Public Scrutiny guidance.</p> <p>It is therefore recommended that Bevan Brittan’s advice be followed; that the basic right of members to place something on scrutiny agendas be relied upon instead of a Protocol; that this is supported by appropriate information in procedure rules; and that an appropriate link should also be provided to the Centre for Public Scrutiny guidance.</p>
N/A	Petitions Scheme	<p>The existing Constitution includes a lengthy document, which contains complex provisions relating to petitions. Information is included as to how individuals can submit petitions, as well as identifying five different types of petitions and how they should be dealt with. Depending upon the number of signatories to a petition, a debate at Full Council can be forced. This has only happened once in the history of the Council.</p> <p>However, a good number of petitions are submitted from time to time and are appropriately administered by officers who ensure that the relevant elected member or decision-making body is informed.</p> <p>Bevan Brittan state that the guidance upon which local authority petitions schemes have been prepared has now been revoked.</p> <p>The Working Group concluded that the most important issues are that individuals submitting petitions should have clear information as to how they can do this, and what will happen to the petition they submit; and that officers have a clear understanding of how petitions should be dealt with, once submitted.</p> <p>The Sub-Committee is therefore recommended to agree that the existing Petitions Scheme, based on revoked guidance, is now dispensed with and is replaced by a link in an appropriate place in the</p>

Page	Section	Comment and/or area for consideration
		Constitution which guides members of the public and officers as to how petitions will be dealt with once submitted.

III. Substantive changes for consideration by the Sub-Committee

Page	Section	Comment and/or area for consideration
Member Code of Conduct		
N/A	Throughout	The Member Code (and associated documents) is being changed to address issues that have arisen with its operation since it was introduced, presumably in 2012. Most of these points have arisen dealing with complaints against town and parish councillors, who tend to adopt the council code, but will be of equal assistance to CEC councillors.
9	Appendix to the current Code. New sections as per the headings in the proposed new code.	Our code currently only defines disclosable pecuniary interests as a class of declarable/registerable interests. The standards regime and legislation envisages council's defining other classes of interests and issuing guidance about declaring those interests and what action to take once those interests have been declared, but Cheshire East has never done that. That is problematic, because there are a whole range of interests that should be declared to ensure transparency and openness, but which don't amount to disclosable pecuniary interests. The lack of definition/guidance has caused confusion, led to inadvertent breaches of the code and so needless standards complaints. It has also caused needless friction between councillors and undermined public confidence in the democratic process.  The code is proposed to be amended to set out a definition for personal interests (where a declaration should be made for transparency but participation in the debate and vote is still permitted) and a prejudicial interest (where one can speak as a member of the public but not otherwise and not vote). This is in line with the old standards regime which most members will be familiar with and seem to be following in practice in any event.

Page	Section	Comment and/or area for consideration
4	Currently dealt with in the “notes” section on the top of page 3 of the existing code. Proposed to have its on dedicated section under the “information” heading in the new code	Operational practice has shown that the code needs to be clearer in its provisions on how Members should and should not deal with information. We address that to re-emphasise the gravity of confidentiality obligations, particularly in light of GDPR where personal accountability and significant fines begin to bite.
5	Gifts and Hospitality	Currently the declaration limit for Members is £100 and for officers £5. That is a stark differential for which it is difficult to see any objective reasonable justification. Compared to other authorities, the Member limit is high and the officer limit very low. Members are asked to consider a unified limit for officers and Members.
2	Paragraph 2 of the proposed new code	We have inserted a requirement not to deliberately mislead, after feedback that our code contains no express provisions in that regard. Our view is that this would be covered in any event under the integrity and honesty headings, and to be “truthful” is a requirement of the Nolan principles in any event, but there has been a request to include it so it is for Members to decide whether and how it goes in.
3	Paragraph 4 of the proposed new code	We have included the word “appropriate” before the bit which says Members are subject to scrutiny by local residents. There have been numerous instances where complaints have been brought which have been founded in an unreasonable expectation of what the right to scrutinise Members entails. In some cases, this has bordered upon the harassment of members.
3	Paragraph 8(a)(iv) of the proposed new code (second “(a)”)	We have added a bit in the “respect for others” section designed to make clear that interference or attempted interference with another party in the standards complaints process is itself a breach of the code. Experience has shown that clarification is necessary.
8	Part 4 of the new code	We make reference in the code to a Monitoring Officer Protocol which the Monitoring Officer will produce and update from time to time. The purpose of that protocol is to alert members to the sorts of issues that have been arising and give an indication of how they will be dealt with under the code. That is almost a running “FAQs” intended to guide Member conduct on common or emerging themes. The

Page	Section	Comment and/or area for consideration
		purpose of the reference to it in the Code is to give the Monitoring Officer Protocol the status of guidance to be considered when determining matters under the Code.
5	Sensitive Interests	This section has been clarified.
8	Pre-determination and bias	This section has been added based on wording in the existing Planning Protocol. This was previously overlooked in the Code and is an issue all Members need to be alert to.
6	Paragraph 12 of the proposed new code	A section has been added where the Audit & Governance Committee can add membership of prescribed bodies as a personal interest. This flows from the debate at A&GC of a Notice of Motion requesting that all members be required to declare membership of the freemasons as an interest. The debate at A&GC queried why just the freemasons and not any other organisation. The resolution at A&GC was to deal with this in the constitution review process. This proposed addition to the Code enables A&GC to add that and any other body as being bodies that membership of which requires a declaration, as the A&GC sees fit.
Appendix A	Arrangements for Dealing with Standards Complaints. This is a separate document that sits outside of the code. The existing document was approved by Council. There is considered a need to update that document as explained in the column to the right. It is opportune to do that as part of this process.	<p>There is a legal requirement to have this document. The code references and links to it. There has been a substantial redraft to clarify issues that have cropped up in practice, and to make the process clearer. The document has been combined with an existing “overview of process” document sown at Appendix A. The main changes are:-</p> <ul style="list-style-type: none"> <li>• Providing more scope for the M.O. with the statutorily appointed Independent Person (IP) to reject complaints without first putting them to the subject member. We get a considerable amount of complaints which are not appropriate for the process (usually trivial, unfounded or tit for tat with no public interest element) but currently have to put those to a subject member and convene formal meetings of the IP (both requiring considerable administrative resource and delay) to consider them before invariably dismissing them on very clear grounds. That is an unsustainable drain on resource. The new procedure enables the MO to reject complaints on set criteria consulting the IP as appropriate. Reasons are given and the subject member is</li> </ul>

Page	Section	Comment and/or area for consideration
		<p>given a precis of the complaint when being told it has been received and rejected.</p> <ul style="list-style-type: none"> <li>Other aspects have been clarified by greater explanation/detail on matters which have caused confusion in practice.</li> </ul>
28	Member/Officer Relations Protocol	<p>A proposed new officer/member protocol is attached. This is substantively the same as the current document, although provides more detail and narrative on areas where difficulties and tensions most often arise. There is a proposal to include further narrative by way of hyper linked appendices on particular areas, if Members would find that useful, such as protocols on involvement in procurement processes and on access to and the use of information.</p>
N/A	Local Ward Member Protocol	<p>The Local Ward Member Protocol currently forms part of the Constitution. It is repetitive in places, complicated to follow, and is not well drafted. The Working Group concluded that the key issues which needed to be addressed in the replacement Protocol were to: simplify the document so as to make it easier to follow; to strike the right balance in respect of keeping local members informed of local issues; and to agree the right approach to hyperlinking.</p> <p>The following substantive matters are identified for agreement by the Sub-Committee:</p> <ol style="list-style-type: none"> <li>The Working Group has therefore agreed to utilise a shorter version of the Protocol, which used plain English, and which focusses the minds of its readers upon what is really important to local members. The Sub-Committee's approval is sought in respect of the newly drafted document at Appendix B.</li> <li>The Working Group concluded that there was no need for the Protocol to be contained within the Constitution, so long as it was accessible to those reading the Constitution via a hyperlink. <ul style="list-style-type: none"> <li>It is therefore proposed to hyperlink the document so as to make it available to anyone reading the Constitution.</li> <li>It is further proposed that the document should have the status of a "Tier Two" hyperlink, with the responsibility for reviewing and updating the document resting with the Constitution Committee.</li> </ul> </li> <li>Keeping Ward Members informed: the previous</li> </ol>

Page	Section	Comment and/or area for consideration
		<p>Protocol stated that “Quite Simply, members should be the first to know of events and issues affecting their wards”. This obligation upon officers was not well expressed, and introduced an element of uncertainty as to circumstances where there might be grounds to preserve confidentiality. Sections 2 &amp; 3 of the Protocol therefore seek to strike the right balance.</p>
N/A	<p>Mayoralty Code of Practice</p>	<p>The Constitution currently includes this Code, which is 6 pages long, is repetitious and poorly drafted. Essentially, it is a document which seeks to set out important and helpful guidance and protocols of behaviour in respect of the Mayor. Bevan Brittan advise that it does not need to be part of the Constitution, and could therefore be hyperlinked.</p> <p>The document has been appropriately re-drafted so as to include the important elements of the document. The Sub-Committee’s approval is sought in respect of the newly drafted document at Appendix C, but the Sub-Committee is asked to express a view upon the following issue which was raised by the Working Group.</p> <p>Whereas the existing arrangement for the nomination of Deputy Mayor rests with the ruling Group, and that in reaching a decision, it may choose to invite nominations from other Groups, the Working Group asked for consideration to be given to granting all Groups the right to put forward nominations for the Deputy Mayoralty to the Ruling Group. This would replace the existing arrangement.</p> <p>The Sub-Committee is asked to make an appropriate recommendation to the Constitution Committee.</p>

**LOCALISM ACT 2011  
ARRANGEMENTS FOR DEALING WITH STANDARDS COMPLAINTS  
AGAINST MEMBERS**

## 1 INTRODUCTION

### What does this guidance cover?

In this document the term “Member” means an elected or co-opted member of Cheshire East Council or of a town or parish council within its area. This guidance covers complaints that a member has failed to comply with their code of conduct. The member complained against is referred to in this guidance as the “subject member”.

These arrangements set out:

- (1) how you can make a complaint about the conduct of an elected or co-opted member of Cheshire East Council or of a town or parish council within the borough.
- (2) how the Council will deal with complaints about members.

There is an overview and flowchart of the process in the [appendix](#) to this document.

### Codes of conduct

Cheshire East Council has adopted a code of conduct for members, which is available for inspection on the council’s [website](#) and on request from the Monitoring Officer: [monitoringofficercec@cheshireeast.gov.uk](mailto:monitoringofficercec@cheshireeast.gov.uk).

Each town or parish council must also adopt a code of conduct. If you wish to inspect a town or parish council’s code of conduct, you should look on their website in the first instance. You may also ask the town or parish clerk to allow you to inspect it.

### What complaints can the Monitoring Officer deal with?

The Monitoring Officer can only deal with complaints that a member has failed to comply with their Code of Conduct. If you wish to make a complaint about:-

- dissatisfaction with a decision or action of the authority or one of its committees
- a service provided by the authority
- the actions of someone employed by the authority
- the authority’s procedures or policies

you can do so using the council’s [corporate complaints process](#) or, in the case of a town or parish council, by contacting that council’s clerk.

If your complaint is about a member, then you can use this process. However, you should be aware that there is an assessment criteria that is applied to all complaints to ensure that the processes focuses on complaints where there is a wider public interest in addressing the conduct complained about.

You should consider the assessment criteria set out below before making your complaint in order to understand how your complaint will be dealt with.

### Changes to and departure from this guidance

The Monitoring Officer may amend this guidance from time to time in consultation with the Chairman of the Audit and Governance Committee and the Independent Person<sup>1</sup>. The Monitoring Officer may also depart from this process when s/he thinks it is necessary to do so in order to ensure that a complaint is dealt with fairly and effectively

## **2 HOW DO I MAKE A COMPLAINT?**

### The Complaint Form

Complaints must be submitted in writing to Cheshire East Borough Council's Monitoring Officer using the standard [complaint form](#). When complete, your form should be sent to the Monitoring Officer along with any supporting evidence that you wish to provide. This should be sent by post or email, however email is preferred.

By Post: Monitoring Officer, Cheshire East Council, c/o Municipal Buildings  
Earle Street, Crewe CW1 2BJ

By email: [monitoringofficercec@cheshireeast.gov.uk](mailto:monitoringofficercec@cheshireeast.gov.uk)

The Monitoring Officer will not normally consider a complaint unless it is in writing and a complaint form has been received. This is to ensure that all of the relevant information is provided and, where necessary, consent to share information has been obtained so that the complaint can be processed.

If you do not have access to the internet or have difficulty completing the form please contact please contact 01270 685863 for assistance.

### Information Required

Completing the complaint form ensures all required information is provided. You will need to provide your name, address and email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. Our preference is to communicate with you by email only, but we will do so through conventional post at your request.

If you are making a complaint on behalf of a number of individuals, please nominate one person as the single point of contact to whom all correspondence will be addressed.

In order to ensure that we have all the information needed to be able to process your complaint you need to provide us with:

- the name of the member(s) you believe to have breached the code of conduct
- the name of their council
- which parts of the code you believe have been breached

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- what they have done that you believe breaches the code. If you are complaining about more than one member you should clearly explain what each individual person has done that you believe breaches the code

It is important that you provide all the information you want us to take into account about your complaint. For example:

- Wherever possible, you should be specific about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was that they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give as accurate a timeframe as you can.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

It would help in dealing with your complaint to know what your desired outcome might be. If you feel able to provide this information please do so. Please note that the Monitoring Officer has no power to suspend or disqualify a member, withdraw a member's allowance or change a decision that a member has made or has been involved in making. The remedies which may be applied through this process are set out below.

### Anonymity

Anonymous complaints will not normally be investigated, unless there is clear public interest in doing so and the Monitoring Officer considers that a fair investigation can be carried out.

Requests from complainants for the Monitoring Officer to withhold their identity, so that they remain anonymous to the subject member, are not ordinarily granted.

The Monitoring Officer has to balance the right of the subject member to properly understand the complaint against them and respond to it, with the rights of the person making the complaint. More often than not, this means that the subject member will need to be told who is making the complaint.

In all cases, the subject member is asked not to approach complainants or to talk to them about the complaint. The Code contains provisions designed to protect complainants and the integrity of the complaints process.

Nevertheless, if you want to keep your identity confidential, please ensure that you complete section 6 of the complaint form. Requests for anonymity will only be granted if there is a good reason for asking us to do this, and if doing so will not prejudice the subject member's ability to properly respond to the complaint.

We will normally use the following criteria when considering your request -

- You have reasonable grounds for believing that you will be at risk of physical harm or harassment if your identity is disclosed
- You have an employment relationship with the subject member(s) and you are afraid of the potential consequences upon that relationship if your identity is disclosed
- You suffer from a serious health condition and there are medical risks associated with your identity being disclosed. Medical evidence may be requested
- Whether the complaint can be investigated without revealing your identity
- The seriousness of the complaint
- The degree to which the subject member may be prejudiced by withholding your identity

The Monitoring Officer will only grant your request if he considers that a fair investigation can still be carried out. You will be informed of the decision and the reasons for it.

If your request for confidentiality is not granted, no further action will be taken unless you confirm that you are happy for the council to release your identity to the subject member.

### **3 WHAT HAPPENS AFTER I SUBMIT MY COMPLAINT FORM?**

#### Confidentiality Requirements

The complaints process is confidential. This means that during each stage of the process up to and, in some cases, including the holding of a Sub-Committee hearing (see below) to determine a complaint, matters are dealt with in confidence.

Information supplied by the complainant(s) and the subject member(s) to the Monitoring Officer will only be supplied to other parties to the complaint in accordance with the procedure.

With the exception of a professional advisor retained for those purposes who is also bound by a duty of confidentiality, the parties to the complaint must not pass on any information relating to the complaint to any third party without first obtaining the written permission of the Monitoring Officer.

Any complainant who fails to comply with the confidentiality requirements risks being found to have contravened the process which may result in no further action being taken on their complaint.

Any member who fails to comply with the procedure risks being subject to a complaint that they have breached the Code simply on account of having made such a disclosure.

#### Acknowledgement

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of progress. It may be necessary to seek further clarification from you at this stage.

### Preliminary Assessment

The Monitoring Officer will undertake a preliminary assessment of your complaint, consulting the Independent Person where appropriate, before making and notifying you of his/her decision on whether and how the complaint should proceed. The Monitoring Officer will endeavour to do so within 5 working days of acknowledging your complaint. The Monitoring Officer is not determining, at this stage, whether or not there has been a breach of the Code.

### Preliminary Assessment Criteria

If your complaint indicates that a criminal offence may have been committed (or some other regulatory infraction) the matter will be reported to the appropriate regulatory body. It may be the case that the complaint cannot be further considered under this process until an associated external investigation has been completed.

If your complaint also relates to or raises concerns about a council service (or an officer of the council), it may first need to be dealt with under the relevant corporate complaints/disciplinary process that applies. This is so that the outcome and any proposed action resulting from any such process can be taken into account when assessing the code of conduct complaint.

The preliminary assessment will also consider whether:-

- 1) The complaint is against one or more named members of Cheshire East Council or a town or parish council within the borough.
- 2) The subject member was in office at the time of the alleged conduct
- 3) The subject member was acting in their official capacity as a member at the time of the alleged conduct.
- 4) There is (or following further enquiries or investigation is likely to be) enough information to form a view as to whether or not a breach of the code has or has likely occurred.

If these tests are not met, no further action will be taken. If these tests are met, the Monitoring Officer will go on to consider whether the complaint:-

- 5) Has been made in time. Complaints lodged more than 6 months after the conduct that is being complained about occurred will not normally be considered unless there are extenuating circumstances
- 6) Is trivial, malicious, vexatious, politically motivated or a "tit for tat" complaint. The complaints process exists to deal with matters of conduct where it is in the public interest to do so. The Monitoring Officer must be mindful of resource considerations and not allow the process to be used as a mechanism to seek to take members to task for conduct which may technically amount to a breach of the code but where there is little or no wider public interest in pursuing the matter.

- 7) Is a repeat complaint. The Monitoring Officer will not normally consider complaints which have been substantively considered (whether or not under this process) within the previous six month period.

#### Informing the subject member

The subject member will not normally be told about the complaint until this preliminary assessment has been undertaken. However, in some cases in order to undertake this assessment it may be necessary to notify the subject member of the complaint and request further information from the subject member or some other person.

Where the complaint relates to a town or parish council member, the Monitoring Officer may inform the relevant clerk of the complaint and seek further information from the clerk.

If more information is required at this stage, the time limit for completing the preliminary assessment may be extended.

Following Preliminary Assessment, the Monitoring Officer may decide to:-

- 1) Take no further action
- 2) Refer the matter to an Independent Assessment Meeting

#### Notification of Preliminary Assessment Decision

Once a decision following Preliminary Assessment has been made, letters of notification will then be sent to you and the subject member informing you of the decision made and the reasons for it.

If the decision is to take no further action, the subject member will be provided with a precis of the complaint and, subject to the provisions on anonymity, the identity of the complainant. The Monitoring Officer may offer advice to the complainant, subject member or both. The Monitoring Officer may also notify the relevant Group Leader, Whip or town or parish clerk of the complaint and the decision taken.

If the decision is to refer the matter to an Independent Assessment Meeting, then unless s/he has already done so, the Monitoring Officer will supply the subject member with a copy of your complaint (and accompanying materials) and will be invited to respond to it in writing. Data protection rules may require some information to be removed from the complaint before it is submitted to the subject member. You will be notified if this is necessary. The subject member will be invited to respond to the complaint within 5 days of the date of the notification letter.

#### Independent Assessment Meeting

If the complaint is referred to an Independent Assessment Meeting, the Monitoring Officer will endeavour to convene and hold that meeting and notify you and the subject member of the outcome of the same within 20 working days of the date of the Preliminary Assessment Notification Letter. This may not always be possible depending on the availability of the Monitoring Officer and the Independent Person. You will be kept informed of progress and timescales.

The Independent Assessment Meeting is an opportunity for the Monitoring Officer and Independent Person to consider the complaint and the subject member's response to it. The purpose of meeting is for the Monitoring Officer, in consultation with the Independent Person, to decide whether it appears that a breach of the code may have occurred and to determine what action, if any to take on the matter.

The Monitoring Officer is not determining, at this stage, whether or not there has been a breach of the Code. The Monitoring Officer is determining whether the circumstances are such that:-

1. No further action should be taken
2. The matter is suitable for informal resolution
3. The matter should be formally investigated

#### Independent Assessment Criteria

In addition to revisiting the Preliminary Assessment Criteria (where appropriate), and to determine the appropriate next course of action, the Monitoring Officer and Independent Person will consider:-

1. Whether there is sufficient information available to him to decide what action should be taken
2. The seriousness of the matters alleged
3. The likely effectiveness of the remedies available
4. The public interest<sup>ii</sup>

#### Notification of Independent Assessment Decision

Once a decision following Independent Assessment has been made, letters of notification will then be sent to you and the subject member informing you of the decision made and the reasons for it.

If the decision is to take no further action, the Monitoring Officer may offer advice to the complainant, subject member or both. The Monitoring Officer may also notify the relevant Group Leader, Whip or town or parish clerk of the complaint and the decision taken.

If the decision is that the matter is appropriate for informal resolution, the Monitoring Officer will make recommendations accordingly. Informal resolution options include:-

1. An explanation and/or apology from the subject member
2. Mediation
3. Training
4. Referral of the matter to the Group Leader, Whip and/or Parish Clerk to be resolved where the complaint is between two members and political group intervention/agreement is appropriate.
5. Some other practical "conflict management" agreement between the complainant and subject member

The Monitoring Officer may take into account the response to and effectiveness of recommendations made for informal resolution in deciding whether or not the matter should nevertheless be formally investigated and pursued further under this process.

If the decision is that the matter should be formally investigated, then the following provisions of this guidance apply.

### Formal Investigation

If the Monitoring Officer decides that the complaint merits formal investigation, they will appoint an Investigating Officer. This may be another senior officer the council, another council or an external investigator. The Monitoring Officer will determine the terms of reference for any investigation in consultation with the Independent Person.

### Investigation Process

The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can:

- explain your understanding of events
- suggest what additional documents the Investigating Officer needs to see
- suggest who the Investigating Officer needs to interview

The Investigating Officer will normally write to the subject member against whom you have complained and provide him/her with a copy of any additional materials you have provided. He/she will also ask the subject member to understand his/her explanation of events, and to identify what documents the subject member thinks he/she needs to see and who the subject member thinks he/she needs to interview.

### Investigation Report

At the end of his/her investigation, usually within 8 weeks of being appointed the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the subject member. This provides you both with the opportunity, within 5 working days of the report being sent to you, to make representations to the Investigating Officer on any matter of fact in the draft report that you disagree with or that you think requires more consideration.

Having received and taken account of any comments which you or the subject member may have made on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer. The report will include the Investigator's findings about whether or not, in the opinion of the Investigating Officer, the code of conduct has been breached and the Investigating Officer's recommendations as to remedies or further action.

The Monitoring Officer will review the Investigating Officer's report in consultation with the Independent Person. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, or considers there to be errors or omissions in the report, he may ask the Investigating Officer to reconsider his/her report. This may involve the Investigating Officer carrying out further investigations and producing an amended report. You will be kept informed of timescales.

### Decision Following Investigation

If (or once) satisfied that the investigation has been properly undertaken and that there are no material errors or omissions in the Investigating Officer's report, the Monitoring Officer will write to you and to the member concerned within 15 working days of receiving the Investigating Officer's final report notifying you of what action, if any, will follow and the reasons for that decision. The Monitoring Officer is not constrained by the recommendations in the Investigating Officer's report.

If the Monitoring Officer's decision is to take no further action, the Monitoring Officer may offer advice to the complainant, subject member or both. The Monitoring Officer may also notify the relevant Group Leader, Whip or town or parish clerk of the complaint and the decision taken.

If the decision is that the matter is appropriate for informal resolution, the Monitoring Officer will make recommendations accordingly. Informal resolution options include:-

6. An explanation and/or apology from the subject member
7. Mediation
8. Training
9. Referral of the matter to the Group Leader, Whip and/or Parish Clerk to be resolved where the complaint is between two members and political group intervention/agreement is appropriate.
10. Some other practical "conflict management" agreement between the complainant and subject member

The Monitoring Officer may take into account the response to and effectiveness of recommendations made for informal resolution in deciding whether or not the matter should nevertheless be referred to the Audit and Governance Hearing Sub-committee.

If the decision is that the matter should be referred to the Audit and Governance Hearing Sub-committee, then the following provisions of this guidance apply.

### Audit & Governance Hearing Sub-Committee

Where the Monitoring Officer considers that it is in the public interest for the matter to be considered by Hearing Sub-Committee, a Sub-Committee will be convened to determine whether the subject member has failed to comply with the code of conduct.

### Pre-Hearing Process

The Monitoring Officer will normally conduct a pre-hearing process within 3 months of receiving the Investigating Officer's report. The subject member will be required to give his/her response in writing to the report. This is done to establish what is likely to be agreed and what is likely to be in dispute at the hearing.

On receiving the subject member's response, a meeting of the Hearing Sub-Committee will then be convened. The Hearing Sub-Committee will comprise three elected members of the Audit and Governance Committee plus an Independent Person, who has not previously been consulted on the complaint.

As part of this meeting, the Chairperson of the Hearing Sub-Committee (appointed from the elected members present) may issue directions about the way in which the hearing will be conducted, for example agreeing the number and identity of witnesses. Directions may be given either before or at the hearing taking account of the advice of the Monitoring Officer. Any meeting to deal with pre-hearing process issues will be held in private without the complainant or the subject member present.

Prior to a hearing, any documentation issued or exchanged during the process must be treated by all recipients as confidential unless and until the sub-committee agrees that the press and public should not be excluded from the meeting at which the allegations are going to be heard. This is because meetings of the Hearing Sub-Committee are subject to the normal rules for publication of council agendas and access to information. At the point the sub-committee agrees that the meeting should be held in public, the investigator's report will be made available to the press and public in attendance at the meeting.

### Hearing Process

At the hearing, an appointee of the Monitoring Officer will present to the sub-committee, calling witnesses as necessary (which may include the complainant), the case that the subject member has failed to comply with the code of conduct. The subject member will then have an opportunity to give his/her evidence, to call witnesses and to make representations about why he/she considers that he/she did not fail to comply with the code of conduct. Normal hearing rule will apply in terms of their being opportunities to question witnesses and test evidence, furtherance to the principles of natural justice

If the subject member (or appointed representative) is not present, then the sub-committee will consider whether to proceed to hear the case and make a decision in absence, or whether to adjourn the hearing to another time or date. If the subject member has indicated that the hearing should carry on without him/her this will normally happen.

On conclusion of the evidence, the Hearing Sub-Committee will decide, with the benefit of any advice from the Independent Person, whether there has been a breach of the code of conduct.

If it concludes that the subject member did not breach the code of conduct it will dismiss the complaint and no further action will be taken. In that event, the sub-committee may still make general recommendations to the council or its members on any remedial actions if considers necessary to address the issues raised.

Where the Hearing Sub-Committee determines that the member has failed to comply with their code of conduct, the Chairperson will inform the subject member of this finding. The Independent Person will give his/her views on the matter, which will be recorded in the minutes of the meeting. The Chairman of the Hearing Sub-Committee will explain the reasons why any advice from the Independent Person has or has not been followed in giving its decision.

The Hearing Sub-Committee will then consider what action, if any, it should take as a result. The Hearing Sub-Committee will give the subject member an opportunity to make representations about that and will consult the Independent Person deciding what action, if any, to take.

### Remedies

The Council has delegated to the Hearing Sub-Committee powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearing Sub-Committee may –

- Censure or reprimand the subject member;
- Publish its findings in respect of the subject member's conduct;
- Report its findings to Cheshire East Borough Council or make recommendations to the town or parish council for consideration;
- Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to committees) that he/she be removed from any or all committees or sub-committees of the Council;
- Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular portfolio responsibilities;
- Instruct the Monitoring Officer to, or recommend that the town or parish council, arrange training for the member;
- Recommend to the Council or town or parish council to remove the subject member from all outside appointments to which he/she has been appointed or nominated by the Council or by the town or parish council;
- Withdraw or recommend to the town or parish council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access if relevant to the subject matter of the complaint;
- Exclude, or recommend that the town or parish council exclude the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Cabinet, committee and sub-committee meetings if relevant to the subject matter of the complaint.

The Hearing Sub-Committee has no power to suspend or disqualify a member or to withdraw a member's allowance. It also cannot impose a sanction on a town or parish councillor, it can only make recommendations to the member's town/parish council as to what action should be taken. Whilst the town/parish council cannot overturn a finding of breach, it can accept, modify or reject the sub-committee's recommendations.

The Chairperson of the Hearing Sub-Committee has the right to depart from the Hearing Sub-Committee procedure, in consultation with the Sub-Committee's legal advisor, at any hearing where he/she considers that it is sensible to do so to deal with the case fairly and effectively.

#### Following the Hearing

At the end of the hearing, having consulted with and considered the views of the Independent Person, the Chairperson of the Hearing Sub-Committee will announce the decision of the sub-committee on the day.

As soon as possible but in any event within 10 working days the Monitoring Officer will prepare a formal decision notice in consultation with the Chairperson and will send a copy to you, to the subject member concerned, and to the town or parish council, if relevant. He/she will also make that decision notice available for public inspection by way of publishing the minutes of the meeting and will report the outcome to the Audit and Governance Committee as part of its bi-annual report on standards matters.

## 4 APPEALS

With the exception of external legal and Local Government Ombudsman processes, there is no right of appeal for you or for the subject member against a decision of the Monitoring Officer or of the Hearing Sub-Committee.

## 5 REPORTS TO THE AUDIT AND GOVERNANCE COMMITTEE

The Monitoring Officer will present a reports to the Audit and Governance Committee at appropriate intervals giving details of;

- (a) the number of complaints received, broken down into borough and town/parish;
- (b) the paragraphs alleged to have been breached;
- (c) the status of complaints in progress;
- (d) the outcome of complaints, where concluded;
- (d) what action has, where appropriate, been taken.

## 6 DOCUMENT RETENTION

The documentation relating to a complaint will be retained for 6 years from the conclusion of the complaint, irrespective of the outcome of the complaint. For the avoidance of doubt, minutes of the Hearing Sub-Committee will be retained in the same way as the minutes of other council decision making bodies.

### **INSERT PROCESS FLOW CHART HERE**

<sup>1</sup> *The Independent Person* - The Council must appoint at least one Independent Person and seek that person's views before it takes decision on a complaint that it has decided to investigate. The Independent Person's views can also be sought by the council on any other issue in the complaints handling process. The Independent Person will also provide, on request, procedural advice to a subject member or to a complainant.

<sup>1</sup> *Public Interest* – Public Interest considerations are at the heart of this process. The Monitoring Officer must balance the appropriate use of public resource in dealing with complaints with the extent to which it may be in the public interest to take further action, and what that further action should be (informal resolution of a formal investigation perhaps leading to a finding of a breach of the code and sanctions being imposed).

If the complaint relates to an ex-member who is now a member of another council the Monitoring Officer may ask that council to consider the complaint.

If the subject member resigns during the process, is or becomes seriously ill or has died, the Monitoring Officer will have to decide whether it is in the public interest to continue with the process. The views of the complainant will be sought in making that decision.

A pattern of behaviour, findings of breach or failed informal resolutions may be relevant in determining whether it is in the public interest to invoke a different course of action than that which might have been invoked in the case of a first or single incident. However, the Monitoring Officer will be mindful of the fact that a number of unsubstantiated allegations do not amount to a proven course of conduct or behaviour.

## Local Ward Member Protocol

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### Community Champions

1. Local ward members, as community champions, have an important role to play in representing the Council in their wards:
  - a. responding to the concerns of their constituents;
  - b. in meetings with partners; and
  - c. serving on external bodies and organisations.

### Keeping ward members informed

2. It is essential for the proper running of the Council that members are fully informed, in a timely manner, about matters upon which they may be required to make decisions, or which affect their wards; including, but not limited to, being informed about consultation exercises, planning applications, pre-planning application meetings, and public meetings or events; except where:
  - a. an individual's right to personal confidentiality overrides this;
  - b. any criminal investigation or police action might be prejudiced; or
  - c. where exempt information would be compromised.

Whilst the presumption will be in favour of information being provided to local members, the Monitoring Officer will decide any question as to whether the above exceptions apply.

3. Subject to this, it is accepted that members need to be made aware of issues within their wards if they are to be effective in their roles as spokespersons on behalf of their local communities.

### Identifying local issues in reports

4. Reports to the Council's decision-making bodies should identify the wards affected by the issues contained in those reports. This will enable local ward members to make themselves aware of these issues, and may then decide to attend the meeting in question, or to make further enquiries about the decision which is proposed to be made.

### Committing the Council to take action

5. Local ward members are reminded that they do not have the right to commit the Council or its officers to any particular course of action, and should ensure that they do not convey to the public any false impression of commitment or give any undertaking that they are not in a position to personally fulfil.

## Mayoralty Code of Practice

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1. The Mayoralty is the most exalted position within the gift of the Council. Officers, Members and staff must, at all times, respect the Mayor and show deference to his/her office.
2. The Mayor's construction or application of any of the Council's Constitution, or as to the proceedings of Council, should not be challenged.
3. Throughout the Mayor's term of office, he/she should remain politically impartial in all matters of policy and should not be involved in political matters or campaigns, or in controversial matters. The Mayor may therefore choose not to attend political group meetings during his/her year of office.
4. Any press enquiries about the Mayor should be made via the Communications Team.
5. The Mayor should not be appointed as Chairman or Vice Chairman or member of any committee or sub-committee of the Council, or as a Deputy Cabinet member, or be appointed to act as a Director of any of the Council's alternative service delivery vehicles. He/she may accept ex-officio positions with outside organisations or bodies where his/her membership stems from the position of Mayor. He/she may attend the annual meeting or other special meetings of an outside organisation or body and may accept the position of patron or president, but should not become actively involved during his/her term of office.
6. The Deputy Mayor will be chosen for election by the political group which has the majority of Council members. Prior to doing so, they may invite another political group or groups to put forward a nomination for their consideration. The Deputy Mayor will normally succeed to the Mayoralty in the following year. The selection process should normally ensure that, upon election to office, the Mayor will have served at least one term of office as a local authority councillor.
7. The Deputy Mayor will support the Mayor in the fulfilment of civic engagements, and will take the chair in the absence of the Mayor at Council meetings.
8. The Mayor may choose to organise a civic service at a venue to be chosen by him/her, and may also choose to appoint a Chaplain.
9. In his/her capacity as civic head or first citizen, the Mayor represents the Sovereign in the Borough, ranking in precedence only after the Lord Lieutenant (if attending in his official capacity representing the Queen) and members of the Royal Family. He/she should therefore officiate at all formal civic events, involving the Council, the public and press. In the absence of the Mayor, the Deputy Mayor should officiate or, at the Mayor's discretion, and always subject to his/her ruling, the appropriate Portfolio Holder may do so.

10. The Mayor and Deputy Mayor should wear their robes, chains and badges of office on all formal occasions within the Borough. At meetings of the Council, the Mayor and Deputy Mayor should wear their robes, chains and badges of office except where they Mayor determines that robes should not be worn.
11. The Mayor and Deputy Mayor should wear their chains and badges of office when attending functions, unless they determine that the wearing of a ribbon would be more appropriate.
12. Members of the Council should be appropriately dressed at Council meetings and should stand when the Mayor enters and leaves the room or chamber where a meeting is taking place.
13. The mace should be used on all Borough ceremonial occasions and will be carried before the Mayor.
14. The offices of Mayoress or Consort and Deputy Mayoress or Consort have no legal status. The appointment to these offices is made upon the invitation of the Mayor and Deputy Mayor, but where persons other than relatives are proposed for appointment, these are at the discretion of the Civic Sub-Committee (or replacement).
15. Support is provided to the Mayor and Deputy Mayor by the Head of Governance and Democratic Services, and their accommodation shall be in the Mayor's Parlours at Macclesfield Town Hall and the Crewe Municipal Buildings.
16. In circumstances where the Mayor is indisposed, the Deputy Mayor will be requested to assume the full duties of the post of Mayor for that time, but will not take the title. Where the Deputy Mayor is similarly indisposed, the Deputy Mayor Elect or the Leader of the Council will assume his or her civic and social duties, but will not take the title.
17. The former Mayors of the Council will be presented with a medallion as a memento of their office, which should be worn on such occasions and at such event as they are advised to do so.
18. The Mayor may organise "Mayor's at Home" events, at which light refreshments will be provided.
19. The Mayor should accept as many invitations as possible to attend events and functions. Where there are conflicting invitations, the Mayor may ask the Deputy Mayor to assist.
20. Any fundraising activities undertaken for the Mayor's charity are the responsibility of the Mayor, the Mayoress and friends. Fundraising for the Mayor's charity is discretionary. Officers will only provide support to the Mayor in respect of charitable activity at formal civic occasions, the Mayoral Ball, and the selling of tickets/reservation of places. The Mayor may consider establishing a committee to assist him/her in the preparation for this activity.

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<sup>i</sup> *The Independent Person* - The Council must appoint at least one Independent Person and seek that person's views before it takes decision on a complaint that it has decided to investigate. The Independent Person's views can also be sought by the council on any other issue in the complaints handling process. The Independent Person will also provide, on request, procedural advice to a subject member or to a complainant.

<sup>ii</sup> *Public Interest* – Public Interest considerations are at the heart of this process. The Monitoring Officer must balance the appropriate use of public resource in dealing with complaints with the extent to which it may be in the public interest to take further action, and what that further action should be (informal resolution of a formal investigation perhaps leading to a finding of a breach of the code and sanctions being imposed).

If the complaint relates to an ex-member who is now a member of another council the Monitoring Officer may ask that council to consider the complaint.

If the subject member resigns during the process, is or becomes seriously ill or has died, the Monitoring Officer will have to decide whether it is in the public interest to continue with the process. The views of the complainant will be sought in making that decision.

A pattern of behaviour, findings of breach or failed informal resolutions may be relevant in determining whether it is in the public interest to invoke a different course of action than that which might have been invoked in the case of a first or single incident. However, the Monitoring Officer will be mindful of the fact that a number of unsubstantiated allegations do not amount to a proven course of conduct or behaviour.

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# Cheshire East Council

## New Constitution

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### Part 4

### Codes and Protocols

This part of the Constitution covers the following areas:-

Part	Title	Contents
A	Member Code of Conduct	<p>This sets out the ways in which elected Members of the Council must conduct themselves. It covers such things as:</p> <ul style="list-style-type: none"> <li>• General obligations</li> <li>• Registering and declaring interests</li> <li>• Pre-determination and bias</li> </ul>
B	Officer Code of Conduct	<p>This sets the ways in which all employees of the Council must conduct themselves. It covers such things as:</p> <ul style="list-style-type: none"> <li>• The Values of the Council</li> <li>• The Council's Core Principles</li> <li>• The Council's Core Standards</li> <li>• Additional standards relevant to particular groups of employees</li> <li>• Guidance on compliance with the Code</li> <li>• Associated forms and referral points</li> </ul>
C	Member / Officer Relations Protocol	<p>This Protocol is to guide Members and Officers of the Council in their relations with one another in such a way as to ensure the smooth running of the Council.</p>
D	Whistleblowing Policy	<p>Although not a formal part of the Council's Constitution, it is considered useful to provide a link to the Whistleblowing Policy in this document.</p>

## Part A – Member Code of Conduct

### MEMBER CODE OF CONDUCT

Cheshire East Council has adopted this Code of Conduct to promote and maintain high standards of conduct and underpin public confidence in the authority and its members and co-opted members (referred to collectively in this Code as “Members”).

The Code has been adopted under the Localism Act 2011 and is based on the following core principles of public life:-

- 1) Selflessness
- 2) Integrity
- 3) Objectivity
- 4) Accountability
- 5) Openness
- 6) Honesty
- 7) Leadership

The Code sets out general obligations about the standards of conduct expected of members and co-opted members of the authority, together with provisions about registering and declaring interests.

#### Part 1 – General obligations

Whenever you are acting as a member or co-opted member of this authority you must act in accordance with the following obligations:

##### *Selflessness*

- 1 You must act solely in the public interest and must never use or attempt to use your position improperly to confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, friends or close associates.

##### *Integrity*

- 2 You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

You should not deliberately mislead.

##### *Objectivity*

- 3 When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending

individuals for rewards or benefits, on merit.

You should remain objective, listen to the interests of all parties appropriately and impartially and take all relevant information, including advice from the authority's officers, into consideration.

You should exercise independent judgement. Although you may take account of the views of others (including a political group), you should reach your own conclusions on the issues before you and act in accordance with those conclusions.

#### *Accountability*

- 4 You are accountable to the public for your decisions and you must co-operate fully with whatever scrutiny is appropriate to your office, including appropriate scrutiny by local residents.

#### *Openness*

- 5 (a) You must be open and transparent where possible about your decisions and actions and the decisions and actions of your authority. You should be prepared to give reasons for those decisions and actions.

#### *Honesty*

- 6 (a) You must declare any personal, pecuniary and non-pecuniary interests that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests as set out in Part 2 below.

(a) You must only use or authorise the use of the authority's resources in accordance with the authority's requirements. You must, when using or authorising the use of such resources, ensure that they are used for proper purposes only. Resources must not be used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity in force from time to time.

#### *Leadership*

- 7 You must promote and support high standards of conduct when serving as member of the authority, by leadership and example, championing the interests of the community.

You should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in you.

#### *Respect for others*

- 8 (a) You must treat others with courtesy. You should engage with colleagues and staff in a manner that underpins mutual respect and courtesy, essential to good local government.

You must not:-

- i) do anything which may cause your authority to breach any equality laws.
- ii) compromise or attempt to compromise the impartiality of anyone who works for, or on behalf of, the authority.
- iii) bully<sup>1</sup> any person, including other councillors, officers of the authority or members of the public.
- iv) intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct

*Information*

- a. You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except<sup>2</sup> where –
  - i. you have the written consent of a person authorised to give it;
  - ii. you are required by law to do so;
  - iii. the disclosure is made to a professional third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
  - iv. the disclosure is reasonable, in the public interest; and made in good faith and in compliance with the reasonable requirements of the authority; or

You must not prevent another person from gaining access to information to which that person is entitled by law.

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<sup>1</sup> "Bullying" may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour and includes "cyber bullying". It may happen once or be part of a pattern of behaviour. It can be contrasted with the legitimate challenges a member may make in challenging policy or scrutinising performance. You may challenge others as to why they hold their views but must take care to raise issues in the appropriate forum and in an appropriate way. Ideas and policies may be robustly criticised but individuals should not be subject to unreasonable or excessive personal attack.

<sup>2</sup> It is your responsibility to ensure that any judgement you make in relying on any exception will stand up to rigorous objective scrutiny. In the case of any doubt advice should be sought from the Monitoring Officer or an independent qualified legal advisor.

*Gifts and Hospitality*

- b. You must within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £100 which you have accepted as a member from any person or body other than the authority. The Monitoring Officer will place your notification on a public register of gifts and hospitality.

**Part 2 – Registering and Declaring Interests**

*Registering and Declaring Interests – General Requirements*

- 1 You must, within 28 days of:-
- a) the adoption of this Code
  - b) taking office as a member
  - c) becoming aware of any new interest not already registered
  - d) becoming aware of any change to any interest already registered
- notify the monitoring officer in writing of any disclosable pecuniary interest, or other type of interest as defined by this Code.
- 2 If you become aware of any such interest not already registered (or the subject of pending notification) during the course of any meeting of the authority at which you are in attendance then you must disclose the interest to meeting, take the action required by the Code depending on the nature of the interest and notify the monitoring officer of the interest in accordance with the provisions of this Code.

*Sensitive Interests*

- 3 A 'sensitive interest' is described in the Localism Act 2011 as an interest the nature of which is such that the member and the authority's monitoring officer consider that disclosure of the details of the interest could lead to the member or a person connected with the member being subject to violence or intimidation.
- 4 Where you consider that you have a sensitive interest, and the monitoring officer agrees, that part of the register recording that interest will be will not be published or made available for public inspection. A declaration of interests must still be made a meetings where relevant, but the sensitive information need not be disclosed.

*Disclosable Pecuniary Interests*

- 5 A disclosable pecuniary interest is defined by statute and is subject to change from time to time. The current statutory definition is [here](#).
- 6 Unless dispensation has been granted, if you are present at any meeting of the authority and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting, you must leave the meeting while any discussion or voting on that matter takes place. You may not participate in any discussion of the matter at the meeting and you may not participate in any vote taken on the matter at the meeting.
- 7 You must not discharge or participate in the discharge of any function related to any matter in which you have a disclosable pecuniary interest.
- 8 Failure to comply with these requirements of the Code may amount to a criminal offence.

*Other Interests – Personal Interests*

- 9 In addition to disclosable pecuniary interests referred to above, you must also declare personal interests.
- 10 You have a personal interest in any business of the authority where the business of the authority relates to or is likely to affect any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority.
- 11 You will also have a personal interest in any business of the authority where the business of the authority relates to or is likely to affect any body exercising functions of a public nature, which is directed to charitable purposes or whose principle purposes includes influencing public opinion or policy where you are a member of that body or in a position of general control or management.
- 12 The Audit and Governance Committee may, from time to time, prescribe certain bodies the membership of which amounts to a personal interest.
- 13 You will also have a personal interest in any business of the authority where a decision in relation to that business might reasonably be regarded as affecting your wellbeing or financial position or the wellbeing or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers, or inhabitants of the electoral division or ward, as the case may be, affected by the decision.

- 14 For the purposes of this Code, a relevant person is –
- (a) a member of your family or any person with whom you have a close association; or
  - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
  - (c) any person or body in whom such persons have a beneficial interest and a class of securities exceeding the nominal value of £25,000 or one hundredth of the total issued share capital of that body.
- 15 Unless your personal interest also amounts to a prejudicial interest, a disclosable pecuniary interest or pre-determination, you may remain in the meeting and take part in the debate and vote.

*Other Interests – Prejudicial Interests*

- 16 You will have a prejudicial interest if you have a personal interest in any business of the authority and where that personal interest is one which a member of the public with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and where that business:-
- (a) affects your financial position or the financial position of a relevant person or body described in paragraph 10 or 11 above; or
  - (b) relates to the determination of any approval, consent, licence, permission or registration in relation to you or any relevant person or body described in paragraph 10 or 11 above
- 17 Where you have a prejudicial interest, you may not participate in any discussion of the matter at the meeting or in any vote taken on the matter at the meeting. You are also required to leave the room where the meeting is taking place during the discussion and vote. However you may attend the meeting and make representations, answer questions or give evidence provided that the public are also allowed to attend the meeting for the same purpose and you leave the meeting immediately after having done so.

### **Part 3 – Pre-Determination and Bias**

- 18 Separately from considerations as to personal, prejudicial or disclosable pecuniary interests, members must be mindful of falling foul of the general obligations of this code by taking part in decisions where they are biased or have pre-determined the matter in question.
- 19 Simply put, a member will be biased or will have pre-determined a matter if they have approach a matter with a closed mind. That is to say if they have made up their mind which way they will decide a matter before all of the relevant considerations are presented and debated in the appropriate decision making forum.
- 20 Previous actions or statements of a member will not be taken by themselves as proof of predetermination. A member may be predisposed to a certain point of view, however notwithstanding any predisposition, members need to be careful to ensure they approach and, insofar as is possible, are seen to approach decisions with an open mind.
- 21 Particular scenarios to be mindful of are where a member, in some other role, is seen to be a promoter or advocate for a proposal which later comes before them for decision. A risk arises when there has been significant personal involvement in preparing or advocating the proposal such that a member may become or may be perceived by the public as being no longer able to approach the decision with an open mind.
- 22 If you feel that you have pre-determined a matter you should say so. You should not speak or vote on the proposal. You may, however, make representations on the proposal if a member of the public also has the right to do so. You are not legally obliged to withdraw from the meeting for the remainder of the debate and vote but in most circumstances doing so will counter any suggestion that you influenced the remaining members by your continued presence. If you do not withdraw, as a minimum you must withdraw to the public area of the meeting room for the whole of the consideration of the matter, whether or not you are also exercising your right to speak.
- 23 If in any doubt you should seek advice from the Monitoring Officer.

### **Part 4 – Further Information**

- 24 The Monitoring Officer, in consultation with the Chairman of the Audit and Governance Committee, will publicise from time to time arrangements for dealing with complaints made against members that their conduct has breached the requirements of this code. The arrangements currently in force are [here](#).
- 25 The Monitoring Officer will publicise from time to time a Monitoring Officer Protocol reflecting current trends in Member Conduct matters in order to

provide guidance on how emerging or common issues will be approached.

**Part 5 – Dispensations**

- 26 The Audit & Governance Committee may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a prejudicial or disclosable pecuniary interest.
  
- 27 A list of matters to which a dispensation has been granted to all members is available [here](#).

FOR INFO IN THE DRAFTING PROCESS AND TO ULTIMATELY BE  
HYPERLINKED:-

Extract from the Relevant Authorities (Disclosable Pecuniary Interests)  
Regulations 2012

- The following categories are Disclosable Pecuniary Interests
- “M” denotes the relevant Elected Member
- The regulations apply if the disclosable pecuniary interest is yours, your spouse’s or civil partner’s or is the pecuniary interest of somebody with whom you are living as a husband or wife or as if you were civil partners

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<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.

Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(1).
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.

List of suggested dispensations to be hyperlinked (Note: this differs from the current list granted by council and differences have been highlighted.)

- (a) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
- (b) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (d) an allowance, payment or indemnity given to members;
- (e) any ceremonial honour given to members;
- (f) setting Council Tax or precept under the Local Government Finance Act 1992 (or any subsequent legislation);

- (g) setting a Local Council Tax Reduction Scheme or Local scheme for the payment of business rates (including eligibility for rebates and reductions) for the purposes of the Local Government Finance Act 2012 (or any subsequent legislation);
- (h) an interest arising from your membership of another local authority; and
- (i) To the extent that it may amount to a prejudicial or disclosable pecuniary interest, any allowance or other remuneration received from the Council in respect of council duties or directorships of council owned ASDVs.

Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either—  (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or  (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

## **Part B – Officer Code of Conduct**

- 1. Code of Conduct - Core Principles**
  
- 2. Code of Conduct - Core Standards**
  
- 3. Code of Conduct - Core Standards - Guidance**
  
- 4. Code of Conduct - Associated Forms & Referral Points**
  
- 5. Other Standards relevant to different groups of employees throughout the Council**
  
- 6. Cheshire East Core Values**

## 1. CORE PRINCIPLES

The following core principles underpin the concept of public service and apply to all employees of the Council regardless of the nature of the job they do.

### **SELFLESSNESS**

Employees should take decisions solely in the terms of the public interest. They should not do so nor use their position in order to gain financial or other material benefits for themselves, their family or their friends.

### **INTEGRITY**

Employees should not place themselves under any financial or other obligations to outside individuals or organisations that might influence them in the performance of their official duties.

### **OBJECTIVITY**

In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, employees should make decisions on merit.

### **ACCOUNTABILITY**

Employees are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### **OPENNESS**

Employees should be as open as possible about all decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands it.

### **HONESTY**

Employees have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### **RESPECT FOR OTHERS**

Employees must treat other people with respect and not discriminate unlawfully or unfairly against any person. They must treat Councillors and other co-opted members of the authority professionally.

### **TRUST**

Employees must, at all times, act in accordance with the trust that the public is entitled to place on them. Employees must use any public money or service users' money entrusted to or handled by them, in a responsible and lawful manner and not make personal use of the Council resources unless properly authorised to do so.

### **LEADERSHIP**

Employees should promote and support these principles by leadership and example.

The Code of Conduct principles operate within the overall framework of the Core Values Our Values for Cheshire East are depicted by the acronym **FIRST** (Explained further in section 6 of the Guidance Notes).

## 2. CORE STANDARDS

Our customers, the general public, are entitled to expect the highest Standards of Conduct from us. The aim of this code is to tell you about the standards which are expected and to help you avoid any misunderstanding or criticism.

1. **GIFTS AND HOSPITALITY**
2. **SPONSORSHIP**
3. **USE OF FINANCIAL RESOURCES**
4. **USE OF COUNCIL FACILITIES**
5. **INTELLECTUAL PROPERTY**
6. **POLITICAL NEUTRALITY**
7. **OTHER EMPLOYMENT AND EXTERNAL ACTIVITIES**
8. **FINANCIAL AND NON-FINANCIAL INTERESTS**
9. **RELATIONSHIPS**
10. **APPOINTMENTS & OTHER EMPLOYMENT MATTERS**
11. **TENDERING & CONTRACTS**
12. **PRIVATE USE OF FIRMS DEALING WITH THE COUNCIL**
13. **DISCLOSURE OF INFORMATION**
14. **COMPLIANCE WITH THE CODE & CONFIDENTIAL REPORTING**

**You should also be aware of and abide by Service specific Standards or Regulations, especially when working with vulnerable adults and children or working in a school. The rules within the Standards of Conduct, for staff in Community Services, for example, if you are offered a gift, are much stricter than those included in this standard Code of Conduct.**

**Please liaise with your Manager who should refer you to the appropriate Standards. At the end of the Code of Conduct Guidance notes, you will also find a matrix to help sign post you to other relevant Standards**

### 3. CODE OF CONDUCT STANDARDS – GUIDANCE

#### 1. GIFTS AND HOSPITALITY

1.1. If we accept gifts from people who are or may be dealing with the Council, the Council and its employees could be open to criticism. If you are declining hospitality please do so courteously and explain that the Council's rules do not allow you to accept.

1.2. You must refuse offers of hospitality where suggestions of improper influence is possible. Employees must be sensitive to the timing of any decisions being made between the Council and third party.

1.3. You should only accept hospitality where it is on a scale appropriate to the circumstances, and where it is apparent that no cause could reasonably arise for adverse criticism about the acceptance of the hospitality. Hospitality is usually acceptable when the invitation is corporate not personal.

1.4. Whatever gift/hospitality is provided to you, other than hospitality of nominal value only such as drink or small items of stationery, you should report the circumstances and the type of hospitality to your Head of Service. Small insignificant gifts of a value of less than £5, such as pens, diaries, calendars, mouse mats or mugs, may be accepted. However, in the case of those working in social care, no gift, however little the value, should be accepted in any circumstances.

1.5. It is a serious criminal offence to corruptly receive or give any gift, loan, fee, reward or advantage for doing or not doing anything or showing favour or disfavour to any person in their official capacity. If an allegation is made it is for the employee to demonstrate that any such rewards have not been corruptly obtained.

**! If you are presented with a gift or offer of hospitality you must seek authorisation in advance, where possible, from your Head of Service, who will record every request on the relevant form. (Consider the decision checklist in section 4 of the Guidance Notes)**

All employees are required to complete an annual declaration of interest return, even if this is to confirm that they have nothing to declare, and then to report issues as and when they occur.

#### 2. SPONSORSHIP - Giving and Receiving

2.1. If an organisation wants to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily, the basic rules about accepting gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.

2.2. If the Council sponsors an event or service, you or anyone connected with you may not benefit from the sponsorship. Similarly, if the Council, gives financial support in the community, please ensure that impartial advice is given and that you have no conflict of interest.

**! You must inform your Head of Service of any personal interest you may have and complete a declaration of interest form.**

### 3. USE OF FINANCIAL RESOURCES

You must ensure that you use public funds entrusted to you in a responsible and lawful manner. Please try to ensure value for money to the local community and to avoid the risk of legal challenge to the Council.

**! Employees must follow Standing Orders, Financial Regulations and operating procedures and advise management where they consider changes can be made to increase value for money.**

### 4. USE OF COUNCIL FACILITIES

4.1 At work you have access to facilities which include office equipment, computers, stores, transport etc. These facilities are provided purely for work and you must not use them for your own purposes.

4.2 There are certain minor exceptions to these rules - the use of telephones, fax machines and photocopiers.

#### 4.3. Telephones

Ideally, private telephone calls should not be made or received. In practice, you may need to make or receive essential calls but these should be kept to a minimum and costs reimbursed to the Council, unless it is an emergency.

#### 4.4. Fax machines and photocopiers

If necessary, personal fax messages may be despatched to locations within Great Britain. Photocopies of personal documents (up to a maximum of 10 copies at any one time) may be taken and costs reimbursed to the Council.

**! Costs must be reimbursed to the relevant person using the Council's reimbursement process.**

### 5. INTELLECTUAL PROPERTY

Intellectual property mean products of the mind, for example inventions, designs, trade marks, creative writings, programs and drawings (referred to in short as 'inventions'). It will normally be the case that the ownership of all 'inventions' and the copyright of all written material created during work for the Council, belong to the Council.

**! This is a complex area, further guidance must always be sought from Legal Services in any particular case.**

## 6. POLITICAL NEUTRALITY

6.1. Employees work for the Council as a whole. You must therefore work for all the councillors and not just those of any controlling group or particular political party.

6.2 You must follow every lawful policy of the authority and must not allow your own personal or political opinions to interfere with your work.

6.3. Certain employees hold politically restricted posts (PoRPs). If your job is politically restricted, you will be notified. You are disqualified from membership of any local authority, other than a parish or community council or from being an MP or MEP.

**! Employees who are politically restricted must observe the restrictions imposed. A register of PoRPs is maintained by HR.**

## 7. OTHER EMPLOYMENT & EXTERNAL ACTIVITIES

7.1 As a general rule you must not undertake any type of private work which conflicts with the Council's interests or prevents you from fulfilling the terms of your employment contract.

7.2 If you are above NJC Grade 7 or equivalent, you must obtain the consent of your Head of Service before you do private work.

7.3 Whether or not you need to obtain consent before doing private work, **you must not;**

- Do private work during working hours nor on the Council premises nor use Council equipment.
- Undertake any private work which prevents you from carrying out your duties with the Council or including any requirements to do contractual overtime.
- Undertake private work for any person, firm or company if it will involve the Council.
- Prepare or assist with any applications, for example, planning or building, in any private capacity if you deal with these normally.
- Access Council Services, for example, if you want to make a planning application personally, unless you declare your employment in writing, in a covering letter with your application and submit this via your line manager.
- Undertake private work that needs approval or consent from the Council
- Undertake private work for any person, firm or company who have a contractual relationship with or who are commissioned by the Council for any type of work.
- Undertake private work for another employee responsible for supervising you or whom you supervise, or for an elected member of the Council.

7.4 Employees must ensure they understand and can comply with both Working Time and Health and Safety regulations before considering other employment.

**! Employees must seek consent from their line manager before undertaking other work. All employees must declare an interest where a conflict may arise.**

All employees are required to complete an annual declaration of interest return, even if this is to confirm that they have nothing to declare, and then to report issues as and when they occur.

## 8. FINANCIAL AND NON-FINANCIAL INTERESTS

8.1. The Local Government Act 1972, section 117, requires you to disclose any direct or indirect financial interest in any contract involving the Council. Failure to declare the interest may be a criminal offence.

8.2. If you have any direct or indirect interest in an organisation or company that is doing business with the Council, which you think conflicts with your job role, then you should inform your Head of Service.

8.3. You may have a conflict of interest even if you have no financial interest. For instance, relationships might be seen to influence judgements and give the impression of a personal motive E.g. a Council employee who is an Honorary Officer of an Association and who is involved in dealing with an application for a grant by the Association. In such a case, again you should inform your Head of Service.

8.4 Employees are able to act as a member of another local authority, a school governor, or member of a community organisation but may still be required to declare their interest if any potential conflict arises.

8.5 If, in connection with his/her employment with the Council, an employee uses his/her relationship with an organisation for his/her own or someone else's personal or financial gain, he/she will be regarded as being in breach of this Code of Conduct.

8.6 Employees who are members of other associations or bodies that have dealings with the Council should declare their interest, if there is any potential conflict.

8.7 Employees who during the course of attending a meeting believe they that may have a conflict with an item on the agenda should advise the Chair and leave the meeting for all or part of the meeting as appropriate.

**! Declare an interest on the Declaration form if there is a potential conflict.**

All employees are required to complete an annual declaration of interest return, even if this is to confirm that they have nothing to declare, and then to report issues as and when they occur.

## 9. RELATIONSHIPS

### 9.1 Councillors

Mutual respect between employees and councillors is essential. Close personal familiarity between employees and individual councillors can damage this relationship. You must be professional at all times and not allow your work and private interests to conflict.

### 9.2 The Local Community and Service Users

You should always remember your responsibilities to the Community and give efficient and impartial service to all groups and individuals within that community as defined by the policies of the Council.

### 9.3 Contractors

If you have a business or private relationship with external contractors or potential contractors you should tell your manager. Orders and contracts must be awarded on merit, by fair competition against other tenders and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against.

9.4 If you engage or supervise contractors or work with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, you should declare that relationship to the appropriate manager.

**! Declare an interest on the Declaration form if there is a potential conflict and do not take part in any related tendering or contract award processes.**

## 10. APPOINTMENTS & OTHER EMPLOYMENT MATTERS

10.1. If you are involved in the recruitment and selection of employees, appointments should be made on the basis of merit and in accordance with our Recruitment and Selection Policy and Procedures obtainable from HR. To avoid any possible accusation of bias, you should not be involved in an appointment where you are related to an applicant, or have a close personal relationship outside work with him or her.

10.2. Similarly, you should not be involved in decisions about discipline, promotion or pay adjustments for any employee who is a relative, partner etc.

**! Declare an interest on the Declaration form if there is a potential conflict.**

## 11. TENDERING AND CONTRACTS

11.1. During the Tendering process, if you are involved in the 'in-house' bid (except Executive Directors and, apart from when their own service is tendered, legal, financial and professional advisers) you must not at the same time be involved in certain client tasks e.g. selecting tenderers. You should seek guidance from your Head of Service as to how the tendering process is to be conducted and how the 'in-house contractor' and client responsibilities are to be discharged.

11.2. Employees working for 'in-house' contractors or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.

11.3. If you are privy to confidential information on tenders or costs for either internal or external contractors you should not disclose that information to any unauthorised party or organisation.

11.4. If you are responsible for selecting contractors to tender or supply quotations, you should ensure that you are not also responsible for the receipt and opening of the tender or quotation except where the sums involved are minor.

**! Refer to the appropriate Corporate Procurement rules and guidance.**

## **12. PRIVATE USE OF SERVICES OF FIRMS DEALING WITH THE COUNCIL**

12.1 You should be cautious when using the services of firms you know have dealings with the Council. You should ensure that the goods or services bought from such firms are at a price readily available to the general public. This is a difficult and sensitive area. Please try to avoid offending anyone and if necessary, explain the Council's policy.

12.2 If you think that any offer of preferential terms is designed to promote a firm's interest, you should not deal with the firm.

12.3 You should not use your position with the Council to obtain a discount. However, you may purchase goods at discount terms under a scheme or arrangement which applies to e.g. your trade union.

**! If you require further guidance please refer to the Corporate Procurement Team.**

## **13. DISCLOSURE OF INFORMATION**

13.1 You must not:

- Use information about work which is confidential, for personal gain or benefit or pass it on to others who might use it in this way.
- Give information to the media unless you are authorised to do so.
- Disclose confidential information to someone else, unless it is a request from an approved source, e.g. HMRC, Department of Social Security and, where authorised, from bank managers or building societies. It is normal practice to ask the person requiring the information to put their request in writing use advance knowledge of a Council decision, particularly about investment decisions or proposed developments to benefit yourself or someone else.

13.2 Data Protection Act (Disclosing information)

You must use personal data in accordance with the Data Protection Act. For example, the data must be held only for specified and lawful purposes and must not be used or disclosed for any other purposes.

**! If you are unsure please seek guidance from the Data Protection Officer or Communications Team, depending on the nature of the request.**

#### 14. COMPLIANCE WITH THE CODE

14.1 It is important that local government employees are exemplary in their conduct at work. Non-compliance with this Code will be dealt with in accordance with our Disciplinary Code.

14.2 Employees who consider other employees to be guilty of misconduct must report this to their line manager or raise it through one of the other available procedures e.g. grievance.

14.3 Employees must not treat employees who report (or who intend to report or are suspected of reporting) potential misconduct any less favourably than other employees.

14.4 If, in some instances, the employee cannot make use of the existing procedures for any reason then they should raise complaints or genuine matters of concern with the relevant person through the Whistle Blowing Policy.

**! This code is reviewed annually. Employees should therefore ensure they regularly familiarise themselves with the Code and its Guidance Notes.**

#### 4. ASSOCIATED FORMS & REFERRAL POINTS

The forms can be found on the HR website under the Code of Conduct.

Name	Action taken by :	Held By/Refer to
Declaration of interest form	Employee to Head of Service	
Ext. Gifts/Hosp/Spons form	Employee to Head of Service	
Reimbursement of Costs	Employee to Business Support	
Register of PoRP	N/A	HR
Whistle Blowing Policy	N/A	HR intranet

#### Checklist for Assessing Potential Conflict – Gifts and Hospitality

Employees should consider the following Checklist:

- (a) Have you obtained the prior approval of your Chief Officer?
- (b) Is the donor, or the event, significant in the community or in the Council's area?
- (c) Are you expected to attend because of your position in the Authority?
- (d) Will the event be attended by others in the Authority or in other Authorities?
- (e) Have you considered the motivation behind the invitation?

- (f) Would the acceptance of the invitation be, in any way, inappropriate or place you under pressure in relation to any current or future matter involving this Council?
- (g) Could you justify the decision to the Council, press and public?
- (h) Is the extent of the hospitality or the nature of the gift reasonable and appropriate?
- (i) How will you respond to the hospitality?

## 5. CODE OF CONDUCT – MATRIX OF REGULATIONS AND STANDARDS RELEVANT TO SPECIFIC DIRECTORATES

In determining acceptable standards, employees are asked to familiarise themselves not only with those included in the Code of Conduct but also those included in Service specific Codes, corporate policies or operational procedures used by their own Services.

**You will find an up-to-date list of those documents on the Human Resources section of the intranet.**

## 6. CHESHIRE EAST CORE VALUES “FIRST FRAMEWORK”

Values are the things in life that we consider to be important. In relation to work, values are what give purpose to our jobs; guiding our behaviours and the decisions we take. Values underpin the culture of our authority and the way we conduct ourselves at work.

Putting Residents First is about really listening and understanding what residents and businesses need and responding appropriately to provide the best possible Service.

This requires **Flexibility**, which means us all adapting quickly to changing circumstances and learning together from our experiences.

**Innovation** is about us being creative in our thinking and the way we approach our work and challenging convention where this no longer seems appropriate.

Taking personal **Responsibility** is at the heart of our values in delivering what we promise, and ensuring efficient use of resources, whether this is our people, funding, processes, information or technology.

**Service** ensures that we listen and respond appropriately enabling others to be empowered, independent and self-reliant.

Bringing this together is **Teamwork**, respecting and working well with others to collectively achieve the best outcomes for residents and communities.

## Part C – Member / Officer Protocol

### Protocol on Member / Officer Relations

#### Introduction and Principles

- 1.1 The purpose of this Protocol is to guide Members and Officers of the Council in their relations with one another in such a way as to ensure the smooth running of the Council.
- 1.2 Given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or comprehensive. It simply offers guidance on some of the issues which most commonly arise. It is hoped, however, that the approach which it adopts to these issues will serve as a guide to dealing with other circumstances.
- 1.3 This Protocol seeks to promote greater clarity and certainty. If the Protocol is followed it should ensure that Members receive fair treatment, objective and impartial advice and that Officers are protected from accusations of bias and any undue influence from Members.
- 1.4 It also seeks to reflect the principles underlying the respective Codes of Conduct which apply to Members and Officers. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and the Codes, therefore, demand very high standards of personal conduct.
- 1.5 This Protocol is a local extension of the Members' and Employees' Codes of Conduct. Consequently, a breach of the provisions of this Protocol may also constitute a breach of those Codes.
- 1.6 This Protocol should be read in conjunction with the Members' and Employees' Codes of Conduct, the Council's Constitution and any guidance issued by the Audit & Governance Committee and/or Monitoring Officer.

#### Allegations of Member or Officer Misconduct: Responses by Members or Officers as appropriate

- 2.1 In a situation where a Member identifies that an Officer may have committed a breach of the Council's disciplinary rules and procedures, s/he shall draw the issue to the attention of the Chief Executive (Head of Paid Service) who will ensure that the appropriate action is taken. Thereafter the Member should not discuss or disclose the matter with any other person.
- 2.2 In respect of an Officer who believes a Member has breached the Members' Code of Conduct, they should:
  - a. not offer any opinion or judgement upon that conduct to the Member;

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- b. they must advise the Monitoring Officer immediately of the circumstances, facts, their belief and the rationale behind it, including supplying all and any documentation; and
- c. they should not comment further on the issue to any other Officer or Member without the prior consent of the Monitoring Officer.

These provisions are to protect both the Member and Officer, avoid Officers and Members from becoming unduly involved in allegations of misconduct at an inappropriate level or in inappropriate fora, and to ensure that any investigation that may need to be carried out by the Monitoring Officer or other agency, is not in any way fettered or damaged.

#### The Relationship: General Points

- 3.1 Both Councillors and Officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to Councillors and the Council, and to carry out the Council's work under the direction and control of the Council, the Executive, their committees and subcommittees.
- 3.2 At the heart of the Code, and this Protocol, is the importance of mutual respect.

Member / Officer relationships are to be conducted in a positive and constructive way. Therefore, it is important that any dealings between Members and Officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party.

- 3.3 Inappropriate relationships can be inferred from language / style. To protect both Members and Officers, Officers should address Members as "Councillor XX / Mr or Madam Mayor/Chair " save where circumstances clearly indicate that a level of informality is appropriate, eg a one to one between a Head of Service and their respective Cabinet Member.
- 3.4 A Member should not raise matters relating to the conduct or capability of an Officer in a manner that is incompatible with the objectives of this Protocol. This is a long-standing tradition in public service. An Officer has no means of responding to such criticisms in public. If a Member feels s/he has not been treated with proper respect, courtesy or has any concern about the conduct or capability of an Officer, and fails to resolve it through direct discussion with the Officer, s/he should raise the matter

with the respective Head of Service. The Head of Service will then look into the facts and report back to the Member. If the Member continues to feel concern, then s/he should report the facts to the Director who heads the Directorate concerned, or if, after doing so, is still dissatisfied, should raise the issue with the Chief Executive who will look into the matter afresh. Any action taken against an Officer in respect of a complaint, will be in accordance with the provisions of the Council's Disciplinary Rules and Procedures.

- 3.5 An Officer should not raise with a Member matters relating to the conduct or capability of another Officer or department. Such concerns should be raised through appropriate officer reporting lines.
- 3.6 Where an Officer feels that s/he has not been properly treated with respect and courtesy by a Member, s/he should raise the matter with his/her Head of Service, Director or the Chief Executive as appropriate, especially if they do not feel able to discuss it directly with the Member concerned. In these circumstances the Head of Service, Director or Chief Executive will take appropriate action either by approaching the individual Member and/or group leader or by referring the matter to the Monitoring Officer.

#### The Relationship: Officer Support to Members: General Points

- 4.1 Officers are responsible for day-to-day managerial and operational decisions within the authority and will provide support to both the Executive and all Councillors in their service areas.
- 4.2 Certain statutory officers – the Chief Executive, the Monitoring Officer and the Chief Financial Officer – have specific roles. These are addressed in the Constitution. Their roles need to be understood and respected by all Members.
- 4.3 The following key principles reflect the way in which the officer core generally relates to Members:
- ◆ all officers are employed by, and accountable to the authority as a whole;
  - ◆ support from officers is needed for all the authority's functions including Full Council, Overview and Scrutiny, the Executive, individual Members representing their communities, etc;
  - ◆ day-to-day managerial and operational decisions should remain the responsibility of the Chief Executive and other officers;
  - ◆ the authority will seek to avoid potential conflicts of

interest for officers arising from the separation of the Executive and Overview and Scrutiny role; and

- ◆ all officers will be provided with training and development to help them support the various Member roles effectively and to understand the new structures.
- 4.4 On occasion, a decision may be reached which authorises named Officers to take action between meetings following consultation with a Member or Members. It must be recognised that it is the Officer, rather than the Member or Members, who takes the action and it is the Officer who is accountable for it.
- 4.5 It is important that all Members, in exercising their functions as a Councillor, take appropriate legal, financial and professional officer advice, particularly about contractual matters. In order to ensure the highest standards of conduct are maintained at all times in relation to this important area of the Council's functions, additional guidance on Best Practice for Member Conduct during a Procurement Exercise is laid out in [Appendix](#)
- 4.6 Generally, all Members – whether Executive or otherwise – should consider, when invited to / attending a meeting, whether or not minutes should be taken and/or an officer should be present. It is a matter for Members' judgement whether this is necessary / appropriate, but factors such as whether any commitment is likely to be given on behalf of the Council and/or whether any complex financial, legal or procurement issues may be discussed will be relevant in deciding that. In such situations, Members are generally recommended to have an officer present and to ensure that contemporaneous minutes are taken and, where appropriate, shared with the other parties present to ensure that an accurate record is maintained. It will, however, be a case of judgement on each and every occasion as to how and when this principle is applied.
- 4.7 Finally, it must be remembered that Officers within a Service are accountable to their Head of Service and Director and that whilst Officers should always seek to assist a Member, they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Head of Service or Director.

#### The Relationship: Officer Support: Members and Party Groups

- 5.1 It must be recognised by all Officers and Members that in

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discharging their duties and responsibilities, Officers serve the Council as a whole and not any political group, combination of groups or any individual Member of the Council.

- 5.2 There is now statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to support and contribute to such deliberations by party groups but must at all times maintain political neutrality. All Officers must, in their dealings with political groups and individual Members, treat them in a fair and even-handed manner.
- 5.3 The support provided by Officers can take many forms. Whilst in practice such Officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups
- 5.4 Certain points must, however, be clearly understood by all those participating in this type of process, Members and Officers alike. In particular:
  - 5.4.1 Officer support must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if Officers are not present at meetings or parts of meetings, when matters of party business are to be discussed;
  - 5.4.2 party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such; and
  - 5.4.3 similarly, where Officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant Committee or Sub-Committee when the matter in question is considered.
- 5.5 Special care needs to be exercised whenever Officers are involved in providing information and advice to a party group meeting which includes persons who are not Members of the Council. Such persons are not bound by Codes of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons,

Officers may not attend and/or give advice to such meetings.

- 5.6 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group.
- 5.7 Whilst any Member may ask a relevant Head of Service, Director or the Chief Executive for written factual information about a Directorate or service, such requests must be reasonable and not seek information relating, for instance, to case work of a similar nature, eg Social Services, employment, etc. Requests will be met subject to any overriding legal considerations (which will be determined by the Director of Legal Services), or if the recipient of any request considers the cost of providing the information requested or the nature of the request to be unreasonable. If a Member requesting such information is dissatisfied by such a response, s/he should raise the matter in the first place with the relevant Director, and if still dissatisfied should raise the matter with the Chief Executive who will discuss the issue with the relevant Group Leader(s).
- 5.8 Requests for information about generic group employee matters such as Service structures, the overall cost of service provision for a group of employees etc should be considered in the normal way as set out above. Heads of Service, Directors or the Chief Executive should ensure that any information supplied does not contain any personal information (within the meaning of the data Protection Act 1998) relating to individual employees such as salary, grade, Trade Union affiliation etc.
- 5.9 Requests for personal information about specific employees or where the group of employees is so small that individual employees personal details are likely to be revealed should only be considered where a Member has a demonstrable need for such detailed personal information in order to carry out the business of the Council and they could not carry out that business without the information being supplied in a redacted form. Any such request must be accompanied by the Members reasons for requiring the information and must be forwarded to the Head of HR for determination (following consultation with the Council's Data Protection Officer and / or Monitoring Officer as appropriate).
- 5.10 All information held by the Council, in whatever form, is confidential to the Council unless and until such confidentiality is waived by the Proper Officer and subject to the requirements of the Data Protection Act 1998. Officers and elected Members are responsible for ensuring that personal information and data is only handled and processed in accordance with the provisions of the Act and to familiarise themselves with their obligations under the Act accordingly. Officers or Members who require advice or assistance in relation to their duties under the Data Protection Act 1998

should take advice from the Director of Legal Services.

## 5.11 In relation to budget proposals:

- a. the Administration shall be entitled to confidential information / discussions with Officers regarding options and proposals. These will remain confidential until determined by the Administration or until published in advance of Committee / Council meetings, whichever is the earlier; and
- b. the opposition groups shall also be entitled to confidential information / discussions with Officers to enable them to formulate alternative budget proposals. These will remain confidential until determined by the respective opposition groups or until published in advance of Committee / Council meetings, whichever is the earlier.

5.12 As part of the Budget process, Officers may be called upon to give advice on budgetary proposals, wherever they may emanate from (once political confidentiality has been lifted). This is in addition to the "normal" rights that any member has to seek advice "in confidence" from Officers. In addition, Officers may feel it appropriate to offer advice to individuals, groups or all Members. In doing so, they should be aware of the need to remain impartial. It is appropriate and indeed, in certain circumstances, necessary that as a matter of professional judgement, if a proposed course of action is imprudent, that Officers should advise the Members of the Authority that this is so. It would, however, be for the Officer to decide how and when to do so, subject to the general rules outlined in paragraph 5.10 below. This is without prejudice to issues of legality and financial administration which are covered by specific duties placed on the Chief Financial Officer and Monitoring Officer.

5.13 In view of the need to ensure that the professional integrity of Officers is not impugned, deliberately or inadvertently, the following principles will be applied (although they may be departed from by the Chief Executive, Monitoring Officer or Chief Financial Officer as and when appropriate given their specific statutory duties):

- a. any advice or information provided to any Member(s) in writing will be marked 'strictly confidential, signed and dated by the responsible Officer.
- b. generally, such advice / information will be provided to the Group Leaders, unless there are over-riding considerations associated with the statutory responsibilities of the Head of Paid Service / Chief Financial Officer / Monitoring Officer which would warrant the advice being shared with all Members;
- c. Group Leaders and Members who received such advice will treat such advice as strictly confidential to the Council and will ensure that, if such advice is further shared or disseminated within their groups, their groups understand that the advice is confidential to the Council and not to be disclosed further under any circumstances.

- d. Officers will also provide, as appropriate, briefings for either Group Leaders and/or all Members as requested by the Group Leaders and/or determined by the Chief Executive, Chief Financial Officer and/or Monitoring Officer prior to the Budget on any particular issues or matters which those Officers, as a matter of professional judgement, consider should properly be drawn to Members' attention.

The over-riding obligation will be to ensure that the integrity of the administration of public affairs is maintained. The prime responsibility of Officers in the matter of any challengeable decision arises in advising Members of the Council before decisions are reached. It is incumbent, in these circumstances, for Councillors to be fully advised on the legal and financial consequences of any proposed course of action.

- 5.14 It must not be assumed by any party group or Member that any Officer is supportive of any policy or strategy developed because of that Officer's assistance in the formulation of that policy or strategy.
- 5.15 Any particular cases of difficulty or uncertainty in this area of Officer advice to party groups should be raised with the Chief Executive who will discuss them with the relevant group leader(s).

#### The Relationship: Officer Support: The Executive

- 6.1 It is clearly important that there should be a close working relationship between Executive Members and the Officers who support and/or interact with them. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officer's ability to deal impartially with other Members and other party groups.
- 6.2 Whilst Executive Members will routinely be consulted as part of the process of drawing up proposals for consideration or the agenda for a forthcoming meeting, it must be recognised that in some situations an Officer will be under a professional duty to submit a report. Similarly, a Head of Service or other senior Officer will always be fully responsible for the contents of any report submitted in his/her name. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report. This is to be distinguished from a situation where there is a value judgement to be made. Any issues arising between an Executive Member and a Head of Service in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.
- 6.3 The Executive and its members have wide ranging leadership roles. They will:
- ◆ lead the policy formation process with input and advice from Overview and Scrutiny Committees and any other persons as appropriate;

- ◆ lead the preparation of the local authority's budget;
- ◆ take in-year decisions on resources and priorities, together with other stakeholders and partners in the local community, to deliver and implement the budget and policies decided by the Full Council; and
- ◆ be the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.

6.4 Where functions which are the responsibility of the Executive are delegated to Officers or other structures outside the Executive, the Executive will nevertheless remain accountable to the Council, through Overview and Scrutiny Committees, for the discharge of those functions. That is to say, the Executive will be held to account for both its decision to delegate a function and the way that the function is being carried out.

6.5 Under Executive Arrangements individual Members of the Executive are allowed to formally take decisions. The Executive and Cabinet members must satisfy themselves that they are clear what exactly they can and cannot do.

6.6 The Council has put in place mechanisms / protocols which ensure that (as with the Council, its Committees and Sub-Committees, and the Executive and its Committees) an individual Executive Member seeks advice from relevant Officers before taking a decision within her or his delegated authority. This includes taking legal advice, financial advice and professional officer advice (particularly about contractual matters) as well as consulting the Monitoring Officer where there is doubt about vires.

6.7 As a result of the particular issues arising during contractual discussions, particular guidance has been provided for all Members at [Appendix](#) to this Officer / Member Protocol. Whilst this guidance is predominantly aimed at Executive Members, who may largely be the Members directly involved in discussions with potential tenderers / contractors / sub-contractors during the course of a procurement exercise, it is not exclusively aimed at Executive Members – it is specifically aimed at all Members, and for that reason, all Members should be aware that their conduct during a procurement exercise should follow the guidance in [Appendix](#).

6.8 Decisions taking by individual Members of the Executive give rise to legal and financial obligations in the same way as decisions taken collectively. Therefore, Members of the Executive should always be aware of legal and financial liabilities (consulting the Monitoring Officer and Chief Financial Officer as appropriate) which will arise from their decisions. To ensure effective leadership for the local authority and the communities it serves, there are arrangements to ensure co-ordination of and sharing

responsibility for Executive decisions including those made by individuals.

6.9 Officers will continue to work for and serve the local authority as a whole.

Nevertheless, as the majority of functions will be the responsibility of the Executive, it is likely that in practice many Officers will be working to the Executive for most of their time. The Executive must respect the political neutrality of the Officers. Officers must ensure that, even when they are predominantly supporting the Executive, that their political neutrality is not compromised.

6.10 In organising support for the Executive, there is a potential for tension between Chief Officers and Cabinet Members with portfolios. All Members and Officers need to be constantly aware of the possibility of such tensions arising and both Officers and Members need to work together to avoid such tensions and conflicts existing or being perceived.

## The Relationship: Officer Support: Overview and Scrutiny

- 7.1 Overview and Scrutiny is an important constituent part of effective democracy and the Council's constitutional arrangements. Officers have significant roles in making it effective. However, it is not Overview and Scrutiny's role to act as a disciplinary tribunal in relation to the actions of Members or Officers. Neither is it the role of Officers to become involved in what would amount to disciplinary investigations on a Panel's behalf. This is the Chief Executive's function alone in relation to staff, the Monitoring Officer's and Audit and Governance Committee as regards the conduct of Members. This means:
- ◆ Overview and Scrutiny's questioning should not be directed to the conduct of individuals, not in the sense of establishing the facts about what occurred in the making of decisions or implementing of Council policies, but with the implication of allocating criticism or blame;
  - ◆ in these circumstances, it is for the Chief Executive to institute a formal enquiry, and Overview and Scrutiny may ask (but not require) him or her to do so.
- 7.2 Overview and Scrutiny should not act as a "court of appeal" against decisions or to pursue complaints by individuals (Councillors, Officers or members of the public) as other procedures exist for this. These are internal, eg the Corporate Complaints Procedure, and external / statutory, eg Local Government Ombudsman or appeal to the Courts. That said,
- ◆ Overview and Scrutiny may investigate the manner in which decisions are made but should not pass judgements on the merits of a decision in individual cases;
  - ◆ they can comment, however, on the merits of a particular policy affecting individuals.
- 7.3 It would be unfair to invite someone to appear before a Panel without telling them in general terms what they will be asked, or not giving them adequate time to prepare. Overview and Scrutiny ought to provide written questions (or indicative topics) beforehand, so that the answers can form the basis of the questioning and discussion. In addition, speakers ought to be told the general line that further questioning is likely to take. Questioning should not stray outside the subject area that the Panel had previously indicated.
- 7.4 Consideration should be given to any Overview and Scrutiny guidelines as to the procedure at Evidence Meetings, and guidance for Members and Officers.
- 7.5 Overview and Scrutiny are, however, entitled to the following:
- a. the level and extent of questioning, and the depth to which Overview and Scrutiny Members may probe Officers is dependent upon the seniority of the Officers present –

accordingly when calling Officers to give evidence, Members may wish to consider the level and nature of the Officer they wish to have before them in the light of the line of questioning they wish to follow;

- b. Officers may be asked to give a professional opinion, and Officers may be asked to give alternative options. Officers may not confine themselves solely to justifying either the position of or the advice that they gave to the Executive, although in giving options, it is to be expected that they will explain the rationale for the advice that they gave and if the advice given to the Executive reflects, in their professional opinion, the best option, to justify that;
- c. it is appropriate for Members of Overview and Scrutiny to ask Officers to explain and justify advice given to Members, whether on the Executive or otherwise, prior to decisions being taken, and to justify decisions Officers have taken under delegated powers;

#### 7.6 Officers are expected:

- a. to maintain political impartiality at all times when commenting on the Cabinet's / Council's policies and actions;
- b. to be prepared to explain and justify advice given to Members, including members of the Executive and the Council prior to decisions being taken and to justify decisions they themselves have taken under the Scheme of Delegation;
- c. to ensure that an Officer of sufficient seniority appears before the relevant meeting in the light of the indicative topics supplied by Overview and Scrutiny in advance;
- d. where requested to provide information to Scrutiny, eg on alternative options. to provide that information in as a comprehensive and timely fashion as if the request had come from the Executive.
- e. to respond to questions from Members in an open, constructive and helpful manner;
- f. not to mislead or be economical with the truth.

#### Support services to Members and Party Groups

8.1 The only basis on which the Council can lawfully provide support services (eg, stationery, typing, printing, photo-copying, transport etc) to Members is to assist them in discharging their role as Members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

### Members' Access to Information and to Council Documents

- 9.1 Members have the ability to ask for information pursuant to their legal rights to information. This right extends to such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as a Member of the Council. This can range from a request for general information about some aspect of the Council's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Head of Service or another senior Officer of the Service concerned. Requests for employee related information (whether group of employees or individual employees) must be treated in accordance with paragraphs 5.8 – 5.10 above. In cases of doubt, Members should approach the Director of Legal Services for assistance.
- 9.2 As regards the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law.
- 9.3 Members will find set out in [Appendix](#) guidance on their rights to obtain information. The law in this area is complex, legislation including the Access to Information provisions of the Local Government Act 1972, the Data Protection Act 1998 as well as the Local Government Act 2000 have all had an impact. However, the Freedom of Information Act 2000 will have an even greater impact, and could potentially provide Members with a single route through which to obtain information in support of their work, whatever their role within the authority. The guidance note set out in [Appendix](#) maps the hierarchy of rights of Members to information, but should be read in combination with the contents of the Constitution, most particularly the Access to Information Procedure Rules which cover the statutory obligations of the authority in terms of information and its relationship with the decision-making process.
- 9.4 Finally, any Council information provided to a Member is deemed to be information provided in confidence, is subject to the protections afforded by the Data Protection Act 1998 and must only be used by the Member for the purpose for which it was provided, ie in connection with the proper performance of the Member's duties as a Member of the Council. Therefore, for example, early drafts of Committee reports / briefing papers are not suitable for public disclosure and should not be used other than for the purpose for which they were supplied. This point is emphasised in Members' Code of Conduct.
- 9.5 Failure to observe this obligation or disclosure of confidential information may amount to a breach of the Code of Conduct. Failure to safeguard and protect the confidentiality of personal information within the meaning of the Data Protection Act 1998 may result in prosecution of the Authority and / or any individual Officer or Member by the Information Commissioner and the imposition of significant monetary penalties.

Correspondence and Advice

- 10.1 Members seeking advice from officers shall be entitled to assume that such advice is given under “Chatham House rules” in terms of disclosure to other Members, unless otherwise agreed with the officer(s) concerned. i.e. it is not for further disclosure.
- 10.2 Correspondence between an individual Member and an Officer should not normally be copied (by the Officer) to any other Member. In other words, a system of “silent or blind copies” should not be employed.
- 10.3 Official letters on behalf of the Council should normally be sent in the name of the appropriate Officer, rather than in the name of a Member. It may be appropriate in certain limited circumstances (eg, representations to a Government Minister) for a letter to appear in the name of a Cabinet Member or the Leader or the Leaders of all political groups represented on the Council by agreement, but this should be the exception rather than the norm. Letters which, for example, create legal obligations or give instructions on behalf of the Council should never be sent out in the name of a Member, Executive or otherwise.

- 10.4 Correspondence received by Democratic Services from the public with a request that it is either copied to Members and/or forwarded to Members will, subject to any over-riding legal considerations, be forwarded / copied.
- 10.5 Officers responding to members queries should do so in a timely manner, and in accordance with the agreed standards for replying to letters and E mails from Members.

#### Publicity and Press Releases

- 11.1 Local authorities are accountable to their electorate. Accountability requires local understanding. This will be promoted by the Authority, explaining its objectives and policies to the electors and rate-payers. In recent years, all local authorities have increasingly used publicity to keep the public informed and to encourage public participation. Every Council needs to tell the public about the services it provides. Increasingly, local authorities see this task as an essential part of providing services. Good, effective publicity aimed to improve public awareness of a Council's activities is to be welcomed.
- 11.2 Publicity is, however, a sensitive matter in any political environment because of the impact it can have. Expenditure on publicity can be significant. It is essential, therefore, to ensure that local authority decisions on publicity are properly made in accordance with clear principles of good practice. The Government has issued a [Code of Recommended Practice on Local Authority Publicity](#). The purpose of the Code is to set out such principles. The Code affects the conventions that should apply to all publicity at public expense and which traditionally have applied in both central and local government.
- 11.3 Officers and Members of the Council will, therefore, in making decisions on publicity, take account of the provisions of this Code. If in doubt, Officers and/or Members should initially seek advice from the Head of Communications who will refer the matter to the Monitoring Officer if necessary / appropriate. Particular care should be paid to any publicity used by the Council around the time of an election. Particular advice will be given on this by the Monitoring Officer.

### Involvement of Ward Councillors

- 12.1 Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Ward or Wards affected should as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be notified at the outset of the exercise. More generally, Officers should consider whether other policy or briefing papers, or other topics being discussed with an Executive Member, should be discussed with relevant Ward Members. Officers should seek the views of the appropriate Executive Member(s) as to with whom and when this might be done.

### Conclusion

- 13.1 Mutual understanding, openness on these sorts of sensitive issues and basic respect are the greatest safeguard of the integrity of the Council, its Members and Officers.

APPENDICES TO FOLLOW – TO BE APPROVED BY AUDIT AND GOVERNANCE COMMITTEE

## **Part D – Whistleblowing Policy**

### **WHISTLEBLOWING POLICY**

The Council has a [Whistleblowing Policy](#) in place.

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