

# Appendix 1

## APPENDIX 1

**COUNCIL**  
**24 FEBRUARY 2009**

### **DECISIONS OF THE GOVERNANCE AND CONSTITUTION COMMITTEE RECOMMENDING CONSTITUTIONAL PROVISIONS TO COUNCIL**

[Note: where appropriate, the Council has authorised the Borough Solicitor to make such consequential amendments to the Constitution as are considered necessary to give effect to the decisions of Council.]

#### **GOVERNANCE AND CONSTITUTION COMMITTEE - 14 JULY 2008**

##### **13 INDEPENDENT REMUNERATION PANEL**

###### **RESOLVED**

That arrangements be put in place for a Cheshire East Council Independent Remuneration Panel to be appointed and there be close liaison with Independent Remuneration Panel for Cheshire West and Chester Council.

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#### **GOVERNANCE AND CONSTITUTION COMMITTEE - 8 SEPTEMBER 2008**

##### **21 UNITARY COUNCIL CONSTITUTION: SUMMARY AND EXPLANATION**

###### **RESOLVED**

That the draft Summary and Explanation of the emerging Constitution be agreed and the Shadow Council be recommended to agree the document for adoption by the unitary Council at its first meeting in April 2009.

##### **22 PART 2 OF THE CONSTITUTION**

###### **RESOLVED**

To endorse the current draft content of Part 2 subject to the minor amendments  
[set out above]. *(There were certain minor amendments in the report which have been incorporated into the final document.)*

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## **GOVERNANCE AND CONSTITUTION COMMITTEE - 6 OCTOBER 2008**

### **35 WHISTLEBLOWING PROTOCOL**

#### **RESOLVED**

To endorse the proposed Protocol and to note that, in view of its implications for staff, that there will be consultations with unions before the contents of the draft are finalised for recommendation to the Shadow Council.

*(Note: consultations on this matter were concluded and the document circulated with the agenda is in final form for adoption.)*

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## **GOVERNANCE AND CONSTITUTION COMMITTEE - 3 NOVEMBER 2008**

### **44 APPOINTMENT OF STATUTORY CO-OPTED MEMBERS TO SCRUTINY COMMITTEES - ELECTED PARENT GOVERNORS AND NOMINATED CHURCH REPRESENTATIVES**

#### **RESOLVED**

1. to recommend to Council that the following decisions of the Committee be incorporated in the Council's Constitution:

- that two parent governor representatives should be appointed to the Scrutiny Committee for the purposes of dealing with education matters; one being drawn from the primary education sector, and the other being drawn from the secondary education sector.
- that the period of office of the parent governor representatives should be 2 years with effect from 1st April 2009.
- that one nominated representative of the Church of England Diocese and one nominated representative of the Roman Catholic Diocese should be co-opted to the Scrutiny Committee for the purposes of dealing with education matters.

2. that Council be recommended to authorise the Interim Monitoring Officer to make such consequential additions and changes to the Constitution as she considers necessary to give effect to the decision of Council.

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## **GOVERNANCE AND CONSTITUTION COMMITTEE - 1 DECEMBER 2008**

### **49 ADOPTION OF COUNCIL PROCEDURE RULES**

#### **RESOLVED**

(1) Council is recommended to adopt the draft Council Procedure Rules, contained in Appendix B to the report, which will take effect on 1 April 2009, subject to the following changes:

Rule 31.6: this draft Rule to be amended to the effect that the Chairman of a Committee or Sub-Committee shall have a second or casting vote, but that he/she will not be obliged to use it. A note will be added to the Rule indicating that, where there is an equality of votes, and where the Chairman does not use his/her second or casting vote; the motion in question will be lost.

Rule 19: this draft Rule to be amended so that the Constitution will identify the Committees and Panels in question, and their Membership sizes, but without showing the names of individual Committee/Panel Members.

Rule 19: this draft Rule to be amended to exclude reference to the Independent Remuneration Panel.

Rule 19: this draft Rule to be amended to include the Health and Adult Social Care Scrutiny Committee, together with the number of Members of it.

Rule 44.6: this draft Rule to be amended to require that, in circumstances where agreement is reached that an urgent Key Decision should not follow the requirements of Rule 44.5, notification of such decision is provided electronically to all Members of the Council.

Rule 49.1: this draft Rule to be clarified to indicate that hard copies of agenda papers will be provided to Members of committees/executive bodies.

Rule 54.1: This draft Rule to be modified to the effect that, only where suspension of a Procedure Rule is moved and carried, will the Procedure Rule be suspended.

Appendix 3, paragraph 11: the draft Appendix to be modified to provide for the mover of an amendment to have a right of reply before the mover of the original motion sums-up, as follows:

“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 on the amendment.”

Appendix 5: the draft Appendix to be modified to the effect that there will be no requirement for Council to approve reserve lists of Members for each political group who will act as reserve Members for each Committee and Sub-Committee, but that any reserve Member will simply be required to notify the Chairman of the Committee or Sub-Committee at the beginning of the meeting in question.

(2) The Interim Monitoring Officer be authorised to produce suitable wording, and to make such consequential amendments to the draft Procedure Rules as she considers are necessary to give effect to the recommended changes.

## 51 LICENSING COMMITTEE - STRUCTURES, MEMBERSHIP AND DELEGATIONS

### RESOLVED

To recommend to Council at its meeting on 9 December 2008 that it considers:

1) the creation of a Licensing Committee on the following terms:

i) A full Licensing Committee of fifteen Members (with a quorum of eight) on a politically proportional basis, i.e. Conservatives 11; Liberal Democrats 2; Labour 1; Independent Group 1 ;

ii) That the Licensing Committee then establishes Sub-Committees of three Members drawn from the full Committee to deal with matters under the Licensing Act 2003 and the Gambling Act 2003;

iii) That Sub-Committees of five Members (with a quorum of three) drawn from the full Committee (of which at least one shall, subject to availability, be the Chairman or Vice Chairman of the full Committee) are established on an ad hoc basis to deal with 'general' licensing matters;

2) the requirement of political proportionality under section 15 of the Local Government and Housing Act 1989 is waived in relation to the subcommittee established under iii) above;

3) to delegate to the Licensing Committee those licensing functions which are the responsibility of Council as set out in Appendix 1, subject to the proviso that before any Councillor who is a member of the Licensing Committee can attend a meeting and participate in the determination of an application or appeal by any individual or body, that Councillor must have attended a suitable training course dealing with the quasi-judicial nature of the role of the Committee; and

4) authorising the Interim Monitoring Officer to make such consequential changes to the Constitution as she considers appropriate to give effect to the decision of Council in relation to 1) above.

## 53 OFFICER CODE OF CONDUCT

### RESOLVED

To recommend that the Council:

- 1) adopts the Officer Code of Conduct appended to the Report (Noting that the Core Values for Cheshire East as a whole are still in draft and will require Cabinet approval in January 2009);
  - 2) agrees that the Officer Code of Conduct will take effect immediately and will apply to all officers appointed by the Shadow Council;
  - 3) agrees that the Officer Code of Conduct will continue to have effect, and will apply to all officers employed by Cheshire East successor authority on 1st April 2009 and thereafter;
  - 4) agrees that the Officer Code of Conduct will be included immediately in the Shadow Council's Constitution and, with effect from 1st April 2009, in Cheshire East successor authority's Constitution; and
  - 5) authorises the Interim Monitoring Officer to make such consequential amendments to the Constitution as she considers are necessary to give effect to the decision of Council.
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## **GOVERNANCE AND CONSTITUTION COMMITTEE - 12 JANUARY 2009**

### **62 MEMBER/OFFICER RELATIONS PROTOCOL**

#### **RESOLVED**

- (a) That the proposed Member/Officer Relations Protocol be endorsed;
- (b) That Council be recommended to adopt the draft Member/Officer Relations Protocol as contained in the appendix to the report into the Constitution.

### **63 SCRUTINY PROCEDURE RULES**

#### **RESOLVED**

- (a) That Council be recommended to adopt the draft Scrutiny Procedure Rules contained in appendix B to the report, to take effect on 1st April 2009 subject to the following change:

Rule 3.2 – Co-option. The rule be amended to clarify that statutory co-optees will be voting Members only in respect of education matters as defined in relevant guidance

- (b) That Council be recommended to authorise the Monitoring Officer to make

such consequential changes to the Constitution as he considers are necessary in order to give effect to its intentions.

## 64 LOCAL CHOICE FUNCTIONS

### RESOLVED

That Council be recommended that

- (i) With effect from Vesting Day, the allocation of local choice functions between Cabinet and the Council, and the further delegations to Committees and officers, be as set out in the appendices to the report, subject to the Borough Solicitor being responsible for arrangements for questions at Council on Police Authority Functions
- (ii) the Monitoring Officer be authorised to determine the remaining detail of the allocation of local choice functions in consultation with the Leader and appropriate Cabinet Members and to make such amendments to the Council's emerging Constitution as he considers are necessary to give effect to the decision of Council.

## 65 DELEGATION OF EXECUTIVE FUNCTIONS

### RESOLVED

That Council be recommended that

- (i) With effect from Vesting Day, the approach set out in the appendix to the report be adopted as part of Cheshire East's Executive arrangements and that this be reflected in the Council's Constitution
- (ii) That the Monitoring Officer be authorised to determine the remaining detail of the appendix in consultation with the Leader and appropriate Cabinet Members and to make such amendments to the Council's emerging Constitution as he considers are necessary to give effect to the decision of Council.

## 66 CABINET DECISION-MAKING ARRANGEMENTS

### RESOLVED

(a) That Council be recommended that with effect from Vesting Day:

- (1) The Council shall have a Leader and Cabinet form of Executive

Arrangements, these to include the “Strong Leader” model, in respect of which and amongst other things the Leader :

- a. is elected by Council;
- b. is empowered to appoint Members of the Council to and remove Members of the Council from the Cabinet, subsequent notification being given to Council;
- c. is empowered to determine the extent of the decision-making powers of Cabinet Members and other executive decision-making bodies.

(2) The Council's Executive arrangements shall comprise those arrangements set out in appendices A and B to the report, subject to the following changes :-

- a. reference to Deputy Leader to be removed from the Adult Services Portfolio and that the role of the Deputy Leader be defined;
- b. the following functions listed within the Children and Family Services Portfolio to apply, as appropriate, to the Portfolio Holders for Adult Services, Children and Family Services and Health and Wellbeing :-

- (i) Liaison with NHS Trusts and Health Authorities;
- (ii) Mental Health and Disability;
- (iii) Health Promotion;
- (iv) Development of integrated services with health partners.

- c. The references within the Children and Family Services Portfolio to :-
  - (i) Mental Health and Disability, to be made specific to Children and Young People; and
  - (ii) Connexions to be removed.

- d. In respect of the Health and Wellbeing Portfolio :-
  - (i) Public Rights of Way to be added beneath Countryside;
  - (ii) Tourism to become a dependency rather than being a prime responsibility.

- e. That in respect of the Environmental Services Portfolio :-
  - (i) Health and Safety enforcement to become a dependency rather than being a prime responsibility;
  - (ii) Public Rights of Way maintenance to be deleted and moved to Health and Wellbeing, as Public Rights of Way

- f. That the Prosperity Portfolio shall include Building Control;

- g. That the Safer and Stronger Communities Portfolio shall include Health and Safety enforcement in the list of prime responsibilities;

- h. That Performance and Capacity Portfolio shall include Twinning in the list of prime responsibilities.

(b) That further consideration be given to the definition of a key decision, to potentially include a financial threshold of £1 million, beyond which an Executive decision shall be a key decision; and that a report be made to Members on the implications;

(c) That Council be recommended that the Monitoring Officer be authorised to make such changes to the Council's emerging Constitution as he considers are necessary to give effect to the wishes of Council.

## 67 CABINET PROCEDURE RULES

### RESOLVED

(a) That Council be recommended that :-

1. The Cabinet Procedure Rules appended to the report be adopted by Council with effect from Vesting Day;
2. The issues identified in appendix A to the report be noted and that the Council shall have a Leader and Cabinet form of Executive arrangements, these to include the "Strong Leader" model;
3. Subject to Access to Information provisions, any Member of the Council will be entitled to attend, speak at, and ask questions and supplementary questions at meetings of the Cabinet provided that 3 working days notice has been given of any question which is proposed to be asked;
4. A 3 working day notice period be required in respect of any question which is to be asked at Cabinet by a member of the public.

(b) That a further report be made to Members upon the practical arrangements for individual Cabinet Member decision-making.

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## GOVERNANCE AND CONSTITUTION COMMITTEE - 9 FEBRUARY 2009

### 5. CONSTITUTION-GENERAL POWER

#### RESOLVED



That Council be recommended that the Borough Solicitor in consultation with the Political Group Whips be granted delegated authority to make such additions and changes to the Council's Constitution as he considers are necessary in order to ensure the delivery of efficient and effective local authority functions with effect from Vesting Day.

## 6. DECISION-MAKING AND OVERVIEW AND SCRUTINY STRUCTURE OF THE COUNCIL

### RESOLVED

That Council be recommended that:

(a) That the following Committees be appointed:

Children and Families Scrutiny Committee  
Health and Adult Social Care Scrutiny Committee  
Environment and Prosperity Scrutiny Committee  
Sustainable Communities Scrutiny Committee  
Corporate Scrutiny Committee  
Staffing Committee  
Lay Members Appointments Committee  
Appeals Committee  
Standards Committee  
Wirral Joint Committee, with terms of reference from agenda item 7  
Governance and Constitution Committee

(b) That the appointed committees be granted the decision-making powers and memberships set out in the Appendix, with effect from Vesting Day.

(c) That the Political Groups notify the Borough Solicitor of the Members to be nominated for appointment to the Committees set out in the Appendix and that, where political proportionality applies, the membership numbers be confirmed by the Borough Solicitor in consultation with Group Leaders.

(d) That the responsibilities of the decision-making bodies set out in the Appendix be agreed.

(e) That the Shadow Council's existing Staff Employment Procedure Rules be incorporated into the Council's Constitution with appropriate amendments to reflect the Council's practices and procedures after Vesting Day.

(f) That the Standards Committee powers be as follows:

- by itself or by sub-committee, to discharge the Council's functions under Part III of the Local Government Act 2000, including:
  - assessment of new complaints (discharge any functions under S57A of the Act)

- review decisions to take no action over a complaint (S57B of the Act)
- consider final investigation reports and conduct determination hearings
- for considering and granting, or otherwise, dispensations in respect of Members' interests when so enabled under Part III of the Local Government Act 2000.

(g) That the Monitoring Officer be authorised make such additions and amendments to the Council's Constitution as he considers are necessary to give effect to the wishes of Council.

## 7. JOINT HEALTH SCRUTINY COMMITTEES

### RESOLVED

That it be recommended to Council that :

- (i) Cheshire East Council agrees to participate in the joint arrangements with Wirral MBC to scrutinise the work of Cheshire and Wirral Partnership NHS Foundation Trust and to appoint six representatives (with Deputies) to serve:
- (ii) the Group Leaders notify the Chief Executive of these appointees in accordance with political proportionality rules.

## 8. PLANNING AND DEVELOPMENT CONTROL: COMMITTEE STRUCTURE AND DELEGATIONS

### RESOLVED

That it be recommended to Council that that development control functions be discharged by a Strategic Planning Board, supported by two Planning Committees and a scheme of delegation as detailed below:

#### **A.**

- creation of a Strategic Planning Board
- with the Terms of Reference set out at Appendix A
- served by a membership of 14 on a politically proportional basis (ie: Conservative 10, Liberal Democrat 2, Labour 1, Independent 1) including the two Portfolio Holders responsible for Development Management and the Local Development Framework
- with a quorum of 5 (as an exception to Standing Order 27)
- comprising councillors to be nominated at full Council on 24<sup>th</sup> February

- meeting for the 1<sup>st</sup> time on [date to be fixed] then on a 3-weekly cycle
  - operating as a Shadow Committee forthwith and as a fully operational Council committee from 1<sup>st</sup> April 2009
- included in the Shadow Council's Constitution forthwith and in the Constitution of Cheshire East Council with effect from 1<sup>st</sup> April 2009.

#### **B.**

- creation of two Planning Committees
- with the Terms of Reference set out at Appendix B
- served by a membership of 15 on a politically proportional basis (ie: Conservative 11, Liberal Democrat 2, Labour 1, Independent 1)
- with a quorum of 5 (as an exception to Standing Order 27)
- comprising councillors to be nominated at the first meeting of the Strategic Planning Board
- meeting for the first time on [dates yet to be fixed] and then on a 3-weekly cycle
- operational from and included in the Constitution of Cheshire East Council from 1<sup>st</sup> April 2009

#### **C**

- adoption of the officer delegation scheme at Appendix C
- to be included in the Constitution of Cheshire East Council with effect from 1<sup>st</sup> April 2009

#### **D**

authority be given to the Borough Solicitor to make such consequential changes to the Constitution as he considers necessary to give effect to the wishes of Council.

### **9. PLANNING PROTOCOL OF CONDUCT IN RELATION TO THE DETERMINATION OF PLANNING MATTERS**

#### **RESOLVED**

That it be recommended to Council that the Planning protocol be adopted as part of the Constitution.

### **10. PUBLIC QUESTIONS/SPEAKING - LICENSING COMMITTEE AND SCRUTINY COMMITTEES**

#### **RESOLVED**

That

(a) it be recommended to Council that the public speaking rule (Rule 35 of the Council Procedure Rules) be disapplied in respect of meetings of the Licensing Committee where it is meeting in a quasi-judicial capacity, either by itself or by Sub-Committee.

(b) the issue of questions and statements by Members and public be further considered in conjunction with a report by the Borough Solicitor to include the emerging Government guidance relating to Councillor Call for Action and Petitions under the Local Government and Public Involvement in Health Act 2007.

## 11. DELEGATION OF NON-EXECUTIVE FUNCTIONS - LICENSING AND ENVIRONMENTAL HEALTH

### RESOLVED

*That it be recommended to Council that the non-executive functions as set out in the Appendices to the report be delegated to Committee and Officers with the addition of the following :*

- 1. To include within the delegation to Licensing Committee the following functions:*

*Power to sanction the use of buildings for the storage of celluloid; and  
Power to license the employment of children*

To include the following within the table of licensing delegations to the Head of Safer and Stronger Communities:

(n)	<i>Sanctioning the use of buildings for the Storage of celluloid</i>	<i>Section 1 of the Celluloid and Cinematograph Film Act 1922</i>
(o)	<i>Licensing employment of children</i>	<i>Part II of the Children and Young Persons Act 1933, Byelaws made under that part, and part II of the Children and Young Persons Act 1963</i>

## 13. ADOPTION OF FINANCE AND CONTRACT PROCEDURE RULES

### RESOLVED

That

- (a) it be recommended to Council that the Finance and Contract Procedure Rules which will form part of the Council's Constitution (in the format contained in Appendix 2 of the report) be adopted to take effect on 1<sup>st</sup> April 2009;

- (b) it be recommended to Council that the Borough Solicitor be authorised to make such amendments and additions to the Constitution as are necessary to give effect to the Council's wishes.

#### 14. ACCESS TO INFORMATION RULES

##### RESOLVED

That

- (a) subject to the deletion of the two references of the word "Lord" in paragraph 15.1.1, it be recommended to Council that the Access to Information Rules appended to the report be incorporated into the Constitution of Cheshire East Council.
- (b) it be recommended to Council that the Borough Solicitor be authorised to make such changes to the Rules, and such consequential changes to the Council's Constitution, as he considers necessary to give effect to the intentions of Council.

#### 15. PUBLIC RIGHTS OF WAY

##### RESOLVED

That it be recommended to Council that

- a bespoke PROW committee be appointed consisting of 7 Members appointed on a politically proportionate basis (5:1:1), and;
- the terms of reference contained in Appendix 1 to the report be adopted in respect of the PROW committee,
- the scheme of delegation to Officers contained in Appendix 2 of the report be adopted,
- the Council's constitution be amended accordingly;
- the Borough Solicitor be authorised to make any further amendments to the Council's constitution as may be required in order to ensure the effectual delivery of a PROW service from Vesting Day.

#### 16. TRADING STANDARDS

##### RESOLVED

That it be recommended to Council that:

- the delegation of functions to officers contained in Appendix 1 to the report be adopted
- the Council's constitution be amended accordingly,
- the Borough Solicitor be authorised to make any further amendments to the Council's constitution as may be required in order to ensure the effectual delivery of a Trading Standards Service.

## Appendix 2

### **Strategic Planning Board Terms of Reference**

**1.** To oversee the division of the Council's Development Management functions and workload in order to ensure timely and consistent decision-making at the most appropriate level: and to that end

(a) to monitor the volume and type of applications determined; assessing the performance of the Development Management service, and, if appropriate

(b) to vary the number, size and working arrangements of the Planning Committees, to appoint their membership, to vary the division of functions and delegations between the Board, the Planning Committees and the Head of Planning & Policy

(c) to adopt working protocols and procedures: eg: protocols governing the direction of applications between the Planning Committees, public speaking rights, call-in procedure and others.

**2.** To exercise the Council's functions relating to town & country planning & development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges set out in the Local Authorities (Functions & Responsibilities)(England) Regulations 2000. Most of these functions are delegated to the Planning Committees and then onwards to the Head of Planning & Policy but the following are reserved to the Board

(a) applications for Large Scale Major Development, defined from time to time by DCLG. Currently this includes

- residential developments of 200 dwellings or more, or 4 ha or more;

- 10,000 square metres or more, or 2ha. or more of retail, commercial or industrial or other floorspace.

(b) applications for major minerals or waste development

(c) applications requiring Environmental Impact Assessments

(d) applications involving a significant departure from policy which a Planning Committee is minded to approve.

(e) any other matters which have strategic implications by reason of their scale, nature or location.

(f) any other matters referred up to it at the discretion of the Head of Planning & Policy

(g) applications involving a significant departure from policy which a Committee is minded to approve

**3.** To exercise a consultation and advisory role, commenting upon the content of proposed planning policy and upon the effectiveness of existing policies employed in development control decisions

## **Planning Committees**

### **Terms of Reference**

**1.** To exercise the Council's functions relating to town & country planning & development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges, set out in the Local Authorities (Functions & Responsibilities)(England) Regulations 2000. Some applications have been reserved to the Strategic Planning Board: others are delegated on to the Head of Policy & Planning: the following are retained for the Planning Committees,

applications for Small Scale Major Development, defined from time to time by DCLG. Currently this includes

- residential developments of 10-199 dwellings or between 0.5 and 4ha
- retail or commercial/industrial or other floorspace of between 1,000 - 9,999 square metres. or between 1ha – 2 ha.

**2.** To determine any other planning & development control matters

- (a) advertised as a departure from policy, which the Head of Planning & Policy is minded to approve.
- (b) submitted by a councillor, senior Council officer (tier 2 or above) or a member of staff employed within the Development Management and Policy service area; or by an immediate family member or partner of these.
- (c) involving the Council either as applicant or land owner. Unless the Head of Planning & Policy identifies some significant factor, this category will not normally include minor developments which accord with planning policy and to which no objection has been made.
- (d) referred up to them by a councillor in accordance with the Committees' call-in procedure.



(e) referred up to them at the discretion of the Head of Planning & Policy.

The Committees will refer up to the Strategic Planning Board matters involving a significant departure from policy which they are minded to approve.

### **Delegation of Planning Functions to Officers**

1. Apart from matters reserved to the Strategic Planning Board and Planning Committees, all those Council functions set out in the Local Authorities (Functions & Responsibilities)(England) Regulations 2000 which relate to town & country planning & development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges are delegated to the Head of Planning & Policy.

Development control functions include decisions regarding planning applications, permitted development, certificates of lawful use & development, enforcement, listed buildings and conservation areas. The planning functions are to be construed purposively and broadly, to include anything which facilitates or is incidental to them. For example, the power to determine planning applications under s70 Town & Country Planning Act 1990 will include powers governing environmental impact assessments under the various TCP (Environmental Impact Assessment) Regulations. It will also include power to impose conditions, limitations or other restrictions or to determine terms to which approvals are subject, and to modify, vary or revoke approvals.

Where legislation is amended or replaced by new provisions or where new development control provisions are enacted, then the relevant authority delegated in this Scheme applies to those new provisions.

2. The Head of Planning & Policy will refer up to a Planning Committee or to the Strategic Planning Board any particular matter which they consider suitable for determination at that level.

Appendix 1

### **PLANNING PROTOCOL OF CONDUCT IN RELATION TO THE DETERMINATION OF PLANNING MATTERS**

This Planning Protocol of Conduct for the determination of planning matters ('the Planning Protocol') substantially follows the Model Code produced by the Association of Council Solicitors and Secretaries following consultation with the Audit Commission, the Local Government Ombudsman and the Standards Board for England.

The aim of the Planning Protocol is to give advice aimed at ensuring the preservation of the integrity of the planning system as open and fair to all parties. It is intended that the Planning Protocol will continue to engender public confidence in the planning system within Cheshire East, whilst avoiding procedural rules which are so rigid and overbearing that observance of them would become an end in itself at the expense of the consideration of the merits of an application.

## **1 INTRODUCTION**

- 1.1 **The aim of this Planning Protocol** is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well-founded in any way.
- 1.2 **The key purpose of Planning** is to control development in the public interest.
- 1.3 **Your role as a Member of the Planning Authority** is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- 1.4 **When the Planning Protocol applies:** this Planning Protocol applies at all times when Councillors are involved in the planning process. (This includes, where applicable, when part of decision-making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings.) It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.
- 1.5 **If you have any doubts about the application of this Planning Protocol to your own circumstances you should seek advice early, from the Monitoring Officer, and preferably well before any meeting takes place.**
- 1.6 In this Planning Protocol "Planning Meeting" covers all meetings of the Strategic Planning Board and the Planning Committees.

## **2 RELATIONSHIP TO THE MEMBERS' CODE OF CONDUCT**

- 2.1 **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with throughout the decision making process.

- 2.2 **Do** then apply the rules of this Planning Protocol, which seeks to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Planning Protocol you may put :-
- the Council at risk of proceedings on the legality or maladministration of the related decision; and
  - yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Committee.

### **3 DEVELOPMENT PROPOSALS AND INTERESTS UNDER THE MEMBERS' CODE**

- 3.1 **Do** disclose the existence and nature of any interest, including any perceived interest, at any relevant meeting, including informal meetings or discussions with officers and other Councillors. This is your responsibility. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.
- 3.2 **Do** then act accordingly. **Where your interest is personal and prejudicial:-**
- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority. You must withdraw from the meeting room when the matter is discussed however please see paragraph 11 for your right to attend and make representations.
  - **Don't** try to represent local, Ward or Area views, get another Member to do so instead.
  - **Don't** get involved in the processing of the application.
  - **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with Officers or Councillors when other members of

the public would not have the same opportunity to do so.

- **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer, in person or in writing, the Code places greater limitations on you than would apply to a normal member of the public.

3.3 **Do** notify the Monitoring Officer and Head of Planning and Policy in writing of your own application, or if you are employed as an agent and note that:-

- notification to the Monitoring Officer and the Head of Planning and Policy should be made no later than submission of the application;
- the proposal will always be reported to the planning meeting and not dealt with by Officers under the scheme of delegation; and
- it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at the planning meeting (*where appropriate.*)
- you do have a right to make written representations to officers about the proposal and may address the planning meeting pursuant to the Public Speaking Protocol subject to certain additional restrictions (see para 11 below for more detailed advice on this point).

## **4 FETTERING DISCRETION IN THE PLANNING PROCESS**

Given the requirement that Councillors of the planning meetings should exercise an independent mind and decide proposals in accordance with the relevant planning considerations, Councillors must not favour any person, company, group or locality or commit themselves to a particular point of view on a planning application prior to its full consideration at the Council's planning meetings.

4.1 **Don't** fetter your discretion and therefore your ability to participate in planning decision-making at this Council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning authority and of your hearing

the officer's presentation and evidence and arguments on both sides.

- 4.2 **Fettering your discretion** in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- 4.3 **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of dual membership, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- 4.4 **Do remember** that you are, of course, free to listen to a point of view about a planning proposal, give procedural advice and agree to forward any comments, but should then refer the person to the appropriate planning officer.
- 4.5 **Do not** use any political group meetings prior to the planning meeting to determine how you or other Councillors should vote. There is no objection to a political group having a predisposition, short of predetermination, for a particular outcome or for you to begin to form a view as more information and opinions become available but decisions can only be taken after full consideration of the Planning Officer's report and information and consideration at the planning meeting.
- 4.6 **Don't** speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.
- 4.7 **Do** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
- 4.8 **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member *where* you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest. Where you do :
- advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item;

- remove yourself from the member seating area for the duration of that item; and
- ensure that your actions are recorded.

## **5 MEMBERSHIP OF PARISH COUNCILS AND OUTSIDE BODIES**

5.1 **Do** be aware that, whilst the Members' Code of Conduct provides for a presumption that you may regard yourself as not having a prejudicial interest in matters which relate to the organisations mentioned below, you must exercise your discretion in deciding whether or not to participate in each case and where:

- you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of :
  - (a) another local or public authority of which you are a member; or
  - (b) a body to which you have been appointed or nominated by the Council as its representative; or
  - (c) you are a trustee or company director of the body submitting the proposal and were appointed by the Council

- you should always disclose a prejudicial as well as personal interest and withdraw.

5.2 **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example), provided:

- the proposal does not substantially affect the well-being or financial standing of the consultee body;
- you make it clear to the consultee body that:
  - (a) your views are expressed on the limited information before you only;

- (b) you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Planning meetings and you hear all of the relevant information; and
  - (c) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the planning meeting; and
- you disclose the personal interest regarding your membership or role when the planning meeting comes to consider the proposal.

## **6 CABINET MEMBERS**

There is no Constitutional or legal reason why a Cabinet member should not also be a member of the planning meeting and take part in the decision-making processes which are not part of the executive function.

- 6.1 **Be** aware that you should not speak or vote on any matter which you have discussed at Cabinet unless you have demonstrated there and can do so at the relevant planning meeting that you have not predetermined the application.
- 6.2 **Do not** take part in any planning meeting on a matter in which you may have been seen as advocating a proposal as a Cabinet Member.

## **7 CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS**

It is recognised that pre-application discussions can be of great benefit to the planning process provided that they take place within clear parameters and governance arrangements.

- 7.1 **Do** refer those who approach you for planning, procedural or technical advice to officers.

- 7.2 **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Head of Planning and Policy organise it. The officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Planning meetings.
- 7.3 **Do** otherwise:
- follow the rules on lobbying;
  - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - report to the Head of Planning and Policy any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.
  - ask relevant questions for the purpose of clarifying your understanding of the proposals but do not express any strong view or state how you or other Councillors might vote.
- 7.4 **In addition in respect of presentations by applicants/developers:**
- 7.5 **Don't** attend a planning presentation unless an officer is present and/or it has been organised by officers.
- 7.6 **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- 7.7 **Do** remember that a presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Planning meeting of the planning authority.
- 7.8 **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Councillors might vote.



## 8

### **LOBBYING OF COUNCILLORS**

- 8.1 **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the planning meetings decision-making to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.
- 8.2 **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- 8.3 **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register the gift or hospitality where its value is over £25.
- 8.4 **Do** copy or pass on any lobbying correspondence you receive to the Head of Planning and Policy at the earliest opportunity.
- 8.5 **Do** promptly refer to the Head of Planning and Policy any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- 8.6 **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- 8.7 **Do** note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Protocol through:
- listening or receiving viewpoints from residents or other interested parties;
  - making comments to residents, interested parties, other Councillors or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
  - seeking information through appropriate channels; or
  - being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member,

provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

## **9 LOBBYING BY COUNCILLORS**

- 9.1 **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a personal and prejudicial interest and have to withdraw.
- 9.2 **Do** register your membership of any lobby group.
- 9.3 **Do** declare the existence and nature of your interest in any lobby group at Planning meeting meetings so that members of the public are informed about interests that may relate to your decisions. Often this will be a personal interest and you can continue to participate but note that it can sometimes be a prejudicial interest or lead to allegations of bias or predetermination and in those circumstances you must withdraw from the meeting.
- 9.4 **Do** not take part in any matter which relates directly to the lobby group of which you are a member rather than to the views it holds. If the Planning meeting is discussing a planning application submitted by the group you should consider that you have a prejudicial interest and should act accordingly.
- 9.5 **Do** weigh up the following factors where your lobby group has expressed a public view on a matter and consider whether a reasonable member of the public, knowing the relevant facts, would think that you appear biased. The factors are:
- the nature of the matter to be discussed
  - the nature of your involvement with the lobby group
  - the publicly expressed views of the lobby group
  - what you have said or done in relation to the particular issue
- 9.6 **Do not** become a member of an organisation whose primary purpose is to promote or oppose specific planning proposals or those within a limited geographical area, as you may be perceived as having fettered your discretion.

- 9.7 **Do** remember that if the local branch of a general interest group has been vociferous or active on a particular issue or you are closely associated with the management or decision making process of that organisation such as its Chairperson or a member of the planning meeting, it will become increasingly difficult to demonstrate your ability to judge the matter with an open mind and you may appear biased and therefore you should consider whether it is appropriate for you to take part in the decision making process.
- 9.8 **Do not** publicly support a particular outcome on a proposal within your Ward or actively campaign for it if you wish to take part in the decision making process. It would be very difficult for you to demonstrate that you had the necessary degree of impartiality to properly weigh the arguments presented and the decision would be open to challenge. Again it is a question of maintaining the fine balance between a predisposition where your mind is not totally made up and a predetermination. This would, however, not prevent you from expressing the views of your constituents provided you are capable of determining the Application in accordance with the law.
- 9.9 **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the planning meeting that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- 9.10 **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken. It is difficult to define "excessively" but you need to consider whether a member of the public, knowing the facts, would think that, through your representations, the lobbied member was no longer able to take a view on the matter in the public interest but had predetermined it.
- 9.11 **Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Councillors should vote on a planning issue.

## **10 SITE INSPECTIONS**

Site Inspections can play a legitimate part in the decision making exercise but must be limited to inspections by viewing and as a fact finding exercise. They are not to be used to determine a proposal prior to the meeting of the Planning meetings. It should be noted that this Section applies to Councillors requests for a Site Inspection and that the Head of Planning and Policy may arrange Site Visits Inspections without prior discussion where, in his professional opinion, there is a real benefit from viewing the site.

It is important to ensure that Councillors taking planning decisions are in possession of all the facts, including matters that may have been pointed out or come to light during a site visit. Attendance of Councillors will not only demonstrate that Councillors are fully informed but will also ensure that high quality consistent and sound decisions are made, and that the risks of legal challenge are minimised. The expectation is that all Planning meeting Members will attend all formal site inspections and a record of attendance will be maintained and monitored.

The Council has a separate protocol that deals with Site Inspections in more detail, the advice contained within this planning protocol is general advice which is developed further by the Site Inspection Protocol.

10.1      **Do** try to attend site inspections organised by the Council where possible.

10.2      **Don't** request a site inspection unless you feel it is strictly necessary because:

- particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
- there are significant policy or precedent implications and specific site factors need to be carefully addressed; or
- details of the proposed development cannot be ascertained from plans and any supporting information to Councillors satisfaction at the planning meeting; or
- where design considerations are of the highest importance particularly in relation to the surrounding locality.

10.3      **Do** ensure that any information that you gained from the site inspection is reported back to the Planning meetings, so that all Councillors have the same information.

- 10.4 **Do** ensure that you treat the site inspection only as an opportunity to seek information and to observe the site.
- 10.5 **Do** ask the officers at the site inspection questions or seek clarification from them on matters which are relevant to the site inspection.
- 10.6 **Do** be prepared to listen to and ask questions of fact from the Applicant or other parties but do not be drawn into arguments or detailed discussions on the individual merits of an application or give the impression that you have made up your mind. The decision can only be made at the Planning meeting and you should make this clear to any applicant or other party and suggest that they make written representations or use of the Public Speaking arrangements and direct them to, or inform, the officer present.
- 10.7 **Don't** express opinions or views to anyone.
- 10.8 **Don't** enter a site, which is subject to a proposal other than as part of an official site inspection, even in response to an invitation, as this may give the impression of bias unless:
- you feel it is essential for you to visit the site other than through attending the official site inspection;
  - you have first spoken to the Head of Planning and Policy about your intention to do so and why (which will be recorded on the file) and
  - you can ensure you will comply with these good practice rules on site inspections.

## **11 PUBLIC SPEAKING AT MEETINGS**

The Council has a separate protocol that deals with Public Speaking at meetings in more detail, the advice contained within this planning protocol is general advice which is developed further by the Public Speaking Protocol.

- 11.1 **Don't** allow members of the public to communicate with you during the planning meeting proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- 11.2 **Do** ensure that you comply with the Council's Protocol for Public Speaking at Planning Meetings.

- 11.3 All Councillors are entitled to speak at a planning meeting in accordance with the Public Speaking Protocol either as an individual, representative or ward member. However, where you might be regarded as having a personal and prejudicial interest in the application then you may attend and speak in accordance with the protocol but only for the purpose of making representations, answering questions or giving evidence relating to the matter in the same manner as would apply to a normal member of the public. Immediately after doing so you must leave the meeting room whilst the meeting considers the proposal even though members of the public may remain.

## 12 OFFICERS

Councillors and officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate whilst officers are responsible to the Council as a whole. Their relationship is based upon mutual trust and understanding and this must never be abused or compromised. Instructions to officers can only be given through a decision of the Council, the Cabinet, Board or Committee or under delegated powers and not by individual Councillors acting outside those powers.

- 12.1 **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Head of Planning and Policy, which may be incorporated into any committee report.)
- 12.2 **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with the Head of Planning and Policy or those officers who are authorised by the Head of Planning and Policy to deal with the proposal at a Member level.
- 12.3 **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the planning meeting or its Councillors
- 12.4 **Do** be aware of the member/Officer Relations Protocol.

## 13 *DECISION MAKING*

The Council has a separate protocol that deals with the Call in of planning applications in more detail, the advice contained within this planning protocol is general advice which is developed further by the Call In Procedure.

- 13.1 **Do** ensure that, if you request a proposal to go before the planning meeting rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the planning meeting.
- 13.2 **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- 13.3 **Do** comply with section 54A of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- 13.4 **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse the application.
- 13.5 **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- 13.6 **Do** have recorded the reasons for the planning meeting's decision to grant, refuse or defer any proposal.
- 13.7 **Do** delegate to the Head of Planning and Policy the drafting of conditions that the Planning meeting may wish to add or amend when considering an application, ensuring that an explanation of why the change or addition is required is given to the planning meeting.
- 13.8 **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.
- 13.9 **Do**, where necessary, consider the drafting of conditions for sensitive applications that the planning meeting wish to approve against Officer recommendation at the next meeting of the planning meeting to allow Officers to formulate appropriate conditions and provide the planning meeting with any relevant further information.

## **14 TRAINING**

- 14.1 **Don't** participate in decision-making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- 14.2 **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.

## **15 INVOLVEMENT IN SECTION 106 AGREEMENTS**

The guidance in respect of planning obligations is similar to that of planning conditions in that they must be relevant to planning and directly related to the proposed development if they are to be taken into account in making a decision on a planning application. Local Planning Authorities should not grant planning permission for unacceptable development because of unrelated benefits offered by the applicant and should not be unduly influenced by any benefits offered.

- 15.1 **Do** remember that requirements to be included within Section 106 Agreements should be considered and discussed at pre-application stage. The Officers will provide advice on general requirements, but if you are aware of any additional potential requirements please refer these to the Head of Planning and Policy as soon as you become aware of them.
- 15.2 **Do** remember that the purpose of Section 106 Agreements is to help make acceptable, development which would otherwise be unacceptable in planning terms, by prescribing the nature of the development, or compensating for loss or damage created by the development, or to mitigate a developments impact. They must therefore be relevant to planning and relate fairly and reasonably to the development.
- 15.3 **Do** include the content of Section 106 Agreements in the debate that takes place at planning meetings, whether you are a member of the planning meeting or a visiting Member who wishes to speak on the application.
- 15.4 **Don't** hold formal or informal meetings with Applicants, Developers and Objectors over the contents of potential Section 106 agreements. If you feel that a meeting would be useful to clarify the issues, you should ask the Head of Planning and Policy to arrange such a meeting. In this way the relevant Officers can be at the meeting, and those present can be made aware that the discussions will not bind the authority, and that the meeting can be



properly recorded on the application file and the record of the meeting disclosed when the application is considered.

- 15.5 **Do** remember **that it is imperative that** a Ward Councillor's role continues after the completion of the Section 106 Agreement, by assisting Officers in ensuring that Section 106 Agreements are complied with. This includes noting when development is being undertaken and assisting Officers in ensuring triggers within Section 106 Agreements are complied with. Ward Councillors should contact Officers for any information on completed Section 106 Agreements.

## **16 MONITORING AND REVIEW**

- 16.1 The Head of Planning and Policy will report annually to the Standards Committee regarding whether the arrangements set out in this Planning Protocol have been complied with and will include any proposals for amendment in the light of any issues that have arisen during the year.
- 16.2 In particular, the Head of Planning and Policy shall monitor the following:-
- (a) the number of complaints made about breaches of the Planning Protocol and the outcome of those complaints;
  - (b) the number of appeals upheld;
  - (c) any external inspection reports in respect of relevant issues;
  - (d) the level of awareness of the Planning Protocol among Councillors and Officers; and
  - (e) the number of Ombudsman reports finding maladministration by Councillors in the conduct of planning issues.

## **17 BREACHES OF THE PLANNING PROTOCOL**

Maintaining high ethical standards enhances the general reputation of the Council, its Councillors and its officers. Open and transparent decision making enhances local democracy and should lead to better informed citizens. This Planning Protocol, along with Cheshire East's Members Code of Conduct are intended to promote these standards.

- 17.1 **Do** be aware of your responsibilities under this Code and the Members Code of Conduct.
- 17.2 **Do** report any apparent breaches of either the Code of Conduct or the Planning Protocol to the Monitoring Officer.
- 17.3 **Do** seek advice if you are in doubt.

- 17.4 Failure to comply with the Members Code of Conduct may lead to a complaint to the Standards Committee who can, in certain circumstances disqualify a Councillor. Failure to comply with this Planning Protocol may lead to a finding of Maladministration by the Ombudsman or could lead to a decision being challenged in the courts.
- 17.5 Allegations on any breach of this Planning Protocol by Members may be referred to the Monitoring Officer for referral to the Standards Committee, the relevant Leader and/or Chief Whip of the political group.

## **Licensing**

### **SECTION 2A - Council (Non-Executive) Functions – Summary of Responsibilities**

<b>Function</b>	<b>Decision making body</b>	<b>Delegation (to the extent set out in Section 2C)</b>
Taxi and miscellaneous licensing <sup>1</sup> (i.e. functions relating to licensing and registration other than in relation to Licensing Act 2003, Gambling Act 2005, highways, marriage premises, village greens, trading standards functions and fire safety/safety at sports grounds)	Licensing Committee	Head of Safer and Stronger Communities
Functions relating to licensing under the Licensing Act 2003 and the Gambling Act 2005 <sup>2</sup>	Licensing Committee	Head of Safer and Stronger Communities
Power to institute criminal proceedings under the Gambling Act 2005 <sup>3</sup>	Licensing Committee	Borough Solicitor
Power to resolve not to issue a	Council	

<sup>1</sup> Items 1-5, 15-18, 20, 24-25, 29-33, 35, 39, 40, 56 –60, 62-68, 71 of paragraph B of Schedule 1 of the Local Authorities (Functions and Responsibilities)(England) Regulations 2000

<sup>2</sup> Item 14A and items 14AA – 14AC, 14C, 14CA, 14E-14G of paragraph B of Schedule 1 of the 2000 Regulations together with section 154 and 232, Schedule 10 paragraph 6, Schedule 12 paragraph 28, Schedule 13 paragraph 3 and Schedule 14 paragraph 7 of the Gambling Act 2005

<sup>3</sup> Item 14D of paragraph B of Schedule 1 of the 2000 Regulations

casino premises licence <sup>4</sup>		
Health and Safety Functions (otherwise than in the authority's capacity as an employer) <sup>5</sup>	Licensing Committee	Head of Safer and Stronger Communities
Functions in relation to smoke-free premises <sup>6</sup>	Licensing Committee	Head of Safer and Stronger Communities
Designated Public Places Orders <sup>7</sup>	Licensing Committee	
Alcohol Disorder Zones <sup>8</sup>	Licensing Committee	

## SECTION 2B - Council (Non-Executive) Functions - Committees Terms of Reference

### Licensing Committees

Matters relating to the administration of licences which are determinable by the Council as set out within the attached Schedule, including the delegation of functional responsibility to individual officers for determination of any application for Consents, Licences, Certificates, Permits, Registrations or the like.

To hear and determine appeals against any decisions of Officers in relation to the grant, renewal, transfer, variation, refusal, revocation, suspension or imposition of condition in accordance with the Council's licensing procedure.

The discharge of the Council's functions under section 13(2) the Criminal Justice and Police Act 2001

The discharge of the Council's functions under section 16 the Violent Crime Reduction Act 2006.

**Provided that** before any Councillor who is a member of the Licensing Committee can attend a meeting and participate in the determination of an application or appeal by any individual or body, that Councillor must have attended a suitable training course dealing with the quasi-judicial nature of the role of the Committee.

Responsibilities of Full Committee and Sub-Committees

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<sup>4</sup> Item 14B of paragraph B of Schedule 1 of the 2000 Regulations

<sup>5</sup> Paragraph C of Schedule 1 of the 2000 Regulations

<sup>6</sup> Paragraph FA of Schedule 1 of the 2000 Regulations

<sup>7</sup> Item 49 of paragraph I of Schedule 1 of the 2000 Regulations

<sup>8</sup> Item 50 of paragraph I of Schedule 1 of the 2000 Regulations

The functions of the Licensing Committee (subject to the delegations to officers contained within Section 2C) shall be determined by the Full Committee or Sub-Committees based on the delegations set out below.

These delegations to Sub-Committees shall be subject to the proviso that the Chairman or Vice Chairman of the full Committee may refer a matter up from a Sub-Committee to the full Committee where that matter is significant or controversial in nature

#### Licensing Act 2003/Gambling Act 2005 Sub-Committee

<b>Function</b>	<b>Full Committee</b>	<b>Sub-Committee</b>
Determination of application for Premises Licence (section 18(3) 2003 Act)		To determine applications where representations have been made and not withdrawn
Determination of application for Provisional Statements (section 31(3) 2003 Act)		To determine applications where representations have been made and not withdrawn
Determination of application for variation of Premises Licence (section 35(3) 2003 Act)		To determine applications where representations have been made and not withdrawn
Determination of application for variation of designated premises supervisor (section 39(3) 2003 Act)		To determine applications where police objection has been made
Determination of application for transfer of Premises Licence (section 44(5) 2003 Act)		To determine applications where police objection has been made
Determination of application relating to an interim authority notice (section 48(3) 2003 Act)		Consideration of police objection to an interim authority notice
Determination of application for a review of a Premises Licence (section 52(2) 2003 Act)		To determine applications for review
Determination of an application for a Club Premises Certificate (section 72(3) 2003 Act)		To determine applications where representations have been made and not withdrawn
Determination of an application to vary a Club Premises Certificate (section 85(3) 2003 Act)		To determine applications where representations have been made and not withdrawn
Determination of an application for the review of a Club Premises Certificate (section 88 2003 Act)		To determine review applications
Decision to give a counter notice to a		To give a counter notice following a

Temporary Event Notice (section 105(2) 2003 Act)		police objection to a temporary event notice
Determination of application for the grant of a Personal Licence (section 120(7) 2003 Act)		To determine applications where police objection has been made
Determination of application for the renewal of Personal Licence (section 121(6) 2003 Act)		To determine applications where police objection has been made
Revocation of Personal Licence (section 124(4) 2003 Act)		To revoke Personal Licence where convictions come to light after the grant/renewal of the Licence
Determination of review following closure order (section 167(5) 2003 Act)		To determine review applications following a closure order where representations are made
Decision to object when the local authority is the consultee not the relevant authority considering an application (2003 Act)		To determine whether to make an objection
Determination of application for Premises Licence (section 163 2005 Act)		To determine applications where representations have been made and not withdrawn
Determination of application for variation of Premises Licence (section 187 2005 Act)		To determine applications where representations have been made and not withdrawn
Determination of application for transfer of Premises Licence (section 188 2005 Act)		To determine applications where objection has been made
Consideration of objection made to application for reinstatement (section 195 2005 Act)		To consider the objection
Determination of an application for the review of a Premises Licence (section 201 2005 Act)		To determine review application
Determination of application for Provisional Statement (section 204 2005 Act)		To determine applications where representations have been made and not withdrawn
Decision to give a counter notice to a Temporary Use Notice (section 224 2005 Act)		To give a counter notice following an objection to a temporary use notice
Consideration of representations in relation to proposed rejection of a club gaming permit or club machine permit (schedule 12 2005 Act)		To consider representations and determine whether permit to be rejected
Cancellation of club gaming permit or club machine permit (schedule 12 2005 Act)		To determine whether to cancel permit
Decision to make an order disapplying section 279 or 282(1) of the 2005 Act in relation to specified premises (section		To determine whether an order to be made where representations made by licensee and not

284 2005 Act)		withdrawn.
Power to set fees for Premises Licence (section 212 2005 Act)	To set fees	

#### General' Licensing Sub-Committee

Subject to the matters reserved to the full Committee below, the 'general'

Licensing Sub-Committee shall deal with the licensing functions set out below

together with any other function within Schedule 1 referred to it by officers

(with the exception of matters under the Licensing Act 2003/Gambling Act 2005).

<b>Function</b>	<b>Full Committee</b>	<b>Sub-Committee</b>
Power to licence (first grant, renewal and transfer) hackney carriages and private hire vehicles		To determine applications where the vehicle does not meet the Council's vehicle conditions or the vehicle does not pass the inspection.
Power to suspend or revoke hackney carriage and private hire vehicle licences		To note reports relating to officer decisions to suspend vehicle licences.  The power to revoke vehicle licences.
Power to licence (first grant or renewal) operators licences		To determine applications where the Council's requirements are not met.
Power to suspend or revoke operators licences		To note reports relating to officer decisions to suspend operators licences.  Power to revoke operators licences.
Power to licence (first grant or renewal) hackney carriage and private hire drivers		To determine applications where the driver does not meet the Council's requirements.
Power to suspend or revoke hackney carriage and private hire drivers licences		To note reports relating to officer decisions to suspend drivers licences.  Power to revoke drivers licences.

Power to set fees in relation to hackney carriage and private hire drivers, vehicles and operators	Power to set fees.	
<i>Power to licence sex shops and sex cinemas (including first grant, renewal, transfer and variation of standard conditions)</i>	<p>First grant: all cases before the Licensing Committee.</p> <p>Renewal: if there are objections which are not withdrawn and which cannot be dealt with under the authority delegated to officers.</p> <p>Transfer: if there are objections which are not withdrawn and which cannot be dealt with under the authority delegated to officers.</p> <p>Variation of standard</p>	
<i>Power to set fees for sex establishments</i>	Power to set fees	
<i>Power to licence street collection</i>		<p>To determine requests for waiver of the Council's street collection regulations.</p> <p>Determines appeals against office refusal.</p>
<i>Power to licence House to House collection</i>		Determines appeals against office refusal.
<i>Power to issue street trading licences or consents</i>		<p>To determine applications for street trading consents where representations have been received (and not withdrawn).</p> <p>To determine applications for street trading licences.</p>
<i>Power to designate streets as consent streets, licence streets or prohibited streets.</i>	Power to designate streets	

<i>Power to set fees in relation to street trading</i>	Power to set fees.	
<i>Power to make a Designated Public Places Order</i>	Power to make order	
<i>Power to designate area as an Alcohol Disorder Zone</i>	Power to make designation	



## **SCHEDULE**

### **Schedule of functions**

All Council (non-executive) functions relating to:

(a) licensing and registration functions in respect of:

- (i) Caravan sites and moveable dwellings/camping sites<sup>9</sup>
- (ii) Hackney carriages and private hire vehicles, drivers and operators<sup>10</sup>
- (iii) Sex shops and sex cinemas<sup>11</sup>
- (iv) Performances of hypnotism<sup>12</sup>
- (v) Acupuncture, tattooing, ear-piercing and electrolysis<sup>13</sup>
- (vi) Pleasure boats and vessels<sup>14</sup>
- (vii) Market and street trading<sup>15</sup>
- (viii) Premises for the preparation of food<sup>16</sup>
- (ix) Scrap yards and motor salvage operators<sup>17</sup>
- (x) Dog breeding, pet shops, animal breeding, animal trainers and exhibitors, zoos and wild animals<sup>18</sup>
- (xi) Employment of children<sup>19</sup>
- (xii) Charitable collections<sup>20</sup>
- (xiii) Operation of loudspeakers<sup>21</sup>
- (xiv) Storage of celluloid<sup>22</sup>
- (xv) Meat product premises and dairy establishments<sup>23</sup>
- (xvi) Egg products, butchers and fish products<sup>24</sup>
- (xvii) Auction and wholesale markets<sup>25</sup>
- (xviii) Food business premises<sup>26</sup>

(b) Health and safety at work<sup>27</sup> to the extent that those functions are discharged otherwise than in the authority's capacity as an employer;

(c) smoke-free premises under the Health Act 2006 and regulations;<sup>28</sup>

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<sup>9</sup> Items 2 & 3 of para B of Schedule 1 Local Authorities (Functions and Responsibilities)(England) Regulations 2000

<sup>10</sup> Items 3 – 5 of para B of Schedule 1 to the 2000 Regulations

<sup>11</sup> Item 15 of para B of Schedule 1 to the 2000 Regulations

<sup>12</sup> Item 16 of para B of Schedule 1 to the 2000 Regulations

<sup>13</sup> Item 17 of para B of Schedule 1 to the 2000 Regulations

<sup>14</sup> Item 18 of para B of Schedule 1 to the 2000 Regulations

<sup>15</sup> Item 20 of para B of Schedule 1 to the 2000 Regulations

<sup>16</sup> Item 24 of para B of Schedule 1 to the 2000 Regulations

<sup>17</sup> Item 25 and 71 of para B of Schedule 1 to the 2000 Regulations

<sup>18</sup> Items 29 – 33 of para B of Schedule 1 to the 2000 Regulations

<sup>19</sup> Item 35 of para B of Schedule 1 to the 2000 Regulations

<sup>20</sup> Item 39 of para B of Schedule 1 to the 2000 Regulations

<sup>21</sup> Item 40 of para B of Schedule 1 to the 2000 Regulations

<sup>22</sup> Item 56 of para B of Schedule 1 to the 2000 Regulations

<sup>23</sup> Items 57-59 of para B of Schedule 1 to the 2000 Regulations

<sup>24</sup> Items 60-65 of para B of Schedule 1 to the 2000 Regulations

<sup>25</sup> Item 66 of para B of Schedule 1 to the 2000 Regulations

<sup>26</sup> Item 67 of para B of Schedule 1 to the 2000 Regulations

<sup>27</sup> Para C of Schedule 1 to the 2000 Regulations

<sup>28</sup> Para FA of Schedule 1 to the 2000 Regulations

(d) Designated Public Place Orders under the Criminal Justice and Police Act 2001 and regulations<sup>29</sup>

(e) Alcohol Disorder Zones under the Violent Crime Reduction Act 2006<sup>30</sup>

(f) the following functions under the Licensing Act 2003<sup>31</sup> and the Gambling Act 2005<sup>32</sup>:

- (i) section 18(3) of the 2003 Act (determination of application for a premises licence where representations have been made);
- (ii) section 31(3) of the 2003 Act (determination of application for provisional statements where representations have been made);
- (iii) section 35(3) of the 2003 Act (determination of application for variation of premises licence where representations have been made);
- (iv) section 39(3) of the 2003 Act (determination of application to vary designated premises supervisor following police objection);
- (v) section 44(5) of the 2003 Act (determination of application for transfer of premises licence following police objection);
- (vi) section 48(3) of the 2003 Act (consideration of police objection made to an interim authority notice);
- (vii) section 52(2) or (3) of the 2003 Act (determination of an application for review of a premises licence);
- (viii) section 72(3) of the 2003 Act (determination of an application for a club premises certificate where relevant representations have been made);
- (ix) section 85(3) of the 2003 Act (determination of application to vary club premises certificates where representations have been made);
- (x) section 88(2) or (3) of the 2003 Act (determination of application for a review of club premises certificate);
- (xi) section 105(2) (decision to give counter notice following police objection to a temporary event notice);
- (xii) section 120(7) of the 2003 Act (determination of application for grant of personal licence following police objection);
- (xiii) section 121(6) of the 2003 Act (determination of application for renewal of personal licences following police objection);
- (xiv) section 124(4) of the 2003 Act (revocation of licence where convictions come to light after grant or renewal of personal licences);
- (xv) section 167(5) (review following closure order where relevant representations have been made);
- (xvi) section 163 of the 2005 Act (determination of an application for premises licences where representations have been made);

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<sup>29</sup> Item 49 of para I of Schedule 1 to the 2000 Regulations

<sup>30</sup> Item 50 of para I of Schedule 1 to the 2000 Regulations

<sup>31</sup> Item 14A of para B of Schedule 1 to the 2000 Regulations

<sup>32</sup> section 154 and 232, Schedule 10 paragraph 6, Schedule 12 paragraph 28, Schedule 13 paragraph 3 and Schedule 14 paragraph 7 of the Gambling Act 2005

- (xvii) section 187 of the 2005 Act (determination of an application for variation of premises licence where representations have been made);
- (xviii) section 188 of the 2005 Act (determination of application for transfer of premises licence following objection);
- (xix) section 195 of the 2005 Act (consideration of objection made to an application for reinstatement);
- (xx) section 201 of the 2005 Act (determination of review of a premises licence);
- (xxi) section 204 of the 2005 Act (determination of application for a provisional statement where representations have been made);
- (xxii) section 224 of the 2005 Act (decision to give counter notice following an objection to a temporary use notice)
- (xxiii) schedule 12 of the 2005 Act (determination as to cancellation of a club gaming permit or club machine permit)
- (xxiv) schedule 12 of the 2005 Act (consideration of representations in relation to the proposed rejection of a club gaming permit or club machine permit).
- (xxv) section 284 of the 2005 Act (determination of whether an order disapplying section 279 or 282(1) of the 2005 Act in relation to specified premises to be made)
- (xxvi) section 212 of the 2005 Act (power to set fees)

## ***SECTION 2C – Council (Non-Executive) Functions – Officer Delegations Scheme***

### **HEAD OF SAFER AND STRONGER COMMUNITIES**

Subject to the exceptions listed below, the Head of Safer and Stronger

Communities is authorised to discharge the following Council (non-executive) functions.

### **Licensing Functions**

(a)	Power to licence hackney carriages and private hire vehicles	Hackney carriages: Town Police Clauses Act 1847; section 47, 57, 60 & 79 Local Government (Miscellaneous Provision) Act 1976  Private Hire Vehicles: sections 48, 57, 60 & 79 Local Government (Miscellaneous Provision) Act 1976
(b)	Power to suspend hackney carriage and private hire vehicle licences	Hackney carriages: Town Police Clauses Act 1847; section 58 & 60 Local Government (Miscellaneous

		Provision) Act 1976  Private Hire Vehicles: sections 58 & 60 Local Government (Miscellaneous Provision) Act 1976
(c)	Power to suspend hackney carriage and private hire vehicle licences pending inspection	Section 68 Local Government (Miscellaneous Provision) Act 1976
(d)	Power to licence operators licences	Sections 55 – 58 & 79 Local Government (Miscellaneous Provision) Act 1976
(e)	Power to suspend operators licences	Section 62 Local Government (Miscellaneous Provision) Act 1976
(f)	Power to licence hackney carriage and private hire drivers	Hackney carriages: Town Police Clauses Act 1847; section 53, 54, 57, 59, 61 & 79 Local Government (Miscellaneous Provision) Act 1976  Private Hire: sections 51, 53, 54, 61 & 79 Local Government (Miscellaneous Provision) Act 1976
(g)	Power to suspend hackney carriage and private hire drivers licences	Section 61 Local Government (Miscellaneous Provision) Act 1976
(h)	<i>Power to renew or transfer licences for sex shops and sex cinemas</i> [Where (i) there has been no material change to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made; and (ii) no objections have been received, or those that have been received should in the officer's opinion be set aside on the ground that the Council could not lawfully take them into account]	Local Government (Miscellaneous Provisions) Act 1982, section 2 and Schedule 3.

(i)	<i>Power to licence street collections</i>	Section 5 Police, Factories etc (Miscellaneous Provisions) Act 1916
(j)	<i>Power to licence House to House collections</i>	Section 2 House to House Collections Act 1939
(k)	<i>Power to issue street trading consents</i>	Section 3 and Schedule 4 Local Government (Miscellaneous Provisions) Act 1982
(l)	<i>Power to licence performances of hypnotism</i>	Hypnotism Act 1952
(m)	<i>Licensing functions under the Licensing Act 2003 and the Gambling Act 2005 (subject to the exceptions below)</i>	Licensing Act 2003 and Gambling Act 2005
(n)	<i>Sanctioning the use of buildings for the storage of celluloid</i>	Section 1 of the Celluloid and Cinematograph Film Act 1922
(o)	<i>Licensing employment of children</i>	Part II of the Children and Young Persons Act 1933, byelaws made under that Part, and Part II of the Children and Young Persons Act 1963

Exceptions

### ***Licensing Functions ('General')***

(i) The determination of applications for hackney carriage or private hire vehicles where the vehicle does not meet the Council's vehicle conditions or does not pass the vehicle inspection be referred to the Licensing Sub-Committee\*.

(ii) The determination of applications for operators licences where the Council's requirements are not met be referred to the Licensing Sub-Committee\*.

(iii) The determination of applications for hackney carriage or private hire drivers licences where the applicant does not meet the Council's requirements be referred to the Licensing Sub-Committee\*

(iv) The determination of applications for the renewal or transfer of licences for sex shops and sex cinemas where there are objections which are not be withdrawn and cannot be dealt with under the authority delegated to officers be referred to the Licensing Committee.

(v) The determination of requests for waiver of the Council's street collection regulations (with the exception of the regulation in relation to processions) shall be referred to the Licensing Sub-Committee.\*

(vi) The determination of applications for street trading consents where representations have been received and not withdrawn be referred to the Licensing Sub-Committee.\*

(vii) The decision to designate streets (section 3 and Schedule 4 Local Government (Miscellaneous Provisions) Act 1982) shall be reserved to the Licensing Committee.

(viii) The power to set fees in relation to hackney carriages and private hire vehicles, operators and drivers, sex establishments and street trading shall be reserved to the Licensing Committee.

#### Licensing Functions (Licensing Act 2003 and Gambling Act 2005)

(i) Any licensing function under the Licensing Act 2003 and the Gambling Act 2005 reserved to full Council (i.e the determination of the three year statement of principles and the decision not to licence casinos under the 2005 Act);

(ii) The determination of an application under the Licensing Act 2003 or Gambling Act 2005 where relevant representations have been received and are not withdrawn shall be referred to the Licensing Sub-Committee.\*

(iii) The determination of review applications (under sections 52, 88 and 167 of the Licensing Act 2003) shall be referred to the Licensing Sub-Committee.\*

(iv) The determination of review applications (under section 201 of the Gambling Act 2005) shall be referred to the Licensing Sub-Committee.\*

(v) The decision to object when the local authority is a consultee and not the relevant authority considering an application under the Licensing Act 2003 shall be referred to the Licensing Sub-Committee.\*

(vi) The consideration of representations in relation to the proposed rejection of a club gaming permit or club machine permit (schedule 12 of the Gambling Act 2005) is reserved to the Licensing Sub-Committee\*

(vii) The decision to cancel a club gaming/club machine permit (schedule 12 of the Gambling Act 2005) shall be referred to the Licensing Sub-Committee.\*

(vii) The decision to give a counter notice to a temporary use notice (section 224 of the Gambling Act 2005) shall be referred to the Licensing Sub-Committee.\*

(viii) The decision to make an order disapplying section 279 or 282(1) of the 2005 Act in relation to specified premises where representations have been made by the licensee shall be referred to the Licensing Sub-Committee.\*

(ix) The decision to revoke a personal licence where convictions come to light after grant or renewal (under section 124 of the Licensing Act 2003) shall be referred to the Licensing Sub-Committee.\*

(x) The decision to set fees under the Gambling Act 2005 shall rest with the Licensing Committee.

(xi) The power to institute criminal proceedings under the Gambling Act lies with the Borough Solicitor.

\*The Chairman and Vice Chairman of the Licensing Committee have the discretion to refer matters from the Licensing Sub-Committee to the full Licensing Committee if the matter is significant or controversial in nature.

# Environmental Health Functions

(a)	Power to issue licences authorising the use of land as a caravan site.	Section 3(3) of the Caravan Sites and Control of Development Act 1960
(b)	Power to licence the use of moveable dwellings and camping sites	Section 269(1) of the Public Health Act 1936
(c)	Power to license premises for acupuncture, tattooing, ear piercing and electrolysis	Sections 13 to 17 of the Local Government (Miscellaneous Provisions) Act 1982
(d)	Power to licence pleasure boats and pleasure vessels	Section 94 of the Public Health Acts Amendment Act 1907
(e)	Power to licence scrap yards	Section 1 Scrap Metal Dealers Act 1964
(f)	To register motor salvage operators	Part 1 of the Vehicles (Crime) Act 2001
(g)	To register and licence premises for the preparation of food	Section 19 of the Food Safety Act 1990
(h)	Power to licence premises for the breeding of dogs	Section 1 Breeding of Dogs Act 1973 and Section 1 of Breeding and Sale of Dogs (Welfare Act) 1999
(i)	Power to licence pet shops and other establishments where animals are bred or kept for the purposes of carrying on a business	Section 1 of Pet Animals Act 1951, Section 1 Animal Boarding Establishments Act 1964 and 1970, Section 1 of Breeding of Dogs Act 1973 and Sections 1 & 8 of Breeding and Sale of Dogs Act (Welfare) Act 1999.
(j)	To register animal trainers and exhibitors	Section 1 of Performing Animals (Regulation) Act 1925.
(k)	Power to licence zoos	Section 1 of the Zoo Licensing Act 1981
(l)	To licence dangerous wild animals	Section 1 Dangerous Wild Animals Act 1976

(m)	To grant consent for the operation of a loudspeaker	Schedule 2 to the Noise and Statutory Nuisance Act 1993
(n)	To approve meat product premises	Regulation (EC) 853/2004 (as enforced under the Food Hygiene (England) Regulations 2006)
(o)	To approve premises for the production of minced meat or meat preparations	Regulation (EC) 853/2004 (as enforced under the Food Hygiene (England) Regulations 2006)
(p)	To approve dairy establishments	Regulation (EC) 853/2004 (as enforced under the Food Hygiene (England) Regulations 2006)
(q)	To approve fish products premises	Regulation (EC) 853/2004 (as enforced under the Food Hygiene (England) Regulations 2006)
(r)	To approve dispatch or purification centres	Regulation (EC) 853/2004 (as enforced under the Food Hygiene Regulations 2006)
(s)	Power to register fishing vessels on board which shrimps or molluscs are cooked	Regulation (EC) 853/2004 (as enforced under the Food Hygiene (England) Regulations 2006)
(t)	Power to approve factory vessels and fishery product establishments	Regulation (EC) 853/2004 (as enforced under the Food Hygiene (England) Regulations 2006)
(u)	To register auction and wholesale markets	Regulation (EC) 853/2004 (as enforced under the Food Hygiene (England) Regulations 2006)
(v)	To keep a register of food business premises	Regulation (EC) 852/2004 (as enforced under the Food Hygiene (England) Regulations 2006)
(w)	Duty to enforce Chapter 1 and regulations made under it	Section 10(3) of the Health Act 2006
(x)	Power to authorise officers	Section 10(5) of and paragraph 1 of Schedule 2 to the Health Act 2006
(y)	Functions relating to fixed penalty notices	Paragraphs 13, 15 and 16 of Schedule 1 to the Health Act 2006.
(z)	Power to transfer enforcement functions to another enforcement authority	Smoke Free (Premises and Enforcement) Regulations 2006 (SI 2006/3368)
(aa)	<i>Functions relating to health and safety at work (to the extent that those functions are discharged otherwise than in the authority's capacity as an employer)</i>	Part 1 Health and Safety at Work etc Act 1974





## **Responsibilities of Council**

The following functions are the responsibility of the Council and will be discharged by the full Council unless specified to be delegated to another Committee, Sub-Committee or body under this Constitution. The Council:

1. is accountable to its citizens for the proper discharge of all of its functions and for the delivery of such services as it is responsible for;
2. will keep under review the running of the Council's affairs and will implement changes where it considers there is a need to do so to improve the way in which the organisation operates, its relationships with the Council's citizens and the delivery of any services in the most effective and efficient way;
3. will adopt the Council's Constitution in accordance with the requirements of the Local Government Act 2000 and approve any subsequent amendments to it in whole or in part;
4. will appoint to the following offices
  - Council Mayor
  - Council Deputy Mayor
  - Leader of the Council
  - Chairmen and Vice-Chairmen of Committees, Sub-Committees and Special Committees
  - such other offices as may be required under this Constitution or by the Council;
5. will determine whether functions which are classified as "local choice" functions under the Local Government Act 2000 should be reserved to the Council or delegated to the Cabinet;
6. will adopt the Council's Codes of Conduct for Members and Officers and the Protocol on Member/Officer Relations;
7. will agree the establishment and composition of, and make appointments to, Committees, Sub-Committees other than those which may be established within the Cabinet;
8. will agree and amend the terms of reference of its Committees and Sub-Committees;
9. will consider any matter which has been referred or submitted to it by the Cabinet;
10. where a matter is referred to it for determination by a Committee or Sub-Committee other than a Cabinet body, under this Constitution or under some other approved policy or procedure, to determine that matter;

11. will adopt or otherwise, as provided in the Council Procedure Rules, motions submitted under Standing Order No.12 (Notice of Motion) which do not relate solely to a Cabinet function;
12. will approve the Members Allowance Scheme including any pension provision for elected Members following advice from the Independent Remuneration Panel;
13. will appoint/dismiss the Head of Paid Service, designate an officer to act as Monitoring Officer and Chief Finance Officer.
14. will approve the Council's response to any issues or proposals in relation to local government boundaries including Electoral Wards, the conduct of elections and the discharge of local authority functions;
15. may determine other matters which may from time to time be submitted to it for determination, either by resolution or through approved procedures, where such matters do not fall within the functions of the Cabinet.

## **Responsibilities of Cabinet**

### **General Responsibility of the Cabinet, Committees and Sub-Committees**

These bodies are responsible and accountable to the Council as appropriate in accordance with this Constitution, their terms of reference and under the approved policies, regulations and procedures of the Council for:

1. ensuring the effective and efficient discharge of the functions delegated to them;
2. ensuring that any Council services are appropriate for and responsive to the needs and views of the Council's citizens, and are delivered effectively and efficiently;
3. ensuring that good external relationships and effective local liaison are promoted in relation to any Council services;
6. monitoring the functions of the Council within their remit and contributing to any Council aims, objectives and policies;
7. determining policies and objectives for any Council services, within their remit, reviewing the extent to which they are met, and agreeing any necessary action;
8. determining the Council's views on matters specific to their areas of responsibility and related external matters;
9. ensuring the effective and efficient management of any services and resources falling within their purview in accordance with this Constitution and, where appropriate, the effective and efficient discharge of the responsibilities of any subordinate bodies or person.

## **Responsibility of the Cabinet**

Where the Cabinet is exercising a Cabinet function, in whole or in part, as set out below, the Cabinet is empowered to take all necessary and appropriate decisions to fulfil the obligations placed upon it subject to any restrictions or constraints imposed by the law or this Constitution.

### **The Cabinet**

Insofar as such functions do not fall within the responsibilities of individual Cabinet Members, the Cabinet is responsible for and accountable to the Council, where appropriate, for the following functions, recognising that certain functions discharged by officers or services within its remit fall, by virtue of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and any subsequent amendments thereto, to be discharged by the Council:

1. consulting on, developing, monitoring and reviewing the various elements of the Council's plans and policies;
2. subject to consultation with the appropriate Scrutiny body or bodies, advising on Budget setting, including all other related financial matters, plans and proposals;
3. ensuring that proper arrangements exist for the effective and efficient management of the Council's executive affairs;
4. ensuring that the Council prepares for the Performance Management regime and any Government initiatives dealing with such matters which have financial implications.
5. 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 and will be met, and requiring or approving any remedial action to be taken where it considers it necessary and appropriate;
6. advising the Council where appropriate, and determining such matters as may be prescribed from time to time, under the Council's Constitution as the responsibility of the Cabinet;
7. approving, monitoring and reviewing any Council Corporate personnel and human resources policies;
8. approving, monitoring and reviewing the provision of services to the Council which are delivered by internal and/or external suppliers;
9. overseeing, approving and co-ordinating policies on national and external communications, public and media relations and public affairs generally;
10. overseeing relationships with, participation in and contribution to external organisations and partnerships, Local Government Association, the North West Regional Assembly or their successors or like bodies;

11. ensuring officers exercising delegated powers on behalf of the Cabinet discharge their responsibilities efficiently and effectively;
12. ensuring that officers discharge their responsibilities efficiently and effectively in relation to Cabinet functions;
13. overseeing the exercise of any Council powers and duties in relation to Part 1 of the Local Government Act 2000 (Promotion of Economic, Social or Environmental Well Being etc);
14. advising the Council on strategic matters in relation to corporate governance, community governance and community strategy;
15. monitoring and reviewing issues relating to local working;
16. overseeing the promotion of the Council's image, role and relationships in the European context, particularly with the European Commission and other European institutions;
17. preparing and approving, as appropriate, Regional and Sub-Regional Plans and Strategies;
18. preparing and approving major planning studies;
19. supporting the North West Regional Assembly or any successors or like body, where appropriate, on regional policy, transportation, planning and environmental issues and related matters and any other matters of relevance to the Council and ensuring that the Council's views are made known;
20. promoting employment and investment in the Council's area, including the preparation and approval of any Economic Development and Tourism Strategies;
21. deciding such other matters as may fall to the Cabinet to determine as required by the law or as delegated to it by the Council;
22. dealing with any executive Local Development Framework functions which are given to the Council by the Secretary of State.
23. making decisions upon those executive functions which arise under the Cheshire (Structural Changes) Order 2008.

The Cabinet may discharge these functions itself, through a Task Group/Cabinet Sub-Committee or by delegation to an officer. In addition, the Cabinet may appoint such advisory panels, including any member of the Council, as it considers appropriate to provide advice to it.

## **Overview and Scrutiny Committees**

Five Overview and Scrutiny Committees will be appointed which, between them, will relate to the Cabinet and specifically as appropriate to the nine individual Portfolios:

- Children and Families
- Health and Adult Social Care
- Environment and Prosperity
- Sustainable Communities
- Corporate Scrutiny

Health and Adult Social Care will fulfil the legally required task of NHS Scrutiny, together with review and advice on jointly commissioned services in Adult Social Care and Mental Health.

External scrutiny of the LAA, Crime and Disorder and Community Strategies will be undertaken by the Sustainable Communities Committee.

Corporate Scrutiny Committee will review the three “corporate” portfolios, and Cabinet and organisational performance as a whole.

Any of the Committees may be invited to provide advice and recommendations on the development and updating of the Authority’s policies.

The Committees will consist of 14 or 15 Members (plus appropriate co-option) which will enable all non-Executive Members to have a place on at least one Committee.

The Scrutiny Committees will/may specifically:

1. discharge the Council’s functions under Section 21 of the Local Government Act 2000 (Scrutiny Committees)
2. oversee the Council’s overall scrutiny function including the preparation, implementation, monitoring and review of an annual work programme for scrutiny and arrangements for the scrutiny of other public bodies particularly where required to do so by law and where partners can contribute to Community Plan priorities and to Local Area Agreement outcomes;
3. establish such task and finish groups, appointing the Chairman with such membership as it sees fit, to undertake scrutiny on a task and finish basis;
4. ensure that officers discharge their responsibilities effectively and efficiently in relation to the scrutiny function;
5. scrutinise decisions of the Cabinet, and offer advice or make recommendations on the matter under scrutiny once the Committee have considered the issues;
6. refer to the Council or appropriate Committee/Sub-Committee any matter which, following scrutiny, the Committee determines should be brought to the attention of the Council or the Committee or Sub-Committee;

7. if requested, offer any views or advice to the Cabinet in relation to any matter referred to the Committee for consideration;
8. undertake general policy reviews with a cross-service and multi-organisational approach wherever possible and make recommendations to the Council or the Cabinet to assist in the development of future policies and strategies;
9. in performing its role, the Committee may consult and involve the local community and other local public, private and voluntary bodies or organisations;
10. review the Council's response to its obligations in respect of the overall performance management regime and where appropriate advise the Cabinet and the Council of its findings;
11. scrutinise decisions after implementation to examine their effect and outcomes;
12. review and making recommendations in relation to matters which are not the direct responsibility of the Council but which affect the social, economic and environmental well-being of an area, or the Council's area as a whole, or under any statutory requirement or Council contract, procedure or practice;
13. develop, maintain and monitor policies and procedures for handling complaints made against the Council and monitor on a regular basis the level and nature of complaints received and ensure that advice is formulated regarding action to be taken to address areas of concern;
14. monitor the level and nature of Ombudsman complaints and advise the Cabinet, Committees, Sub-Committees and officers on remedial action as appropriate;
15. ensure in conjunction with the Standards, and Governance and Constitution Committees that the Council has in place appropriate mechanisms to protect organisational Integrity including the development of appropriate policies and guidance;
16. deal with any overview and scrutiny matter which is the subject of a Call-In, a Councillor Call for Action or Local Petition;
17. provide a regular programme of training and development for all Members and Co-opted Members involved in the work of the Committee.

## **HEALTH AND ADULT SOCIAL CARE SCRUTINY COMMITTEE**

The Health and Adult Social Care Scrutiny Committee will:

1. fulfil the Health Scrutiny duties falling on the Authority by virtue of the Health and Social Care Act 2001 (consolidated into the NHS Act 2006) and subsequent relevant legislation and Government Guidance;

2. liaise with NHS Trusts on any matter relating to the planning, provision and operation of Health services in East Cheshire, including commenting on the annual “health check” of the performance of those Trusts;
3. respond to any formal consultations undertaken by relevant NHS Trusts on any substantial development or variation in service;
4. participate with other relevant local authorities in joint scrutiny arrangements of NHS Trusts providing cross-border services to East Cheshire residents, in particular the Cheshire and Wirral Partnership Foundation Trust;
5. prepare an annual Work Programme and commission scrutiny reviews to ensure that all sections of East Cheshire’s local communities have equal access to Health services and have an equal chance of a successful outcome from those services;
6. liaise with the Local Involvement Network (LiNK) for East Cheshire, commissioning work and receiving reports and recommendations as appropriate;
7. deal with any matter referred by the Department of Health, the Local Involvement Network or by the Council;
8. offer advice to the Cabinet on Key Decisions relating to the operation of the Council’s Adult Social Care functions;
9. receive reports from the Council’s external inspectors on its Adult Social Care responsibilities and to offer advice thereon to the Cabinet;
10. keep under review the Council’s performance management arrangements in relation to its Adult Social Care responsibilities and offer advice as appropriate;
11. deal with any Health or Adult Social Care matter which is the subject of a Call-In, a Councillor Call for Action or Local Petition;
12. provide a regular programme of training and development for all Members and Co-opted Members involved in the work of the Committee;

### **Staffing Committee**

7 Members: 5:1:1

1. Undertaking the selection process for the appointment, and formulating recommendations to the Council in relation to:
  - the appointment and dismissal of the Head of the Paid Service;
  - the designation of an officer to act as Monitoring Officer and Chief Finance Officer;



- the appointment/dismissal of Monitoring Officer and Chief Finance Officer;

in accordance with legislation and the appropriate procedures set out in the Staff Employment Procedure Rules;

2. undertaking the selection, appointment and dismissal processes for any staff where so required by law;

(It should be noted that the Chief Executive has powers to appoint all other staff)

3. hearing and determining any appeals by staff under the Council's approved personnel policies and procedures including through any appointed Sub-Committee;
4. hearing and dealing with disputes registered with the Council by recognised Trade Unions.

### **Lay Members Appointments Committee**

7 Members: 5:1:1

Appointing Lay Members (who shall not be Members of the Council) to serve on the Independent Admissions and Exclusion Appeals Panel as required under the relevant legislation.

### **Appeals Committee**

7 Members: 5:1:1

1. Hearing and determining appeals lodged under the Marriage Acts.
2. Hearing and determining any appeals lodged with the Council for determination, as authorised under all relevant education legislation, excluding those duties falling to the Independent Appeals Panel (schools admissions and exclusions).
3. Hearing and determining any appeals lodged with the Council in respect of school transport.
4. Hearing and determining appeals from bus contractors in accordance with contract procedures.
5. Hearing and determining any appeals lodged with the Council as Social Services Authority, and as authorised under all relevant social services legislation.

### **Standards Committee**

(Existing Committee to continue with existing membership and powers):

#### **1. Composition**

- 1.1 The Standards Committee will be composed of:

- 1.1.1 8 Councillors
- 1.1.2 5 Statutory Independent Members, who will be entitled to vote at meetings, but who are not Councillors or officers of the Council;
- 1.1.3 3 Parish Members. At least one Parish Member must be present when matters relating to Parish Councils or their Members are being considered;

## **2. Powers**

The Committee will be responsible for

- By itself or by sub-committee, to discharge the Council's functions under Part III of the Local Government Act 2000, including:
  - Assessment of new complaints (discharge of any functions under S57A of the Act).
  - Reviewing decisions to take no action over a complaint (S57B of the Act)
  - Consider final investigation reports and conduct determination hearings.
- considering and granting, or otherwise, dispensations in respect of Members' Interests when so enabled under Part III of the Local Government Act 2000;
- promoting high standards of ethical behaviour by developing, maintaining and monitoring codes of Conduct for Members of the Council (including Co-opted Members and other persons acting in a similar capacity) and for employees in accordance with best practice and Government guidance;
- advising the Council on the adoption or revision of the Codes of Conduct for Members and Officers;
- ensuring that Members receive advice and training as appropriate on the Members' Code of Conduct;
- issuing advice to Members on the treatment of personal interests and on conduct matters generally;
- ensuring that the Council maintains appropriate links with the Standards Board for England and the Commission for Local Administration in England (Ombudsman);
- referring issues, which impinge on staff conduct, performance, terms of employment, training and development to the appropriate and responsible Executive Member and/or Manager;
- promoting high standards of responsiveness by the Council to its clients and contacts
  - (a) advising other persons/bodies on probity and ethics as appropriate, particularly where that person or body is exercising functions on behalf of the Council;
  - (b) supporting the Council's statutory officers as appropriate or their authorised deputies, in the performance of their duties;

- the local determination of complaints following any allegations of misconduct by Members;
- the determination of applications for exemption in respect of politically restricted posts;

### **Governance and Constitution Committee**

14 Members: 10:2:1:1

The Governance and Constitution Committee is responsible for:

1. overseeing, monitoring, co-ordinating and implementing the Council's administrative and political business, including electoral matters; administrative boundaries; support for and facilities for Members, including Members' learning and development and party groups for the purpose of their duties as councillors; and administrative arrangements for and the conduct of the Council and other meetings;
2. determining policies and conventions in relation to the political management of the Council, including statutory requirements concerning political balance and rights to information;
3. reviewing the Council's Constitution and recommending any changes to the Council;
4. advising the Council on, and overseeing the promotion of private legislation on behalf of the Council;
5. recommending to the Council, as appropriate, the appointment of Members to Committees and Sub-Committees (including any co-opted members other than in respect of Scrutiny Committees);
6. appointing representatives to serve on outside bodies and organisations (including education bodies and establishments) not falling to the Cabinet to appoint;
7. overseeing and monitoring the Members Allowance budget including pensions and keeping under review the scheme for the payment of allowances to Members;
8. approving annual conference and seminar attendance;
9. recommending to the Council any issues relating to the Honorary Aldermen;
10. approving reasons for absence for Members;
12. approving the overall seating plan for Council meetings;
13. overseeing and agreeing the arrangements for Members to be indemnified for and insured against risks and liabilities arising from the performance of

their duties as Members of the Council, and as the Council's representatives on outside bodies.

14. overseeing the Council's role and responsibilities in respect of Corporate Governance;
15. developing a Code of Corporate Governance and to undertake as appropriate an assessment of wider governance issues;
16. supporting the Council's audit function, both internal and external;
17. ensuring the Council has in place appropriate policies and mechanisms to safeguard the Council's resources;
18. supporting the Chief Financial Officer in relation to the performance of their duties;
19. approving any Council Statement of Accounts as may be required by the relevant Account and Audit Regulations;
20. ensuring any Council's Risk Management process is operating effectively.
21. undertaking work, and making recommendations, upon the Council's political management structure.
22. receiving the Annual Audit Report
23. monitoring performance against the Audit Plan
24. reviewing and making recommendations upon the Statement of Internal Control

### **Independent Remuneration Panel**

The Council's Independent Remuneration Panel has the following responsibilities:

To make recommendations to the Council:

- as to the amount of basic allowances that should be paid to Members;
- about the responsibilities or duties which should lead to the payment of a special responsibility allowance and as to the amount of such allowance;
- about the duties for which a travelling and subsistence allowance can be paid and as to the amount of such allowance;
- as to the amount of the co-optees' allowance;

- as to whether the Council's allowances scheme should include an allowance in respect of the expenses for arranging for the care of children and dependants and, if it does make such recommendation, the amount of such allowance and the means by which it is determined;
- on whether any allowance should be backdated to the beginning of a financial year in the event of the scheme being amended;
- as to whether annual adjustments of allowance levels may be made by reference to an index and, if so, for how long such a measure should run;
- as to which Members of the Council are entitled to pensions, in accordance with a Scheme made under Section 7 of the Superannuation Act 1972;
- as to treating basic allowance and special responsibility allowance as amounts in respect of which such pensions are payable.

**CHESHIRE EAST COUNCIL/CHESHIRE WEST & CHESTER  
COUNCIL/METROPOLITAN BOROUGH OF WIRRAL  
JOINT SCRUTINY COMMITTEE**

**TERMS OF REFERENCE**

- 1 to undertake the Scrutiny of, and report on, any matter relating to the planning, provision and operation of services provided by the Cheshire and Wirral Partnership NHS Foundation Trust (including commenting on the annual “health check” of the performance of the Trust) within the areas of Cheshire East Council, Cheshire West & Chester Council and Wirral Metropolitan Borough Council
- 2 to consider and comment upon any proposals submitted by the Trust for substantial development or variation in the provision of its services
- 3 to consider any matters referred to the Joint Committee by Cheshire East Council Health & Adult Social Care Scrutiny Committee, or Cheshire West & Chester Scrutiny Committee, or the Metropolitan Borough of Wirral’s Social Care, Health and Inclusion Overview and Scrutiny Committee
- 4 to consider any matters referred to the Joint Committee by the appropriate Local Involvement Network (LINK)

## **PUBLIC RIGHTS OF WAY COMMITTEE**

1. The Council will appoint a Public Rights of Way Committee which will be a politically balanced body of 7 Councillors (5:1:1).
2. The Public Rights of Way Committee shall discharge all the functions of the Council in relation to all matters relating to public rights of way.<sup>33</sup> Specifically, it shall discharge those functions set out in Part I (1) of Schedule 1 to the Local Authorities (Functions and responsibilities) (England) Regulations 2000 (SI2000/2853) (and any subsequent amendments thereto) that are not specifically delegated to officers namely<sup>34</sup>:-
  - 2.1 To authorise the creation of footpaths, bridleways and restricted byways by agreement (s25) and by order (S26)
  - 2.2 To authorise the making of applications to Magistrates' Court for the stopping up of public rights of way (S116)
  - 2.3 To determine applications and authorise the making of all public path extinguishment orders (S118, S118ZA, S118A, S118B & S118C; S294 of the Housing Act 1981; S257 & 258 Town and Country Planning Act 1990; S32 of the Acquisition of Land Act 1981)
  - 2.4 To determine applications and authorise the making of all public path diversion orders (S119, S119ZA, S119A, S119B, S119C, S119D & S135A; S257 Town and Country Planning Act 1990)
  - 2.5 To determine that an applicant for a special diversion order shall enter into an agreement in respect of costs (S119C)
  - 2.6 To decline to determine certain applications (S121C)
  - 2.7 To keep the Definitive Map and Statement under review. (S53 Wildlife and Countryside Act 1981) Including the determination of applications for modification orders whether by direction of the Secretary of State or otherwise.
  - 2.8 To include modifications in other orders. (S53A Wildlife and Countryside Act 1981)
  - 2.9 Power to designate footpaths as cycle tracks. (S3 Cycle Tracks Act 1984)
  - 2.10 Power to enter into agreements with respect to means of access. (S35 Countryside and Rights of Way Act 2000)
  - 2.11 Power to provide access in absence of agreement. (S37 Countryside and Rights of Way Act 2000)

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<sup>33</sup> Being all highways as defined by the Highways Act 1980 and permissive ways that are not within the remit of the Head of Environmental Services. These include Footpaths, Bridleways, Restricted Byways and Byways Open to All Traffic and are often known collectively as "public paths". This effectively amounts to all highways and paths other than metalled or surfaced "all purpose" public carriageway highways (roads) and most urban paths.

<sup>34</sup> Correct as at 16.1.09. Note: Section numbers in brackets refer to the Highways Act 1980 unless otherwise stated.

- 2.12 To determine applications for the making, variation or revocation of Gating Orders relating to public paths. (Part 8A)
- 3 To discharge the authority's functions in respect of Commons and Village Greens.
- 4 To be apprised of, approve, and comment on a range of policies, programmes and practices relating to rights of way, Commons and Village Greens and countryside matters including but not limited to:-
- 4.1 Annual Report and Work Programme
  - 4.2 Progress reports on implementation of the Rights of Way improvement Plan (part of the Annual Progress Review for the Local Transport Plan)
  - 4.3 Statements of Priorities
  - 4.5 Enforcement Protocols
  - 4.6 Charging Policy for Public Path Order applications (Annual)
  - 4.7 Proposals for changes to legislation
  - 4.8 Commencement of legislation
  - 4.9 Significant case law
  - 4.10 Corporate policies affecting PROW

## **APPENDIX 2 – PROPOSED DELEGATION TO OFFICERS**

The following functions are delegated to the Head of Service<sup>35</sup>:-

- 1 To keep a register of information with respect to maps, statements and declarations (S31A)
- 2 To keep a register with respect to applications under sections 118ZA, 118C, 119ZA, and 119C of the Highways Act 1980 (S121B).

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<sup>35</sup> Correct as at 16.1.09. Note: Section numbers in brackets refer to the Highways Act 1980 unless otherwise stated.

- 3 To take all necessary action to assert and protect the rights of the public to the use and enjoyment of public paths (S130)
- 4 To exercise all powers in relation to highways delegated to the Head of Environmental Services (in place of the same) where the highway in question is a public right of way.
- 5 To serve notice of proposed action in respect of obstructions on public paths (S130A).
- 6 To apply for the variation of orders issued under S130B of the Highways Act 1980 (S130B(7))
- 7 To authorise the temporary disturbance of a public path (S135)
- 8 To discharge functions in respect of the making good of damage and the removal of obstructions from public paths. (S135B HA)
- 9 To discharge functions in respect of the removal of things so deposited on public paths so as to be a nuisance. (S149 HA)
- 10 Duty to keep a register of prescribed information with respect to applications under S53(5) OF THE Wildlife and Countryside Act 1981. (S53B Wildlife and Countryside Act 1981)
- 11 Power to prepare a map and statement by way of consolidation of the definitive map and statement. (S57A of the Wildlife and Countryside Act 1981).
- 12 To grant permission for provision of services, amenities, recreation and refreshment facilities on public paths. (S115A – S115K)
- 13 Authorising the use of footpaths and bridleways for motor vehicles and cycle trials. (S33 Road Traffic Regulation Act 1988)
- 14 Certifying extracts from the Definitive Map under the provisions of Section 56 of the Wildlife and Countryside Act 1981.
- 15 Making temporary diversion orders for footpaths and bridleways under the Highways Act 1980.
- 16 Serving notices to require the removal of obstructions from public rights of way, the restoration of public rights of way following ploughing, cropping or other disturbances and the maintenance of stiles, gates or other structures across public rights of way.
- 17 Granting permission to extend the period of restoration following disturbance of the surface of a right of way and the granting of orders that a right of way shall be subject to a condition that the surface may be disturbed by excavation or operations.
- 18 Issuing notices under the provisions of Schedule 12A of the Highways Act 1980.



19 Authorising the erection of stiles and gates across any public right of way.

20 The making of Traffic Regulation Orders in respect of any public right of way.

Note:- It is anticipated that other day to day functions will be delegated by virtue of a general powers of officers section in PT3 of the constitution to be cascaded further by an internal scheme of delegation where appropriate. For instance the power to institute legal proceedings and criminal prosecutions in respect of rights of way matters will be delegated as a general power of officers to the Head of Service. The delegations provided herein are for clarity and are without prejudice to the generality of the powers delegated to officers in the said PT3.

Note:- Checks and balances are built in to the general delegation scheme by reference to an approved policy and budget framework. Further checks and balances are to be built in to delegations relating to notices and enforcement etc where appropriate by requiring the approval of the Borough Solicitor to those types of functions.

## **Trading Standards**

### **Part 1 – Scheme of Delegation to Officers**

**1.0** The following powers and functions are delegated to the Head of Safer and Stronger Communities:-

**1.1** The role of the Council's Chief Inspector of Weights and Measures under Section 72 of the Weights and Measures Act 1985.

**1.2** To appoint and authorise officers of the Council to act as duly authorised persons, proper officers, inspectors, or similar (howsoever statutorily described) to discharge the statutory functions devolving upon the Council under the legislation<sup>36</sup> listed in Part 2 to this Appendix including but not limited to the functions of registration, enforcement, inspection or any associated action or granting, amending, varying, refusing, revoking, suspending or transferring any licences, approvals or consents.

**1.3** To enter into reciprocal arrangements for the authorisation and appointment of officers for the purposes set out in 1.2 above to facilitate cross-border co-operation in the discharge of the said functions with any other local authority.

**1.4** To Amend the functions listed in Part 2 to this Appendix (and any associated officer authorisations issued pursuant to 1.2 and 1.3 above) in accordance with legislation from time to time in force:-

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<sup>36</sup> Which shall include any Statute extending or amending the same or incorporated therewith, or any re-enactment thereof, or any Statutory Instruments, Regulations, Byelaws or Orders made there under or continued in force thereby and also such other powers and duties under such other Statutes, Statutory Instruments, Regulations, Byelaws or Orders as may from time to time be conferred upon said officers by the Council.

**1.4.1** without reference to elected Members in respect of functions which the authority is obliged by legislation to discharge (mandatory functions); or;

**1.4.2** following approval from elected members in respect of functions which the authority has discretion to discharge (discretionary functions).

**2.0** The following powers and functions are delegated to the Borough Solicitor:-

**2.1** To exercise such functions as are conferred on to the authority by agreements or instruments made pursuant to the provisions of the Registration Service Act 1953 (Registration Schemes)

**2.2** To exercise such functions as are necessary to effectively discharge the Council's duties in respect of the provision of a Coroners Service

## **Part 2 – List of Statutory Provisions**

- 1) Accommodation Agencies Act 1953
- 2) Administration of Justice Act 1970
- 3) Agriculture Act 1970
- 4) Agriculture (Miscellaneous Provisions) Act 1968
- 5) Agricultural Produce Act 1928
- 6) Agricultural Produce Act 1931
- 7) Agricultural Produce (Grading and Marketing) Act 1928
- 8) Animal Health Act 1981
- 9) Animal Welfare Act 2006
- 10) Business Names Act 1985
- 11) Cancer Act 1939
- 12) Cattle Identification Regulations 1998
- 13) Children and Young Persons Act 1933
- 14) Children and Young Persons (Protection from Tobacco) Act 1991
- 15) Child Resistant Packaging (Safety)(Amendments) Regulations 1993
- 16) Civil Partnerships (Approved Premises) Regulations 2005
- 17) Classification, Packaging and Labelling of Dangerous Substances Regulations 1984
- 18) Clean Air Act 1993
- 19) Companies Act 1985
- 20) Consumer Credit Act 1974
- 21) Consumer Protection Act 1987
- 22) Control of Pollution Act 1974
- 23) Control of Pollution (Anti-Fouling Paints and Treatments) Regulations 1987
- 24) Copyright Designs & Patents Act 1988
- 25) Crime and Disorder Act 1998
- 26) Criminal Attempts Act 1981
- 27) Criminal Damage Act 1971
- 28) Criminal Justice Act 1988
- 29) Criminal Justice Act 1993
- 30) Criminal Law Act 1977
- 31) Crystal Glass (Descriptions) Regulations 1973
- 32) Development of Tourism Act 1969

- 33) Dogs Act 1906
- 34) Education Reform Act 1988
- 35) Eggs (Marking Standards) Regulations 1985
- 36) Electro Magnetic Compatibility Regulations 1992
- 37) Energy Act 1976
- 38) Energy Conservation Act 1981
- 39) Enterprise Act 2002
- 40) Estates Agents Act 1979
- 41) European Communities Act 1972
- 42) Explosives Act 1875
- 43) Explosives Act 1923
- 44) Fair Trading Act 1973
- 45) Farm and Garden Chemicals Act 1967
- 46) Fire Safety & Safety of Places of Sport Act 1987
- 47) Fireworks Act 2003
- 48) Food Act 1984
- 49) Food and Environment Protection Act 1985
- 50) Food Safety Act 1990
- 51) Forgery and Counterfeiting Act 1981
- 52) Fraud Act 2006
- 53) Hallmarking Act 1973
- 54) Health and Safety at Work Act 1974
- 55) Housing Act 2004
- 56) Insurance Brokers (Registration) Act 1977
- 57) Intoxicating Substances (Supply) Act 1985
- 58) Legislative and Regulatory Reform Act 2006
- 59) Licensing Act 1964
- 60) Licensing Act 2003
- 61) Lotteries and Amusements Act 1976
- 62) Malicious Communications Act 1988
- 63) Marriage Act 1949
- 64) Materials and Articles in Contact with Food Regulations 1985
- 65) Measuring Container Bottles (EEC Requirement Regulations) 1977
- 66) Medicines Act 1968
- 67) Mock Auctions Act 1961
- 68) Motor Cycle Noises Act 1987
- 69) National Lottery Act 1993
- 70) Natural Mineral Water Regulations 1985
- 71) Nurses Agencies Act 1957
- 72) Opticians Act 1989
- 73) Offensive Weapons Act 1996
- 74) Performing Animals (Regulation) Act 1925
- 75) Personal Protective Equipment (EC Directive) Regulations 1992
- 76) Petroleum (Consolidation) Act 1928
- 77) Petroleum (Transfer of Licences) Act 1936
- 78) Pigs (Records, Identification and Movement) Order 1995
- 79) Poisons Act 1933
- 80) Poisons Act 1972
- 81) Poultry (Water Content) Regulations 1984
- 82) Prices Acts 1974
- 83) Prices Act 1975
- 84) Proceeds of Crime Act 2002

- 85) Property Misdescriptions Act 1991
- 86) Protection of Animals Acts 1911
- 87) Registration Service Act 1953
- 88) Rent Act 1965
- 89) Rent Act 1977
- 90) Road Traffic Act 1972
- 91) Road Traffic Act 1974
- 92) Road Traffic Act 1988
- 93) Road Traffic (Foreign Vehicles) Act 1972
- 94) Road Traffic Regulation Act 1984
- 95) Road Traffic Offenders Act 1988
- 96) Safety of Sports Grounds Act 1975
- 97) Schedule Prices Act 1974
- 98) Scotch Whisky Act 1988
- 99) Solicitors Act 1974
- 100) Telecommunications Act 1984
- 101) Textile Products (Indication of Fibre Content) Regulations 1986
- 102) Theft Act 1968
- 103) Theft Act 1978
- 104) Timeshare Act 1992
- 105) Tobacco Advertising and Promotions Act 2002
- 106) Trade Descriptions Act 1968
- 107) Trade Marks Act 1994
- 108) Trade Representations Act 1972
- 109) Trading Representations (Disabled Persons) Act 1958
- 110) Trading Stamps Act 1964
- 111) Unsolicited Goods and Services Act 1971
- 112) Unsolicited Goods and Services Act 1975
- 113) Vehicles (Crime) Act 2001
- 114) Video Recordings Act 1984
- 115) Weights and Measures Act 1976
- 116) Weights and Measures Act 1985

# Responsibility for executive functions: the Council's executive arrangements

## ***Responsibilities of all Cabinet Members***

### **Preamble**

The following are the general responsibilities which apply to all Cabinet Members, and the specific responsibilities which apply to individual Cabinet Members. These responsibilities include various functions which are delegated to each Cabinet Member to discharge.

These responsibilities and delegations are the Council's Executive Arrangements which include the Framework For Decision-Making by Individual Cabinet Members, set out below the lists of responsibilities of each Cabinet Member.

In discharging these functions, the Cabinet Member must act lawfully. This means that he or she must act within the scope of the authority that is delegated in accordance with any limits within the delegation, this Constitution, Council policies, Procedure Rules and the Members' Code of Conduct, taking advice of the Monitoring Officer and the Section 151 Officer.

There are occasions when matters affect more than one portfolio of responsibility. On such occasions, the Cabinet Members concerned shall act in conjunction with one another.

### **Each Cabinet Member is responsible for:-**

1. The proper administration of the Council's services.
2. Ensuring adequate staffing, premises and other resources to secure agreed standards and target outcomes within the scope of their portfolio.
3. The efficient use and day to day maintenance of Council premises insofar as it relates to their portfolio.
4. Ensuring budget control and financial monitoring within the scope of their portfolio.
5. Approving use of specific grants and/or funding from non-governmental sources, and any annual delivery plans and agreements in relation to such funding.
6. The continuous improvement of the Council's services through a programme of work.
7. Liaising with the relevant Council Scrutiny Committee.
8. All decisions proposed and made within the responsibility of the Cabinet Member's portfolio.

9. The promotion of the Council's policies and communication with the public as appropriate through local and other media, ensuring always that publications are compliant with the Council's publications, guidelines and/or any advice provided by the Borough Solicitor.
10. Speaking up on matters of local concern and acting as the main Council spokesperson on issues within the scope of their portfolio..
11. Where permitted by the Procurement and Financial Procedure Rules, approving exemptions to those Rules in conjunction with the Borough Solicitor and Section 151 Officer.
12. Giving approval to proceed to advertisement or other method of securing competition in accordance with Procurement and Financial Procedure Rules; and for inviting and accepting tenders and quotations related to matters within their portfolio in accordance with the Rules, and approving all specifications/tender documentation.
13. Applying for planning permission, conservation area consent, listed building consent or any other permissions or consents necessary to progress the Council's own development schemes.
14. In conjunction with the relevant officer of the Council, setting new external charges and revisiting current ones.
15. In consultation with the Leader, representing and acting as an ambassador for the Council.
16. Representing the Council's views on matters of corporate or strategic policy and any other matters which are within the scope of their portfolio.
17. Request or commissioning research and other studies on any matters of policy or service provision within the scope of their portfolio..
18. Appointing or nominating the Council's representatives on outside bodies/organisations that fall within the scope of their portfolio..
19. Taking up corporate Membership of any appropriate body or organisation whose objectives are considered to be beneficial to the pursuit of the Council's activities.
20. Taking urgent decisions on matters which fall within the scope of their portfolio.
21. Working with other Cabinet Members on matters, as directed by the Leader.
22. Ensuring appropriate consultation and liaison with partners and the community on matters within the scope of their portfolio.
23. Leading on energy savings and reduction in carbon emissions on matters within the scope of their portfolio.
24. Submitting to the Cabinet:-
  - Proposals on how to agree annual budget allocations between services covered within the scope of their portfolio.

- Recommendations in respect of strategic policy concerning matters covered within the scope of their portfolio.
- All responses to consultation papers, relating to matters within the scope of their portfolio., issued by the Government and outside organisations
- Annual estimates of expenditure and income in respect of services within the scope of their portfolio.
- All policy and/or operational matters which have corporate implications or which cross the remits of other individual Cabinet Members.

25. Overseeing the timely progress of Service reviews, and adopting and reviewing Service Plans within the scope of their portfolio..

## Responsibilities of the Leader

- To Chair the Cabinet.
- To select the Cabinet Members and determine their Portfolios of responsibility.
- To appoint Committees and sub-committees of the Cabinet and to determine their powers.
- To represent and act as ambassador for the Authority.
- To have overall responsibility for;
  - policy development and design
  - Ministerial and Members of Parliament/European Parliament liaison
  - and act as Head of Cabinet.
- To represent the Council's views on matters of corporate or strategic policy and any other matters which are within the Leader's terms of reference.
- To request or commission research and other studies on any matters of policy or service provision within these responsibilities.
- To submit to the Cabinet:
  - all policy and/or operational matters which have corporate implications or which cross the remits of the individual Cabinet Members
  - any matter which crosses the portfolio of more than one Cabinet Member, and which cannot be resolved, to the Cabinet for decision
- To prepare and publish a Forward Plan of Key Decisions.
- To present to the Council "state of the Borough" reports and to be responsible for related debates.
- To provide appropriate and timely Cabinet responses to Scrutiny Committee recommendations and to monitor the implementation of those responses

## Responsibilities of Adult Services Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Adult Services Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, and subject to the Council's Executive Arrangements, which empower officers to make certain decisions, and which require the collective Cabinet to make

other decisions, the Portfolio Holder has individual responsibility to make all decisions in respect of the following matters:

- Reablement
- Support to Informal Carers
- Community Equipment
- Occupational Therapy
- Assistive Technology
- Mobile Meals
- Respite and Short Breaks
- Family Based Care
- Domiciliary Care
- Residential Care
- Nursing Home Care
- Extracare housing
- Supported Employment
- Sensory Impairment Services
- Safeguarding Adults
- HIV/Aids
- DAAT Services
- Domestic Violence service
- Equality in service access and delivery
- Adult Social Care
- Where appropriate to this Portfolio:
  - Liaison with NHS Trusts and Health authorities
  - Mental Health and Disability
  - Health Promotion
  - Development of Integrated Services with Health Partners
- Strategy for Responding to Health Inequalities
- Welfare Rights
- Community Legal Service
- Where appropriate to this Portfolio:
  - Liaison with NHS Trusts and Health Authorities
  - Mental Health and Disability
  - Health Promotion
  - Development of Integrated Services with Health Partners

## Responsibilities of Children and Family Services Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Children and Family Services Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.



In particular, and subject to the Council's Executive Arrangements, which empower officers to make certain decisions, and which require the collective Cabinet to make other decisions, the Portfolio Holder has individual responsibility to make all decisions in respect of the following matters:

- Early Years
- Education, including:
  - School organisation and inclusion
  - Special educational needs
  - School development and improvement
  - School finance buildings (including Capital Monitoring of school project) and catering
  - Building Schools for the Future Programme
  - Maintenance and management of Children's Play Areas
- Children's social care and wellbeing
- Joint use sports and community schemes at schools;
- Youth Services
- Lifelong Learning
- Family Services
- Conway Centre
- In respect of safeguarding children to;
  - ensure that the Council gives appropriate priority to safeguarding children coherently and consistently in service planning and resource allocation
  - ensure the Council appoints an Executive Director to carry social services responsibilities and ensure that the Cabinet receives advice from him/her on all relevant matters
  - Ensure all communities are equally served in this regard.
- Where appropriate to this Portfolio:
  - Liaison with NHS Trusts and Health Authorities
  - Mental Health and Disability (in respect of Children and Young People)
  - Health Promotion
  - Development of Integrated Services with Health Partners
- Strategy for Responding to health Inequalities
- Looked-after Children

## Responsibilities of Health and Wellbeing Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Health and Wellbeing Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, and subject to the Council's Executive Arrangements, which empower officers to make certain decisions, and which require the collective Cabinet to make other decisions, the Portfolio Holder has individual responsibility to make all decisions in respect of the following matters:

- Sport
- Archives
- Parks and Recreation

- Children's Play
- Public Health promotion
- Health improvement
- Cultural Services, including:
  - Arts
  - Events
  - Museums
  - Libraries
  - Countryside
  - Public Rights of Way
- Where appropriate to this Portfolio:
  - Liaison with NHS Trusts and Health Authorities
  - Mental Health and Disability
  - Health Promotion
  - Development of Integrated Services with Health Partners

Key dependencies where lead is a different Portfolio Holder:

- Tatton Park
- Joint use sports
- Tourism

## Responsibilities of Environmental Services Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Environmental Services Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, and subject to the Council's Executive Arrangements, which empower officers to make certain decisions, and which require the collective Cabinet to make other decisions, the Portfolio Holder has individual responsibility to make all decisions in respect of the following matters:

- Streetscene
- Highways Operational Management including:
  - Management of Highways Register
  - Highways Design, Maintenance, Parking and Decriminalisation of Parking Enforcement
  - Street Lighting, Signals and Signing
  - Traffic Management and Road Safety
  - Civil Engineering and Transport Operations
- Climate change
- Domestic and Commercial Waste collection and Disposal
- Waste PFI
- Markets

- Bereavement services
- Local Agenda 21
- Recycling
- Environmental cleansing and Street Cleaning
- Bulk Waste and Clearance

Key dependencies where lead is a different Portfolio Holder:

- Parks and other open space maintenance
- Contaminated land
- Health and Safety Enforcement

## Responsibilities of Prosperity Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Prosperity Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, and subject to the Council's Executive Arrangements, which empower officers to make certain decisions, and which require the collective Cabinet to make other decisions, the Portfolio Holder has individual responsibility to make all decisions in respect of the following matters:

- Strategic highways
- Local Transport Plan
- Strategic Public Transport Issues
- Economic development
- Development management
- Public and Private Sector Housing Strategy and Provision
- Homelessness
- Tourism
- Tatton Park
- Contaminated land
- Industrial and commercial activities
- New deal and other employment initiatives
- Credit Union and co-operatives development
- Building Control

Key dependencies where lead is a different Portfolio Holder:

- Extracare housing
- Local Development Framework

## Responsibilities of Safer and Stronger Communities Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Safer and Stronger Communities Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, and subject to the Council's Executive Arrangements, which empower officers to make certain decisions, and which require the collective Cabinet to make other decisions, the Portfolio Holder has individual responsibility to make all decisions in respect of the following matters:

- Civil protection/ emergency planning
- Third sector and community delivery
- Youth offending team
- Crime reduction including CDRP and police/emergency services liaison
- Anti social behaviour reduction including drug abuse and domestic violence
- Community safety wardens
- CCTV
- Trading standards
- Registration services
- Licensing
- Reviewing fares and Licensing Fees
- Environmental Health
- Food safety
- Air Pollution control and monitoring
- Environmental enforcement
- Contaminated land
- Pest and Vermin Control
- Dog wardens
- Cremation and Burial Services
- Health and Safety Enforcement
- Overall responsibility for monitoring all enforcement activity

Key dependencies where lead is a different Portfolio Holder:

- Neighbourhood working implementation
- Domestic Violence

## Responsibilities of Resources Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Resources Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, and subject to the Council's Executive Arrangements, which empower officers to make certain decisions, and which require the collective Cabinet to make other decisions, the Portfolio Holder has individual responsibility to make all decisions in respect of the following matters:

- Finance
- Finance service responsibility
- Construction of annual budget
- Treasury Management
- Capital Programme
- Revenues and Exchequer functions, including Benefits
- Revenues and benefits
- HR Strategy
- Transactional HR
- Liaison with employees, organisations and unions
- Organisational Development
- Employee training and development
- Occupational Health
- Corporate Health and safety
- Legal and Democratic Services
- Civic matters
- Electoral Services
- Member Training and Development
- ICT, including internet and ICT monitoring

To submit to the Cabinet:

- proposals on how to agree annual budget allocations between services;
- annual estimates of expenditure and income ;
- proposals on how to agree annual budget allocations between services covered by these terms of reference;
- annual estimates of expenditure and income in respect of services covered by these terms of reference.

In respect of the Council's budget and Council Tax:

- to make recommendations for the proper administration of the Authority's financial affairs;
- to consider the Authority's revenue and capital estimates and to make recommendations on the levels of Council Tax for submission to the Council;
- to consider and make recommendations annually to the Council on the calculation of the Council Tax base.

To consider and make recommendations to Council in respect of the final accounts and balance sheets of the Council and the Annual Reports on the accounts prepared by the relevant officers.

Key dependencies where lead is a different Portfolio Holder:

- Audit

# Responsibilities of Procurement, Assets and Shared Services Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Procurement, Assets and Shared Services Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, and subject to the Council's Executive Arrangements, which empower officers to make certain decisions, and which require the collective Cabinet to make other decisions, the Portfolio Holder has individual responsibility to make all decisions in respect of the following matters:

- Property services including county farms
- Corporate Landlord function in respect of all Council property
- Council Property functions including:
  - Council land policy, usage, sales, valuations
  - Markets and vending facilities
  - Facilities management and the allocation of office space.
  - Architectural and design services
  - The Council's conference facilities and allied establishments
  - Security of Council buildings
  - Accessibility within Council buildings
- Cheshire Business Services
- Pensions
- Procurement including subregional hub
- External funding
- European Unit
- Shared services and delivery models
- Procurement and Contract Monitoring of External Providers
- Resource Procurement, SRB, European and Lottery Funding

Key dependencies where lead is a different Portfolio Holder:

- PFI procurement
- E-procurement

# Responsibilities of Performance and Capacity Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Performance and Capacity Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, and subject to the Council's Executive Arrangements, which empower officers to make certain decisions, and which require the collective Cabinet to make other decisions, the Portfolio Holder has individual responsibility to make all decisions in respect of the following matters:

- Performance Management and Transformation
- Research and Intelligence
- Customer Access/Services
- Community Plan/Community Strategy
- Third sector and community development
- Local Strategic partnership
- Corporate Plan
- LDF
- Area and neighbourhood working
- Communications, market research and public opinion surveys
- Consultation
- Audit
- Risk management and insurance
- Equality and diversity
- Oversee the Comprehensive Performance Assessment
- The Council's work in respect of the Local Strategic Partnership
- Policy Unit
- Customer Complaints and Responses
- Marketing and Publicity
- Printing and Design
- Business Planning
- Major Policy Development
- Twinning

To submit to the Cabinet:

- recommendations in respect of strategic policy for the Council
- recommendations in respect of the Council's Corporate Plan
- all responses to consultation papers, relating to these terms of reference, issued by the Government and outside organisations
- recommendations in respect of strategic policy concerning matters covered by these terms of reference

Key dependencies where lead is a different Portfolio Holder:

- Organisational development

- External Funding/European Unit
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## OUTLINE FOR DECISION MAKING INDIVIDUAL CABINET MEMBERS

Individual Cabinet Members are empowered to make all executive decisions in respect of their own portfolio area of responsibility **except**

- Those decisions delegated to an officer (unless the officer refers the decision to the executive member)
- Where the decision is a Key Decision as defined in this Constitution.
- A decision or recommendation on strategy or policy
- A decision that is a departure from any agreed Corporate objective or the approved Budget
- Where the Leader (before a decision has been taken) requires the decision to be taken collectively by the Cabinet
- A decision which any Cabinet Member has asked to be taken collectively by the Cabinet

The decisions must be made in discussion with one or more of the following as appropriate:

- Chief Executive
- Appropriate Director or Head of Service
- Monitoring Officer
- Chief Finance Officer
- Where there are minor cross-cutting implications - other appropriate Portfolio Holder(s)

The Executive Member must take into account professional, legal and financial implications.

If any of the above officers give advice that the decision would fall within one of the exceptions above then it shall be a decision for the Cabinet acting collectively.

Where it is not clear in which Portfolio an issue sits, the Leader shall decide.

Decisions must be recorded on a form, countersigned by one of the above officers that professional advice has been given and that legal and financial implications have been made known. In the case of key decisions the reasons for the decision must be identified. The advising officer must keep a record of the decisions he/she has countersigned and a copy of the form sent to the Democratic Services team. The decision will be published electronically and members may exercise call-in in the same manner as for a full executive decision.



## Appendix 4

### SECTION 1: RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS

<b>Local Choice Functions<sup>37</sup></b>	<b>Decision Making Body</b>	<b>Delegation of functions to Committees or officers</b> (to the extent set out below or in Section {} for Council (non-executive) functions and section {} for executive functions)
Functions under a local Act (other than one specified or referred to in Reg 2 or Schedule 1 of the Regulations 2000)	Cabinet	The relevant Director for the function concerned.
To determine appeals <sup>38</sup> against any decision of the authority.	Full Council	Appeals Panel insofar as not delegated to any other committee, excluding employee appeals delegated to the relevant Director concerned
To appoint review boards under the Social Security Act 1998 <sup>5</sup>	Full Council	Appeals Panel (probably cascaded to officers)
To make arrangements for appeals against exclusion of pupils from maintained schools	Full Council	Appeals Panel
To make arrangements for appeals regarding school admissions <sup>6</sup>	Full Council	Appeals Panel
To make arrangements for appeals by governing bodies <sup>7</sup>	Full Council	Appeals Panel
To make arrangements to enable questions to be put at Council meetings on the discharge of the functions of a police authority <sup>8</sup>	Full Council	Borough Solicitor
To appoint Members to police authorities <sup>9</sup>	Full Council	

<sup>37</sup> Local Authorities (Functions and Responsibilities) Regulations 2000, Schedule 2

<sup>38</sup> Including appeals in relation to access to information by Members under s100F Local Government Act 1972, Regulation 17 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, and the common law “need to know” rules

<sup>5</sup> s34(4) Social Security Act 1998

<sup>6</sup> s94(1), (1A) and (4) School Standards and Framework Act 1998

<sup>7</sup> s95(2) School Standards and Framework Act 1998

<sup>8</sup> s20 Police Act 1996

<sup>9</sup> Paragraphs 2 to 4 of Schedule 2 Police Act 1996

<b>Local Choice Functions<sup>1</sup></b>	<b>Decision Making Body</b>	<b>Delegation of functions to Committees or officers</b> (to the extent set out below or Section 2C for Council (non-executive) functions and section 3D for executive functions)
Any function relating to contaminated land <sup>11</sup>	Cabinet	Strategic Director Places
The control of pollution or the management of air quality <sup>12</sup>	Cabinet	Strategic Director Places
To serve an abatement notice in respect of a statutory nuisance <sup>13</sup>	Cabinet	Strategic Director Places
To pass a resolution that Schedule 2 of the Noise and Statutory Nuisance Act 1993 should apply in the authority's area <sup>14</sup>	Full Council	
To inspect the authority's area to detect any statutory nuisance <sup>15</sup>	Full Council	Strategic Director Places
To investigate any complaint about the existence of a statutory nuisance <sup>16</sup>	Full Council	Strategic Director Places
To obtain information about interests in land <sup>17</sup>	Full Council	Planning Committee and Strategic Director Places and Head of Planning and Policy
To obtain particulars of persons interested in land <sup>18</sup>	Full Council	All Strategic Directors in pursuance of their delegated authority

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<sup>11</sup> Part IIA Environmental Protection Act 1990 and subordinate legislation

<sup>12</sup> Pollution Prevention and Control Act 1999; Part IV Environment Act 1995; Part I Environmental Protection Act 1990; Clean Air Act 1993

<sup>13</sup> s80(I) Environmental Protection Act 1990

<sup>14</sup> s8 Noise and Statutory Nuisance Act 1993

<sup>15</sup> s79 Environmental Protection Act 1990

<sup>16</sup> s79 Environmental Protection Act 1990

<sup>17</sup> s330 Town and Country Planning Act 1990

<sup>18</sup> s16 Local Government (Miscellaneous Provisions) Act 1976

<b>Local Choice Functions<sup>1</sup></b>	<b>Decision Making Body</b>	<b>Delegation of functions to Committees or officers</b> (to the extent set out below or Section 2C for Council (non-executive) functions and section 3D for executive functions)
To make arrangements for the execution of highways works <sup>19</sup>	Cabinet	Strategic Director Places and Head of Environmental Services <sup>39</sup>
<b>To appoint any individual</b>  (a) to any office other than an office in which he is employed by the authority (b) to any body other than – (i) the authority; (ii) a joint Committee of two or more authorities; or (c) to any Committee or sub Committee of such a body  and to revoke any such appointment	Cabinet in respect of organisations listed at {} below and the Full Council in respect of other organisations	In respect of appointments by Full Council delegated to the Governance and Constitution Committee.
<b>To make agreements with other local authorities for the placing of staff at the disposal of those other authorities</b>	Cabinet	Strategic Directors
<b>Functions relating to local area agreements<sup>40</sup></b>	Cabinet	

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<sup>19</sup> s278 Highways Act 1980

<sup>39</sup> Upon terms acceptable to the Borough Solicitor

<sup>40</sup> Sections 106,110,111 and 113 of the Local Government and Public Involvement in Health Act 2007

### POWERS AND RESPONSIBILITIES OF OFFICERS

#### **1.0 AN INTRODUCTION TO THE ROLES AND RESPONSIBILITIES OF OFFICERS AND ELECTED MEMBERS**

- 1.1** Elected Members set policy priorities and strategies to reflect local interests and needs and are also responsible for allocating funding between individual priority areas.
- 1.2** Officers of the Authority are responsible for implementing these strategies and policies by delivering services and major initiatives. It is Officers therefore, who have responsibility for managing the Authority's day to day operations, within a policy and budgetary framework laid down by Members.
- 1.3** As such, the Chief Executive, Management Board Members<sup>41</sup> and Heads of Service or their nominated representatives are entitled to be notified and represented at all meetings of the Council and Cabinet<sup>42</sup> and to be consulted in advance on all reports and items of business being submitted to Members.
- 1.4** Under laws introducing "executive arrangements" in the discharge of local authority functions, both the full Council and Cabinet have specific functions which can be delegated to committees or to Officers.
- 1.5** Where Council or Cabinet have established a committee to discharge their respective functions then subject to any limitations they impose, that committee can also delegate its functions to sub-committees or Officers.
- 1.6** This scheme of delegation captures a full range of executive and Council functions by service area. A definition of what constitutes an executive function is set out below.
- 1.7** The majority of the functions set out in this scheme of delegation are executive functions delegated to Officers by the Cabinet. Details of the functions that are
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<sup>41</sup> Defined at paragraph 3.2 below

<sup>42</sup> "Council" and "Cabinet" shall include any committees, sub-committees, special committees, panels, boards or other similarly constituted bodies including briefing meetings and in respect of the Cabinet shall the Cabinet Members sitting *functus officio* whether individually or collectively.

delegated to Officers by full Council and its committees can be found in the sections of this Constitution that relate to Local Choice Functions and Non-Executive Functions.

## **2.0 EXECUTIVE FUNCTIONS DEFINED**

**2.1** Executive functions include those Local Choice Functions identified in this Constitution as being the responsibility of the Cabinet, and all the other functions of the Authority that are not specified in the section of this constitution that sets out Non-Executive Functions.

**2.2** However, in accordance with the functions Regulations<sup>43</sup>, the following are NOT functions of the Executive:

**2.2.1** Imposing conditions, limitations or restrictions on approvals, licences, permissions or registrations on a non-executive function.

**2.2.2** Determining any terms that any such approval etc. is subject to.<sup>44</sup>

**2.2.3** determining whether and how to enforce any failure to comply with such approvals or any of the attached conditions etc.<sup>45</sup>

**2.2.4** Amending, modifying, varying or revoking any such approval.<sup>46</sup>

**2.2.5** Determining whether a charge should be made for such approvals or the amount of such charge.<sup>47</sup>

**2.2.6** Making, amending, revoking or replacing the Members Allowance Scheme or determining any amounts or rates in the scheme.<sup>48</sup>

**2.2.7** Electoral arrangements.<sup>49</sup>

**2.2.8** Governance arrangements.<sup>50</sup>

**2.2.9** Community governance reviews.<sup>51</sup>

**2.2.10** Subject to any Regulations under S20 of the Local Government Act 2000, making arrangements for the joint exercise of functions under S101(5) of the Local Government Act 1972 and making appointments to committees/joint committees under S.102 of the 1972 Act.<sup>52</sup>

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<sup>43</sup> The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 SI2000/2853

<sup>44</sup> Reg. 2(2)

<sup>45</sup> Reg. 2(3)

<sup>46</sup> Reg. 2(4)

<sup>47</sup> Reg. 2(6)

<sup>48</sup> Reg. 2(5) and 2 (6)

<sup>49</sup> Reg 2(6A and B)

<sup>50</sup> Reg2(6Ca) -c),Da) and b), and F)

<sup>51</sup> Reg2(6E)

<sup>52</sup> Reg. 2(8)

- 2.2.11** Any functions reserved to full Council under legislation which pre-dates the Regulations.<sup>53</sup>
- 2.2.12** Amending, modifying, varying or revoking any plan or strategy unless it is required to give effect to the requirements of the Secretary of State or Minister submitted for approval or where full Council when approving the plan/strategy authorised the Executive to do so.<sup>54</sup>
- 2.2.13** The adoption/approval of a plan/strategy which is not in the policy framework, if full Council has determined that full Council should take the decision<sup>55</sup> and where the decision is contrary to or not wholly in accordance with the Budget and Policy Framework.<sup>56</sup>

### **3.0 OFFICER MANAGEMENT ARRANGEMENTS**

- 3.1** The Officer management arrangements for the Authority are overseen by an Officer Management Board comprising the Chief Executive and those other Officers from time to time listed as members of the Management Board on the Authority's website. The Officer Management Board shall be chaired by the Chief Executive.
- 3.2** Each member of the Officer Management Board ("Board Member") 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 Authority.
- 3.3** Within these arrangements powers are delegated to Board Members who will establish, operate and keep under review schemes of internal delegation to cascade powers and responsibilities to Heads of Service and other subordinate Officers.
- 3.4** Heads of Service are accountable to the Chief Executive and the appropriate Board Member for effectively and efficiently managing the Services for which he or she is responsible, in accordance with the objectives, plans, policies, programmes, budgets and processes of the Authority. This includes responsibility for the proper exercise of any delegated powers.

### **4.0 PRINCIPLES UNDERPINNING THE OFFICER SCHEME OF DELEGATION**

- 4.1** In addition to the delegations set out in this scheme, the Council and Cabinet can arrange for bespoke delegations on specific matters.
- 4.2** The fact that a function is delegated under these arrangements does not preclude the delegator from exercising the function directly by determining to reserve particular decisions for itself. In respect of Cabinet functions the power to reserve decisions is exercisable by the relevant portfolio holder or the leader of the Cabinet.

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<sup>53</sup> Reg. 2(11)

<sup>54</sup> Reg. 4

<sup>55</sup> Reg. 5(1)

<sup>56</sup> Reg. 5(1)

- 4.3** Officers with delegated powers under this scheme may, subject to any limitations imposed in the terms of the delegation to them, delegate further to other Officers. Every such sub-delegation shall be recorded in writing within the internal Service schemes of delegations. The sub-delegation of functions shall not in any way diminish the overall responsibility and accountability of the delegator.
- 4.4** Officers shall devolve responsibility for service delivery and management to the nearest practicable point to the service user.
- 4.5** In some circumstances a delegatee (whether officer of committee/sub-committee) may consider a matter to be of such importance that their delegated authority should not be exercised. In these circumstances the delegatee may refer the matter back to the delegator for determination.
- 4.6** Each Officer with power to act under this section is authorised to do so only in relation to the budgets, resources and policies within their areas of responsibility.
- 4.7** Before taking decisions, Officers are under a duty to satisfy themselves that they have the duly delegated power to do so and that they have undertaken any appropriate consultation. Appropriate advice must be taken where the matter in question involves professional or technical considerations that are not within the Officer's sphere of competence.
- 4.8** Officers are under a duty to ensure that they take decisions in accordance with:-
- 4.8.1** Principles of natural justice.
  - 4.8.2** Professional standards.
  - 4.8.3** Statutory powers and requirements, guidance and Codes of Practice.
  - 4.8.4** This Constitution.
  - 4.8.5** The approved budget and policy framework including contract and financial procedure rules.
  - 4.8.6** any other approved policies, procedures and practices.
- 4.9** The scheme of delegation does not delegate to Officers:-
- 4.9.1** Any matter specifically reserved by law or by this Constitution to the Council or to any committee or sub-committee of the Council.
  - 4.9.2** Any matter in respect of which specific provision is made elsewhere in this constitution.
  - 4.9.3** Any matter which in law may not be delegated to an Officer.

**4.9.4** Any Key Decision other than those in respect of which specific provision has been made for delegation to Officers.

**4.10** Any decision made under this scheme of delegation may be called-in in accordance with the appropriate decision making procedure rules from time to time in force.

## **5.0 POWERS TO IMPLEMENT DECISIONS OF THE COUNCIL AND CABINET**

**5.1** Once Cabinet and Council decisions come into effect, Board Members (and Officers duly authorised by them to act on their behalf) have, in accordance with this scheme of delegation, the power to take all necessary actions (including the letting of contracts and incurring expenditure) to implement those decisions, without further reference to the Cabinet or Council, to ensure that all matters of day to day management and administration of the Authority's affairs are carried out effectively and efficiently.

**5.2** The powers and responsibilities in the following paragraphs are set out to assist clarity and are without prejudice to the generality of the power set out above.

**5.3** The general delegation above and the delegations below include the power to do anything ancillary or incidental to, arising from, or necessary or desirable to give effect to or facilitate the exercise of the powers and functions delegated to Officers including, where not specifically prohibited or available within the Authority, the engagement or retention of any external source of expertise to advice, represent or act for or on behalf of the Officer or Authority.

**5.4** References to legislation include any amendments or re-enactments in addition to, where appropriate, any subordinate legislation, regulations, statutory codes of practice or guidance.

## **6.0 GENERAL FINANCIAL RESPONSIBILITIES**

**6.1** Board Members are responsible for financial management within their Departments. 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

**6.2** Board Members shall establish, operate and keep under review schemes of internal financial delegation in consultation with the Borough Treasurer to ensure that:-

**6.2.1** The day to day financial management of Services within their Departments is carried out in a secure, efficient and effective manner and in accordance with Financial Procedure Rules and Codes of Practice on Financial Management.

**6.2.2** Budgetary problems are contained wherever possible within the Department and if necessary specific in year approval for the transfer of resources between budgets is sought.



- 6.2.3** Reports are made to the appropriate bodies on the management of resources and performance against targets set out in the business plan.
- 6.2.4** Risks are appropriately assessed, reviewed and managed.
- 6.2.5** All members of staff are fully trained, aware and comply with the requirements of the Financial Procedure Rules, the Code of Practice on Financial Management and the Contract Procedure Rules.
- 6.2.6** All allegations of suspected fraud, corruption and financial irregularity are promptly reported to the Borough Treasurer and Borough Solicitor and that any local investigations are undertaken thoroughly, consistently and impartially.

## **7.0 BAD DEBTS**

- 7.1** Board Members shall decide whether to write off debts (other than local taxation) in accordance with Financial Procedure Rules.

## **8.0 CASH IMPRESTS ACCOUNTS**

- 8.1** Board Members shall authorise the establishment and administration of individual cash imprests accounts in accordance with the Financial Procedure Rules.

## **9.0 FEES AND CHARGES**

- 9.1** Board Members 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 whether authorised by specific statutory provision or local authority powers at large.

## **10.0 PERSONNEL**

- 10.1** Board Members are authorised deal with the full range of employment and staff management issues including but not limited to appointments, terms and conditions, training, discipline, dismissal, performance, progression, promotion, shifts and working hours, grievance, grading, emoluments, expenses, allowances, sick pay, leave, equal opportunities and health and safety in accordance with the Authority's approved policies and procedures.

## **11.0 CHANGES TO STAFFING STRUCTURES**

- 11.1** Board Members are authorised, subject to the prior notification of the Head of Human Resources and Organisational Development and prior consultation with all appropriate parties affected by the decision including any Trade Union, to implement changes to staffing structures except where the restructure:

- 11.1.1** Involves the loss of one or more posts not currently vacant.

- 11.1.2** Involves the re-grading of posts or the grading of new posts.

- 11.1.3** Involves changes to existing National or Local Agreements and policies.
- 11.1.4** Cannot be achieved within delegated powers in respect of budgets.
- 11.2** Decisions in respect of restructures which do not fall within the preceding paragraph are delegated to the Head of Human Resources and Organisational Development.
- 11.3** Proposals which involve expenditure outside approved budgets or issues outside approved policy will be referred to the Council or appropriate committee.
- 12.0 MANAGEMENT OF LAND PREMISES VEHICLES EQUIPMENT AND STORES**
- 12.1** Board Members are authorised to manage all land, premises, vehicles, plant, equipment, machinery, stock, stores, supplies, materials, furniture, appliances, and uniforms necessary for the provision of services. For the avoidance of doubt this includes a power to make arrangements for the cleaning, maintenance, hire and letting of the same and authorising the write-off, loss or disposal of the same where obsolete or surplus to operational requirements.
- 12.2** The power in the preceding paragraph in respect of acquiring and disposing of interests in and rights over land or premises is only exercisable in respect of arrangements not exceeding 7 years in duration and on terms negotiated and recommended by the Assets Manager, subject to there being sufficient budgetary provision and in accordance with the Finance and Contract Procedure Rules.
- 12.3** Board Members are authorised to make application for planning permission pursuant to the Town and Country Planning General Regulations 1992 and any other necessary applications for any other consent required for the development of land.
- 13.0 LEGAL AUTHORISATIONS AND COMPLAINEE**
- 13.1** Board Members shall implement and ensure compliance with the Authority's procedures relating to data protection, freedom of information, human rights, and surveillance activities.
- 13.2** Board Members shall authorise<sup>57</sup> Officers (and such other persons where permitted by law) possessing such qualifications as may be required by law, in accordance with the Authority's policy, or where the Board Member is satisfied that appropriate training has been undertaken to:-
- 13.2.1** Take samples, carry out inspections or surveys, enter land and premises and generally perform the functions of a duly authorised Officer of the Authority (however described).

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<sup>57</sup> which shall include a power to issue such letters or warrants of authorisation and/or identification as is considered necessary or appropriate

- 13.2.2** to issue any necessary certificates of authority or certify copies of documents.
  - 13.2.3** To enforce the requirements of legislation including by way of fixed penalty notice.
- 13.3** Board Members shall with the approval of the Borough Solicitor:-
  - 13.3.1** Authorise the issue and service of requisitions for information, any notice, order, or direction.
  - 13.3.2** Approve or issue any licence or regulations which may be required or authorised by or under any legislation or byelaws.
  - 13.3.3** authorise the institution of legal and quasi-legal proceedings and/or other action (including debt recovery) whether in respect of any default in compliance with anything so served or authorised, approved or issued or otherwise as is considered necessary to protect the interests of the Authority.
  - 13.3.4** Sign certificates for contracts pursuant to the Local Government (Contracts) Act 1997.
- 14.0 SAFEGUARDING CHILDREN**
- 14.1** Board Members shall ensure that arrangements are in place to discharge the responsibilities of the Department in respect of the need to safeguard and promote the welfare of children as required under Section 11 of the Children Act 2004.
- 15.0 POWERS AND RESPONSIBILITIES OF THE CHIEF EXECUTIVE**
- 15.1** The Chief Executive is the Head of the Authority's Paid Service.
- 15.2** The Chief Executive is responsible to the Council for:-
  - 15.2.1** Being the Authority's principal Officer representative and point of contact and to promote its good image and reputation.
  - 15.2.2** Exercising the powers and responsibilities of any Board Member in his or her absence.
  - 15.2.3** Leading and directing the strategic management of the Authority
  - 15.2.4** Ensuring the effective pursuit and achievement of the Authority's objectives
  - 15.2.5** Ensuring the Authority's activities are carried out with maximum effectiveness and efficiency
  - 15.2.6** Ensuring the efficient and effective discharge of the decision making and scrutiny functions of the Authority

**15.2.7** The general supervision of this scheme of delegation

**15.2.8** Monitoring and reviewing the Authority's management and general sufficiency of staffing arrangements (including this Scheme of Delegation) and reporting periodically to the Council on the effectiveness of the arrangements and any need for change pursuant to his duty as Head of the Paid Service under the Local Government and Housing Act 1989.

**15.2.9** Invoking disciplinary processes for Board Members.

**15.2.10** Discharging the Authority's responsibilities under its emergency planning and civil protection functions subject to any constraints/restrictions imposed by the Council.

## **16.0 POWERS AND RESPONSIBILITIES OF THE STRATEGIC DIRECTOR PEOPLE**

**16.1** The Strategic Director People will provide a professional focus and lead for children's services ensuring that the needs of children and young people are met in the locality.

**16.2** The Director has three key roles in this regard:-

**16.2.1** Professional accountability for the effectiveness, availability and value for money of all local authority children's services;

**16.2.2** A leadership role to secure any necessary changes to culture and practice, so that services are organised around children and young people's needs; and

**16.2.3** Building and leading effective partnerships with and between those local bodies who also provide children's services, in order to focus resources jointly on improving outcomes for children and young people.

**16.3** The Strategic Director People is appointed to discharge Children's Services functions in four areas:

**16.3.1** Education services. The Authority's functions in its capacity as a local authority under the Education Acts, except those certain functions relating to further education, higher education and adult education.

**16.3.2** Children's social care. The authority's social services functions within the meaning of the Local Authorities Social Services Act 1970 insofar as they relate to children and young persons, and the local authority's functions for children and young people leaving care.

**16.3.3** Health services. Any health related functions exercised on behalf of an NHS body, insofar as they relate to children.

- 16.3.4** Inter-agency co-operation. The new functions of Children's Services set out in the Children Act 2004, in particular building and leading the arrangements for inter-agency co-operation and safeguarding.
- 16.4** The Strategic Director People will in addition be responsible for new functions conferred on Children Services Authorities under the Children Act 2004 and by any subsequent legislation or Regulations.
- 16.5** The Strategic Director People or the duly nominated Officer in respect of Children's Services, is required to observe all policy decisions taken by the Council and its relevant bodies and shall exercise all functions of a Director of Children's Services (DCS) specified in relevant legislation and Government Guidance.
- 16.6** Except where specifically provided for elsewhere in this constitution or precluded by statute the Strategic Director People shall exercise of the powers and duties of the Authority under the enactments listed in Schedule 1 of the Local Authority Social Services Act 1970 (excluding Children and Young Persons).
- 16.7** The Strategic Director People shall:-
- 16.7.1** Apply for orders of receivership under the legislation relating to mental health and for grants of representation in respect of the estates in cases of intestacy arising under the appropriate provisions of the National Assistance Act 1948, non-recoverable expenses to be defrayed by the Authority.
  - 16.7.2** Authorise the removal of parts of the body of a deceased resident in accordance with the wish expressed by the resident during his/her lifetime.
  - 16.7.3** On terms approved by the Borough Treasurer and Borough Solicitor, authorise adaptations to property and the provision of assistance and aids in accordance with the Chronically Sick and Disabled Persons' Act 1970, within the overall budget and policies set by the Authority.
  - 16.7.4** Act as trustee or appointee for the assets of service users for whom the Authority has a statutory responsibility.
  - 16.7.5** Exercise powers to purchase domiciliary, residential and nursing home services vested in the Authority under the National Assistance Act 1948 as amended by subsequent legislation.
  - 16.7.6** Except where therein otherwise provided, exercise the powers and duties of the Social Services Authority under the legislative provisions relating to mental health, including those relating to Guardianship and the institution of Court proceedings.

## **17.0 STRATEGIC DIRECTOR PLACES**

- 17.1** The Strategic Director Places shall be responsible for discharging the operational day to day functions of the Authority in respect of the maintenance and improvement of highways, traffic and street management including but not limited to:-
- 17.1.1** Granting consents and imposing requirements in connection with works in highways or adjacent premises.
  - 17.1.2** Determining, subject to conditions, applications for the placing of plant, structures, trees and equipment in, over or under highways or highway land.
  - 17.1.3** Construction of carriageway crossings over footways and verges, erection of fences, boundary posts, cattle grids and the carrying out of works for the drainage of highways.
  - 17.1.4** Exercising the Authority's responsibilities under the New Road and Street Works Act 1991 and, where appropriate, waiving charges under the provisions of Section 74 of the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) Regulations 2001.
  - 17.1.5** Authorising urgent repair of private streets under Section 230 of the Highways Act 1980 and the passing of exemption resolutions and the giving of exemption notices on behalf of the Street Works Authority under Section 219 of the Highways Act 1980.
  - 17.1.6** Authorising minor improvements to roads including grass verges, street furniture etc not exceeding £30,000 for which provision has been made in the budget and capital programme.
  - 17.1.7** Setting charges for work and maintenance carried out by the Authority for which the costs are to be met by third parties.
  - 17.1.8** Authorising the installation of sound insulation.
  - 17.1.9** Nominating safety supervisors.
  - 17.1.10** Making observations on planning applications consultations.
  - 17.1.11** Taking of traffic censuses.
  - 17.1.12** On the advice of the Assets Manager or District Valuer, settling claims for borehole damage up to £1,500.
  - 17.1.13** Approving routine traffic management orders, highway stopping-up and alley gating orders and variations to pedestrian crossing schemes under the Road Traffic Regulations Act 1984 and Highways Act 1980.
  - 17.1.14** Accepting blight notices on properties affected by an approved scheme, where all the conditions on the establishment of blight are satisfied.

- 17.1.15** Determining, in appropriate cases, the manner in which the requirements of Schedule 14 to the Highways Act 1980 relating to the serving of notice of application shall be carried out.
  - 17.1.16** Taking emergency measures to protect persons and property from escapes of water from reservoirs.
  - 17.1.17** Granting licences under Sections 142, 176, 177 and 181 of the Highways Act 1980.
  - 17.1.18** Exercising the Highway Authority's powers and duties under Part VIIA of the Highways Act 1980 – Provision of Amenities on certain highways.
  - 17.1.19** Exercising the Authority's powers and duties under the Traffic Management Act 2004 and in particular the appointment from time to time of a Traffic Manager to perform such tasks as are considered will assist the Authority to perform its Network Management duty under that Act.
  - 17.1.20** Accepting land for road improvements by dedication subject to the total consideration whether in works or otherwise not exceeding £30,000.
  - 17.1.21** Entering into agreements for the construction and adoption of estate roads.
  - 17.1.22** All other functions of the Authority as set out in the Schedule to the Local Government (Committees and Political Groups) Regulations 1990 (as amended) and in particular the functions conferred by the Countryside Act 1968, Local Government (Miscellaneous Provisions) Act 1976, Highways Act 1980, Cycle Tracks Act 1984, Road Traffic Regulation Act 1984 and Road Traffic Act 1988.
- 17.2** Without prejudice to the powers and responsibilities delegated in the preceding paragraph the Strategic Director Places shall in consultation with the appropriate Cabinet Portfolio Holder undertaking all necessary external consultation and advertisement associated with the exercise of powers to implement schemes of maintenance of and improvement to the highways infrastructure and in the discharge of the following functions:-
- 17.2.1** Traffic Management and Regulation Orders
  - 17.2.2** Stopping Up and Alley-gating Orders
  - 17.2.3** Street naming proposals
- 17.3** The Strategic Director Places shall be responsible in consultation with the appropriate Cabinet Portfolio Holder for all matters appertaining to the strategic management of the highways network

- 17.4** The Strategic Director Places shall maintain operational oversight in respect of the discharge of the following functions relating to transportation:-
- 17.4.1** Tendering, applications to Traffic Commissioners and other relevant functions under the provisions of the Transport Act 1985.
  - 17.4.2** Negotiations in respect of terms with service operators in respect of concessionary fare/travel and dial-a-ride schemes.
  - 17.4.3** The organisation of (special and non-special) school transport services, including the issue of scholars' passes, and Social Services transport services.
  - 17.4.4** The issuing of minibus permits under the Public Passenger Vehicles Act 1981.
  - 17.4.5** The administration of Car Contract Hire Schemes.
  - 17.4.6** The Management of the client side of vehicle maintenance contracts under the Local Government Act 1988.
  - 17.4.7** The Organisation of School Crossing Patrols.
  - 17.4.8** The holding of Operators Licence(s) on behalf of the Authority and all associated functions and responsibilities.
- 17.5** The Strategic Director Places shall be responsible for the discharge of the functions of the authority relating to waste, waste collection and waste disposal including but not limited to:-
- 17.5.1** Taking any action under the Refuse Collection (Amenity) Act 1978 and the Removal and Disposal of Vehicle Regulations 1986 and to generally manage the refuse collection, disposal, and recycling system of the Authority.
  - 17.5.2** Functions relating to the provision of litter/dustbins and wheeled bins including functions relating to the recovery of charges, expenses and fines
- 17.6** The Strategic Director Places shall be responsible for exercising functions in relation to the general management and operation of the Authority's burial grounds, cemeteries and crematoriums including but not limited to:-
- 17.6.1** The grant of exclusive rights of burial under Section 2 of the Parish Councils and Burial Authorities (Miscellaneous Provisions) Act 1970.
  - 17.6.2** Determine licence conditions and operating licensing arrangements of memorial stonemasons.
- 17.7** The Strategic Director Places shall be responsible for discharging the following functions in relation to housing.



- 17.7.1** To enforce the functions of the 'local housing authority' within the meaning of the Housing Act 1985 and other housing legislation.
- 17.7.2** To authorise the awarding and payment of grants in accordance with the Authority's Private Sector Housing Renewal Policy.
- 17.7.3** To authorise designated Officers, signatories and administrators.
- 17.7.4** To exercise the powers and duties of the Authority in the development of strategies and policies for Assessment of housing need the provision of social housing private sector housing duties, including condition, improvement and enforcement private tenancy relations advice and assistance to enable people to stay in their own home.
- 17.7.5** Energy conservation advice to residents of the Borough Operational management to Head of Service and Section Manager.
- 17.7.6** To co-ordinate the preparation of the Authority's Housing Strategy Statement prior to its submission to the Government in connection with the annual Housing Investment Programme
- 17.7.7** To meet the Regional Controller of the Government Office and Housing Officials to review the annual Housing Investment Programme submission and resources allocation
- 17.7.8** To liaise with the Housing Corporation as appropriate
- 17.7.9** To advise the Council on the Housing Needs of the Borough and to recommend how to fulfil those needs in accordance with a defined Housing Strategy
- 17.7.10** To work in partnership with other housing providers to meet the housing needs of the Borough and to recommend any financial arrangements to be made between the Authority and other housing providers to carry this out.
- 17.7.11** To act as consultee on issues of acquisition and disposal of land (including interests in land) for the purposes of providing social housing in partnership with Registered Social Landlords
- 17.7.12** To liaise with Housing Associations on the Right to Buy sharing agreement.
- 17.7.13** To administer the Authority's responsibilities for the homeless including the provision of hostels, in accordance with the Housing Act 1996.
- 17.7.14** To administer the Authority's duty to make available accommodation for the homeless, in accordance with the Housing Act 1996.
- 17.7.15** To administer a Housing Advice Service

- 17.7.16** To administer the Authority's Housing and Social and Welfare Policies and initiatives such as Care and Repair
- 17.7.17** To maintain the Housing Waiting List and to make nominations to registered Social Landlords in accordance with the Authority's Allocation Policy.
- 17.7.18** To approve applications for all types of grants other than those specifically

## **18.0 BOROUGH TREASURER AND HEAD OF ASSETS**

### **18.1 The Borough Treasurer and Head of Assets is:-**

- 18.1.1** The financial adviser to the Council, the Cabinet and Officers
- 18.1.2** The Authority's 'responsible financial Officer' under the Accounts and Audit Regulations
- 18.1.3** Responsible for the proper administration of the Authority's affairs as specified in, and undertake 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.

### **18.2 The Borough Treasurer and Head of Assets will:-**

- 18.2.1** Establish, keep under review and operate (including the reporting of any non-compliance) any such guidance and policy documents in relation to the administration of the Authority's financial affairs as is considered to be necessary or desirable to ensure the proper administration of the Authority's financial affairs so that resources are used in the most efficient and effective manner in order to meet the Authority's objectives.
- 18.2.2** For the avoidance of doubt the guidance and policy documents referred to in the preceding paragraph shall incorporate or apply any national requirements from time to time in force and shall include but not be limited to Financial Procedure Rules, Financial Schemes of Delegation, and any other relevant codes of practice on financial Management.
- 18.2.3** To monitor the Authority's capital and revenue budgets, investments, and financial position generally and maintain an efficient and effective internal audit of the Authority's financial affairs.
- 18.2.4** Secure effective treasury management, including taking all action necessary in relation to all debts, payment of accounts, loans (including guarantees and indemnities), grants, advances, investments, financing and banking generally.

- 18.2.5** Take all action necessary to ensure the safeguarding of assets, the appraisal and management of risk generally, including the taking out and administration of appropriate insurances.
- 18.2.6** Agree the format of capital appraisals for schemes as required under the Finance Procedure Rules.
- 18.2.7** Exercise discretion to apply interest charges against service budgets, where avoidable cash flow losses have been incurred.
- 18.2.8** Agree specific ring-fencing of certain provisions as part of the annual budget setting process.
- 18.2.9** Authorise urgent work to repair, replace or reinstate vehicles, buildings or equipment where the work is fully funded from insurance monies.
- 18.2.10** Agree in consultation with Board Members and the Chief Executive circumstances where normal procurement requirements and or requirements for quotations or tenders should be waived.
- 18.2.11** To take all necessary action in respect of the Authority's role in relation to the administration and operation of the Cheshire Pension Fund.
- 18.2.12** Administering the supply of goods and services to other public authorities and bodies under the Local Authorities (Goods and Services) Act 1970 and all other enabling legislation and setting of prices and collecting and recovering any charges made.
- 18.2.13** To make recommendations to the Council on Council Tax requirements, determine the Council tax base and to administer and manage generally all matters relating to Council Tax, Non Domestic Rates, Community Charge and General Rates including the awarding of discounts, relief, and exemptions and the levying, collection, recovery, and disbursement of all sums due to the Authority in respect of the same in accordance with all governing Regulations.
- 18.2.14** To receive and determine applications for Housing Benefit including rent restrictions, rebates, allowances, backdating requests and overpayment recovery and otherwise exercising all powers and responsibilities of the Authority under legislation relating to Housing Benefit
- 18.2.15** To negotiate, enter into arrangements and act generally on behalf of the Authority in respect of continuing financial matters arising from arrangements and obligations existing between the former Cheshire County and six District Councils.

## **19.0 BOROUGH SOLICITOR**

- 19.1** The Borough Solicitor is the Authority'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.

- 19.2** After consulting with the Chief Executive and the Borough Treasurer the Monitoring Officer will report 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.
- 19.3** The Borough Solicitor shall be responsible for settling of actual or potential uninsured claims or Local Government Ombudsman cases as follows:-
- 19.3.1** Up to £20,000 the Borough Solicitor may authorise settlement
  - 19.3.2** Above £20,000 and below £50,000 the Borough Solicitor and Borough Treasurer may jointly authorise settlement
  - 19.3.3** £50,000 and above - approval by Executive
- 19.4** The Borough Solicitor shall be responsible for:-
- 19.4.1** Conducting and appearing on behalf of the Authority any legal proceedings authorised by or on behalf of the Authority before any court or tribunal and similarly defending the Authority where any proceedings are instituted against it and taking all other action (within such proceedings or otherwise) considered by him or her to be necessary to protect and/or further the Authority's interests.
  - 19.4.2** Save when specifically referred to in this Constitution, to act as the Authority's proper Officer for the purposes of Section 234 of the Local Government Act 1972 (Authorisation of Documents).
  - 19.4.3** Lodging objections to any proposal affecting County interests.
  - 19.4.4** To act as proper Officer under the Access to Information Procedure Rules and in particular for the purposes of the Access to Information provisions of the Local Government Act 1972.
  - 19.4.5** Determining applications for the display of the crest or logo of the Authority.
  - 19.4.6** Determining applications for Certificates of Lawful Development or Interim Development Orders.
  - 19.4.7** Taking all action including the completion of agreements, the service of notices, giving of directions, obtaining or issuing orders, authorising the execution of powers of entry, and the institution and defence of legal proceedings necessary or desirable to protect and advance the interests of or discharge the roles, functions and responsibilities of the Authority.

- 19.4.8** Making orders for the temporary closure of highways and regulation of traffic.
- 19.4.9** To make any Statutory and discretionary payments under Land Compensation Act 1973.
- 19.4.10** To be responsible for the overall monitoring of the operation of the Regulation of Investigatory Powers Act 2000.
- 19.4.11** To exercise such functions as are conferred on to the authority by agreements or instruments made pursuant to the provisions of the Registration Service Act 1953 (Registration Schemes)
- 19.4.12** To exercise such functions as are necessary to effectively discharge the Authority's duties in respect of the provision of a Coroners Service
- 19.4.13** To make minor and consequential amendments to the constitution on account of drafting anomalies and authorised revisions.

## **21 SOLICITORS, BARRISTER, LEGAL EXECUTIVES AND TRAINEE SOLICITORS**

- 21.1** Are authorised to appear in, and conduct legal proceedings in any Court or Tribunal on behalf of the Authority.
- 21.2** Are authorised to prove debts owed to the Authority in bankruptcy and liquidation proceedings.

## **20.0 ASSETS MANAGER**

- 20.1** The Assets Manager shall be responsible for oversight of the day to day control and management of land and buildings in the ownership of the Authority, to ensure compliance with all relevant statutory requirements (including the Health and Safety at Work Act 1974), fitness for purpose, service delivery, maximum asset value and in particular:-

- 20.1.1** Corporate landlord management
- 20.1.2** The provision of fixtures and fittings.
- 20.1.3** Matters relating to energy conservation.
- 20.1.4** Architectural, Estates, Building Maintenance and security services.
- 20.1.5** Promotion of responsibilities relating to improved access and mobility within the built environment with particular reference to people with disabilities under relevant legislation and codes of practice.
- 20.1.6** May maintain an Approved Select List of Building/Engineering Contractors and Suppliers to the Authority.

**20.1.7** Maintaining an up-to-date terrier of all land and buildings held by the Authority.

**20.1.8** Undertaking a periodic review of property owned by the Authority.

**20.1.9** Recommending policies for the acquisition, management and disposal of land and interests in land.

**20.1.10** Design, preparation and contract management (including Health and Safety issues) of building work (whether new build or restoration) of all corporate property and professional services provided under the Local Authorities (Goods and Services) Act 1970.

**20.1.11** Technical recommendations relating to derelict land.

**20.1.12** Co-ordinating land management with economic development.

**20.1.13** Accepting of title to existing open space land where there is a history of maintenance by the Authority.

**20.1.14** Authorising of deeds of rectification with Housing Associations

**20.2** The Assets Manager shall be responsible for managing the Farms estate including the service of all statutory notices and granting consent to farm estate tenants for:-

**20.2.1** The provision of fixtures.

**20.2.2** Ploughing out permanent pasture

**20.2.3** Investment in improvements to farms up to a maximum value of £20,000

**20.2.4** The acquisition and sale of Milk Quota.

**20.2.5** Negotiating and approving tenant right settlements on changes to tenancy.

**20.3** The Assets Manager is authorised to:-

**20.3.1** Approve valuations of the Authority's property assets for all purposes

**20.3.2** Negotiate and approve (including any subsequent modifications or renewals) the terms of all property transactions entered into by the Authority and to recommend such terms for approval at the appropriate level

**20.3.3** Negotiate and approve, on the advice of the Borough Solicitor, the content and format of any documents to be entered into by the Authority to give effect to an approved property transaction

**20.4** The Assets Manager shall be responsible for the general management of markets run or promoted by the Authority and in particular:-

**20.4.1** The letting of market stalls consistent with maintaining a balanced mix of trades in accordance with the Authority's policy.

**20.4.2** The determination of and application of the Market Rules and Regulations.

**20.4.3** The maintenance and letting of Community stalls on both markets.

**20.4.4** The fixing of market stall charges in accordance with the Authority's approved scale of charges.

**20.4.5** To grant leave of absence to regular market traders (of a minimum of two years standing) for medical reasons without financial penalty and without the loss of their regular status.

**20.4.6** To allocate market stalls to charities and local fund raising organisations without charge on up to 12 occasions annually, being no more than once per month.

**20.4.7** To determine future applications for concessionary waiver applications of market stall charges due to weather conditions up to a limit of £500 per occasion

**20.5** The Assets Manager shall be responsible for the general management of the Authority's car parks including all signage, planting, maintenance, lay out, the giving of consent for alternative uses or events, the reservation of car parking spaces and the collection of fees and charges.

**20.6** The Assets Manager shall be responsible for the management of the Authority's vehicle fleet for the acquisition and disposal of vehicles and for their maintenance.

## **21.0 HEAD OF SERVICE FOR CHILDREN AND FAMILIES**

**21.1** The Head of Service for Children as the duly nominated Officer of the Strategic Director People shall:-

**21.1.1** Bring forward strategic plans and policies and to develop partnership and commissioning arrangements to ensure the provision of children's services.

**21.1.2** Bring forward strategic plans and policies and implement all necessary decisions, including the allocation of resources within approved estimates, so as to maintain the operation and effectiveness of the early years and related services for which the DCS is responsible and which are statutorily covered by Acts of Parliament and related Regulations.

- 21.1.3** Bring forward strategic plans and policies and implement all necessary decisions, including the allocation of resources within approved estimates, so as to maintain the operation, effectiveness and quality of post early years children's education and related services for which the DCS is responsible and which are statutorily covered by Acts of Parliament and related Regulations.
- 21.1.4** In relation to persons under 19 years of age, to bring forward proposals and implement all necessary decisions, as appropriate, including the allocation of resources within approved estimates, so as to maintain the operation and effectiveness of all the children services for which the Director is responsible and which are statutorily covered by Acts of Parliament and related Regulations.
- 21.1.5** Bring forward strategic plans and policies and implement all necessary decisions, including the allocation of resources within approved estimates, so as to maintain the operation and effectiveness of the children's social care and related services for which the DCS is responsible and which are statutorily covered by Acts of Parliament and related Regulations.
- 21.1.6** Institute and defend proceedings in relation to the care of children, the exercise of parental responsibility, provision of secure accommodation and wardship proceedings and to intervene, where appropriate, in matrimonial, guardianship and special guardianship proceedings or any other proceedings pursuant to its functions relating to children and young persons, and to undertake the functions of the Authority as an adoption and fostering agency.
- 21.1.7** Ensure the provision and quality of statutory youth and related Services, and the development of associated strategic plans and partnership arrangements for youth and related services.

## **22.0 HEAD OF POLICY AND PERFORMANCE**

- 22.1** Shall be responsible for monitoring the performance of the Authority, for promoting business quality, public relations and for involving and developing the Authority's employees.
- 22.2** Shall promote the efficiency and effectiveness of the Authority, through the Business Quality Programme.
- 22.3** Shall oversee the Authority's response to "Best Value", including recommendation of targets/service standards, performance indicators and consultation.
- 22.4** Shall consider all formal service reviews and to make recommendations to individual Committees and Council.
- 22.5** Shall advise Council on service changes and to recommend an Annual Performance Plan.



- 22.6** Shall oversee the formal administration of the Authority's Quality System, Risk Management and EFQM.
- 22.7** Shall promote customer care and equality in service delivery and access.
- 23.0 HEAD OF HEALTH AND WELLBEING**
- 23.1** The Head of Health and Wellbeing Shall be responsible for the following services relating to libraries, archives and culture:-
- 23.1.1** Opening and closing of library, information and archive service points including their hours of opening.
  - 23.1.2** Establishing and varying of mobile library schedules.
  - 23.1.3** Promoting cultural activities in libraries and other locations, subject to the cost not exceeding £1,000 for any one event in any one place.
  - 23.1.4** Maintaining the Register of Commons pursuant to the Commons Registration Act 1965.
  - 23.1.5** Acting as lead Officer on behalf of the Authority in relation to the Data Protection Act 1998 and Freedom of Information Act 2000.
- 23.2** The Head of Health and Wellbeing shall be responsible for making grants, under schemes and financial limits approved by or on behalf of the Authority and in accordance with Finance Procedure Rules:-
- 23.2.1** towards the cost of cultural projects and commissions
  - 23.2.2** for the provision of, and improvements to community recreation facilities
  - 23.2.3** for the improvement of the environment
  - 23.2.4** for the promotion of sport and recreation
  - 23.2.5** towards the cost of cultural projects and commissions
  - 23.2.6** towards the cost of voluntary adult sports projects
  - 23.2.7** to other appropriate statutory or voluntary organisations
  - 23.2.8** for archaeological excavations
- 23.3** The Head of Health and Well being shall discharge the following functions<sup>58</sup> in relation to public rights of way<sup>59</sup>:-

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<sup>58</sup> References to Section numbers in this paragraph are to Sections of the Highways Act 1980 unless otherwise stated.

<sup>59</sup> Footpaths, Bridleways, Restricted Byways, and Byways Open to All Traffic and other such ways that are within the remit of the Head of Health and Wellbeing

- 23.3.1** To keep a register of information with respect to maps, statements and declarations (S31A)
- 23.3.2** To keep a register with respect to applications under sections 118ZA, 118C, 119ZA, and 119C of the Highways Act 1980 (S121B).
- 23.3.3** To take all necessary action to assert and protect the rights of the public to the use and enjoyment of public paths (S130)
- 23.3.4** To exercise all powers in relation to highways delegated to the Head of Environmental Services (in place of the same) where the highway in question is a public right of way.
- 23.3.5** To serve notice of proposed action in respect of obstructions on public paths (S130A).
- 23.3.6** To apply for the variation of orders issued under S130B of the Highways Act 1980 (S130B(7))
- 23.3.7** To authorise the temporary disturbance of a public path (S135)
- 23.3.8** To discharge functions in respect of the making good of damage and the removal of obstructions from public paths. (S135B HA)
- 23.3.9** To discharge functions in respect of the removal of things so deposited on public paths so as to be a nuisance. (S149 HA)
- 23.3.10** To keep a register of prescribed information with respect to applications under S53(5) of the Wildlife and Countryside Act 1981. (S53B Wildlife and Countryside Act 1981)
- 23.3.11** Power to prepare a map and statement by way of consolidation of the definitive map and statement. (S57A of the Wildlife and Countryside Act 1981).
- 23.3.12** To grant permission for provision of services, amenities, recreation and refreshment facilities on public paths. (S115A – S115K)
- 23.3.13** Authorising the use of footpaths and bridleways for motor vehicles and cycle trials. (S33 Road Traffic Regulation Act 1988)
- 23.3.14** Certifying extracts from the Definitive Map under the provisions of Section 56 of the Wildlife and Countryside Act 1981.
- 23.3.15** Making temporary diversion orders for footpaths and bridleways under the Highways Act 1980.
- 23.3.16** Serving notices to require the removal of obstructions from public rights of way, the restoration of public rights of way following ploughing, cropping or other disturbances and the maintenance of stiles, gates or other structures across public rights of way.

**23.3.17** Granting permission to extend the period of restoration following disturbance of the surface of a right of way and the granting of orders that a right of way shall be subject to a condition that the surface may be disturbed by excavation or operations.

**23.3.18** Issuing notices under the provisions of Schedule 12A of the Highways Act 1980.

**23.3.19** Authorising the erection of stiles and gates across any public right of way.

**23.3.20** The making of Traffic Regulation Orders in respect of any public right of way.

**23.3.21** Managing Tatton Park in relation to the terms of the Lease from the National Trust.

**23.4** The Head of Health and Wellbeing shall be responsible for the general management, hire and letting of sports and leisure facilities for public use, including (but not limited to) sports centres, athletics stadium, swimming pools, sauna suites, community centres, community halls, theatres, parks, lakes, waterways, playing fields, recreation grounds, caravan parks and allotments.

## **24.0 HEAD OF SAFER AND STRONGER COMMUNITIES**

**24.1** The Head of Safer and Stronger Communities shall discharge the following functions in respect of trading standards and consumer protection:-

**24.1.1** To undertake or appoint to the role of the Authority's Chief Inspector of Weights and Measures under Section 72 of the Weights and Measures Act 1985.

**24.1.2** To appoint and authorise Officers of the Authority to act as duly authorised persons, proper Officers, inspectors, or similar (howsoever statutorily described) to discharge the statutory functions devolving upon the Authority under the legislation<sup>60</sup> listed in the Appendix to this section including but not limited to the functions of registration, enforcement, inspection or any associated action or granting, amending, varying, refusing, revoking, suspending or transferring any licences, approvals or consents.

**24.1.3** To enter into reciprocal arrangements for the authorisation and appointment of Officers for the purposes set out in the preceding paragraph to facilitate cross-border co-operation in the discharge of the said functions with any other local authority.

**24.1.4** To Amend the functions listed in the Appendix to this section (and any associated Officer authorisations) in accordance with legislation from time to time in force:-

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<sup>60</sup> Which shall include any Statute extending or amending the same or incorporated therewith, or any re-enactment thereof, or any Statutory Instruments, Regulations, Byelaws or Orders made there under or continued in force thereby and also such other powers and duties under such other Statutes, Statutory Instruments, Regulations, Byelaws or Orders as may from time to time be conferred upon said officers by the Council.

**24.1.4.1** without reference to elected Members in respect of functions which the authority is obliged by legislation to discharge (mandatory functions); or;

**24.1.4.2** Following approval from elected members in respect of functions which the authority has discretion to discharge (discretionary functions).

**24.2** Subject to the exceptions listed below, the Head of Safer and Stronger Communities is authorised to discharge the following licensing functions:-

**24.2.1** Power to licence hackney carriages and private hire vehicles and suspend licences (including suspension pending inspection).

**24.2.2** Power to issue and suspend operators licences

**24.2.3** Power to licence and suspend hackney carriage and private hire drivers

**24.2.4** Power to licence street and House to House collections

**24.2.5** Power to renew or transfer licences for sex shops and sex cinemas where:-

**24.2.5.1** there has been no material change to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made; and

**24.2.5.2** No objections have been received, or those that have been received should in the Officer's opinion be set aside on the ground that the Council could not lawfully take them into account.

**24.2.6** Power to issue street trading consents

**24.2.7** Power to licence performances of hypnotism

**24.2.8** Licensing functions under the Licensing Act 2003 and the Gambling Act 2005 (subject to the exceptions below)

**24.2.9** Sanctioning the use of buildings for the storage of celluloid

**24.2.10** Licensing employment of children

**24.3** In the following circumstances, the power delegated to the Head of Safer and Stronger Communities in respect of general licensing functions shall stand referred to body set out below:-

**24.3.1** The determination of applications for hackney carriage or private hire vehicles where the vehicle does not meet the Authority's vehicle

conditions or does not pass the vehicle inspection be referred to the Licensing Sub-Committee.

- 24.3.2** The determination of applications for operators licences where the Council's requirements are not met be referred to the Licensing Sub-Committee.
  - 24.3.3** The determination of applications for hackney carriage or private hire drivers licences where the applicant does not meet the Council's requirements be referred to the Licensing Sub-Committee.
  - 24.3.4** The determination of applications for the renewal or transfer of licences for sex shops and sex cinemas where there are objections which are not be withdrawn and cannot be dealt with under the authority delegated to Officers be referred to the Licensing Committee.
  - 24.3.5** The determination of requests for waiver of the Authority's street collection regulations (with the exception of the regulation in relation to processions) shall be referred to the Licensing Sub-Committee.
  - 24.3.6** The determination of applications for street trading consents where representations have been received and not withdrawn be referred to the Licensing Sub-Committee.
  - 24.3.7** The decision to designate streets (section 3 and Schedule 4 Local Government (Miscellaneous Provisions) Act 1982) shall be reserved to the Licensing Committee.
  - 24.3.8** The power to set fees in relation to hackney carriages and private hire vehicles, operators and drivers, sex establishments and street trading shall be reserved to the Licensing Committee.
- 24.4** In the following circumstances, the power delegated to the Head of Safer and Stronger Communities in respect of Licensing Functions (Licensing Act 2003 and Gambling Act 2005) shall stand referred to body set out below.
- 24.4.1** Any licensing function under the Licensing Act 2003 and the Gambling Act 2005 reserved to full Council (i.e the determination of the three year statement of principles and the decision not to licence casinos under the 2005 Act).
  - 24.4.2** The determination of an application under the Licensing Act 2003 or Gambling Act 2005 where relevant representations have been received and are not withdrawn shall be referred to the Licensing Sub-Committee.
  - 24.4.3** The determination of review applications (under sections 52, 88 and 167 of the Licensing Act 2003) shall be referred to the Licensing Sub-Committee.
  - 24.4.4** The determination of review applications (under section 201 of the Gambling Act 2005) shall be referred to the Licensing Sub-Committee.

- 24.4.5** The decision to object when the local authority is a consultee and not the relevant authority considering an application under the Licensing Act 2003 shall be referred to the Licensing Sub-Committee.
  - 24.4.6** The consideration of representations in relation to the proposed rejection of a club gaming permit or club machine permit (schedule 12 of the Gambling Act 2005) is reserved to the Licensing Sub-Committee.
  - 24.4.7** The decision to cancel a club gaming/club machine permit (schedule 12 of the Gambling Act 2005) shall be referred to the Licensing Sub-Committee.
  - 24.4.8** The decision to give a counter notice to a temporary use notice (section 224 of the Gambling Act 2005) shall be referred to the Licensing Sub-Committee.
  - 24.4.9** The decision to make an order disapplying section 279 or 282(1) of the 2005 Act in relation to specified premises where representations have been made by the licensee shall be referred to the Licensing Sub-Committee.
  - 24.4.10** The decision to revoke a personal licence where convictions come to light after grant or renewal (under section 124 of the Licensing Act 2003) shall be referred to the Licensing Sub-Committee.
  - 24.4.11** The decision to set fees under the Gambling Act 2005 shall rest with the Licensing Committee.
  - 24.4.12** The power to institute criminal proceedings under the Gambling Act lies with the Borough Solicitor.
- 24.5** The Head of Safer and Stronger Communities is authorised to discharge the following functions in relation to environmental health:-
- 24.5.1** Power to issue licences authorising the use of land as a caravan site
  - 24.5.2** Power to licence the use of moveable dwellings and camping sites
  - 24.5.3** Power to license premises for acupuncture, tattooing, ear piercing and electrolysis
  - 24.5.4** Power to licence pleasure boats and pleasure vessels
  - 24.5.5** Power to licence scrap yards
  - 24.5.6** To register motor salvage operators
  - 24.5.7** To register and licence premises for the preparation of food
  - 24.5.8** Power to licence premises for the breeding of dogs

- 24.5.9** Power to licence pet shops and other establishments where animals are bred or kept for the purposes of carrying on a business
- 24.5.10** To register animal trainers and exhibitors
- 24.5.11** Power to licence zoos
- 24.5.12** To licence dangerous wild animals
- 24.5.13** To grant consent for the operation of a loudspeaker
- 24.5.14** To approve meat product premises
- 24.5.15** To approve premises for the production of minced meat or meat preparations
- 24.5.16** To approve dairy establishments
- 24.5.17** To approve fish products premises
- 24.5.18** To approve dispatch or purification centres  
Power to register fishing vessels on board which shrimps or molluscs are cooked
- 24.5.19** Power to approve factory vessels and fishery product establishments
- 24.5.20** To register auction and wholesale market
- 24.5.21** To keep a register of food business premises
- 24.5.22** To enforce Chapter 1 (Health Act 2006) and regulations made under it
- 24.5.23** Power to authorise Officers
- 24.5.24** Functions relating to fixed penalty notices
- 24.5.25** Power to transfer enforcement functions to another enforcement authority
- 24.5.26** Functions relating to health and safety at work (to the extent that those functions are discharged otherwise than in the authority's capacity as an employer)

## **25.0 HEAD OF PLANNING AND POLICY**

- 25.1** Apart from the matters reserved to the Strategic Planning Board and Planning Committees, all those Council functions set out in the Local Authorities (Functions & Responsibilities)(England) Regulations 2000 which relate to town & country planning & development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges are delegated to the Head of Planning & Policy.

- 25.2** Development control functions include decisions regarding planning applications, permitted development, certificates of lawful use & development, enforcement, listed buildings and conservation areas.
- 25.3** The planning functions are to be construed purposively and broadly, to include anything which facilitates or is incidental to them. For example, the power to determine planning applications under s70 Town & Country Planning Act 1990 will include powers governing environmental impact assessments under the various TCP (Environmental Impact Assessment) Regulations. It will also include power to impose conditions, limitations or other restrictions or to determine terms to which approvals are subject, and to modify, vary or revoke approvals.
- 25.4** Where legislation is amended or replaced by new provisions or where new development control provisions are enacted, then the relevant authority delegated in this Scheme applies to those new provisions.
- 25.5** The Head of Planning and Policy is authorised to exercise all the powers and duties conferred on the Authority in relating to Building Control and without limitation upon those general matters, to be responsible for:-
- 25.5.1** The passing or rejection of plans of proposed work deposited in accordance with Building Regulations or passing them subject to conditions, under the provisions of Section 16 of the Building Act 1984, subject to any other section of this Act or any other Act that expressly requires or authorises the rejection of such plans in certain cases.
  - 25.5.2** The declaration by notice that the deposit of plans is of no effect under the provisions of Section 32 of the Building Act.
  - 25.5.3** The dispensation with the requirements of the Building Regulations in appropriate cases.
  - 25.5.4** Dealing with applications for regularisation certificates in respect of unauthorised building work.
  - 25.5.5** The serving of notice to open up work in cases where a person carrying out building work neglects to notify the Authority of the stages of work referred to in Regulation 14 of the Building Regulations 1985.
  - 25.5.6** Dealing with dangerous structures by:- (i) Taking action under Section 77 of the Building Act 1984 to secure the removal of dangerous conditions in buildings or structures including application to Magistrates Court for an order to remove such dangerous conditions.
  - 25.5.7** Take emergency action under Section 78 of the Building Act in such cases where immediate action is necessary to remove danger.
  - 25.5.8** Dealing with ruinous and dilapidated buildings and neglected sites by taking action under Section 79 of the Building Act 1984.



- 25.5.9** Dealing with private demolitions of the whole or part of a building or buildings by taking action under Section 81 of the Building Act 1984
- 25.5.10** The taking of enforcement action in cases where the provisions of the Building Regulations and other related legislation have not been complied with, including instituting proceedings in the Magistrates Court for contraventions of the Building Regulations
- 25.5.11** Supervision of Building Work etc Otherwise than by Local Authorities
- 25.5.12** The receipt and acceptance or rejection, on prescribed grounds AND, where appropriate, of the various notices referred to in Part II of the Building Act 1984 and the Building (Approved Inspectors) Regulations 1985 in connection with the supervision of plans and work by approved inspectors
- 25.5.13** Variation of the standard fee scales of the Local Government Association model scheme by plus or minus 10% (by a percentage greater than 10% - to portfolio holder)

## **26.0 HEAD OF HUMAN RESOURCES AND ORGANISATIONAL DEVELOPMENT**

- 26.1** The Head of Human Resources and Organisational Development shall be responsible for discharging the following functions:-
  - 26.1.1** To be responsible for the effective implementation and maintenance of Equal Opportunities in Employment Policy.
  - 26.1.2** To apply, in consultation with the Borough Treasurer and Head of Assets the terms of the early retirement/redundancy scheme in those cases where the post is to be deleted.
  - 26.1.3** To determine and pay honoraria in accordance with the NJC Scheme subject to a report to appropriate Members the next available meeting
  - 26.1.4** In consultation with the portfolio holder and chair of the appropriate Scrutiny Committee and the Borough Treasurer and Head of Assets to determine annually the recruitment requirements for trainee positions at a level that can be met within budgetary provisions.
  - 26.1.5** Jointly with the relevant Board Member and on behalf of the Authority to take leasehold interests in appropriate property in order to provide accommodation for the Surestart Partnership subject to prior confirmation from the Partnership that it will reimburse the Authority in respect of its liabilities in relation to any such property.
  - 26.1.6** To approve the Management Structure of each Directorate below Head of Service level after undertaking appropriate consultations.
  - 26.1.7** To approve Job Descriptions/Person Specifications for all employees other than Board Members.

- 26.1.8** To recommend to Council, the development of policies on the full range of Personnel issues, after appropriate consultation with Members.
- 26.1.9** To approve Codes of Conduct in support of Personnel policies as set out in the Authority's Performance Strategy.
- 26.1.10** To have regard to issues relating to the Local Government Pensions Scheme and the Authority's Early Retirement Scheme except where they are applied to individual employees.
- 26.1.11** To monitor staffing information reports.
- 26.1.12** To consider recommendations in respect of the use of the powers in Section 13(4) and 13(5) of the Local Government Act 2000 to place staff at the disposal of other local authorities to facilitate joint arrangements or joint working.
- 26.1.13** Take responsibility for the health and safety of the Authority's employees.

## **APPENDIX**

### **LIST OF STATUTORY PROVISIONS IN RESPECT OF TRADING STANDARDS FUNCTIONS**

- 117) Accommodation Agencies Act 1953
- 118) Administration of Justice Act 1970
- 119) Agriculture Act 1970
- 120) Agriculture (Miscellaneous Provisions) Act 1968
- 121) Agricultural Produce Act 1928
- 122) Agricultural Produce Act 1931
- 123) Agricultural Produce (Grading and Marketing) Act 1928
- 124) Animal Health Act 1981
- 125) Animal Welfare Act 2006
- 126) Business Names Act 1985
- 127) Cancer Act 1939
- 128) Cattle Identification Regulations 1998
- 129) Children and Young Persons Act 1933
- 130) Children and Young Persons (Protection from Tobacco) Act 1991
- 131) Child Resistant Packaging (Safety)(Amendments) Regulations 1993
- 132) Civil Partnerships (Approved Premises) Regulations 2005
- 133) Classification, Packaging and Labelling of Dangerous Substances Regulations 1984
- 134) Clean Air Act 1993
- 135) Companies Act 1985
- 136) Consumer Credit Act 1974
- 137) Consumer Protection Act 1987

- 138) Control of Pollution Act 1974
- 139) Control of Pollution (Anti-Fouling Paints and Treatments) Regulations 1987
- 140) Copyright Designs & Patents Act 1988
- 141) Crime and Disorder Act 1998
- 142) Criminal Attempts Act 1981
- 143) Criminal Damage Act 1971
- 144) Criminal Justice Act 1988
- 145) Criminal Justice Act 1993
- 146) Criminal Law Act 1977
- 147) Crystal Glass (Descriptions) Regulations 1973
- 148) Development of Tourism Act 1969
- 149) Dogs Act 1906
- 150) Education Reform Act 1988
- 151) Eggs (Marking Standards) Regulations 1985
- 152) Electro Magnetic Compatibility Regulations 1992
- 153) Energy Act 1976
- 154) Energy Conservation Act 1981
- 155) Enterprise Act 2002
- 156) Estates Agents Act 1979
- 157) European Communities Act 1972
- 158) Explosives Act 1923
- 159) Fair Trading Act 1973
- 160) Farm and Garden Chemicals Act 1967
- 161) Fire Safety & Safety of Places of Sport Act 1987
- 162) Fireworks Act 2003
- 163) Food Act 1984
- 164) Food and Environment Protection Act 1985
- 165) Food Safety Act 1990
- 166) Forgery and Counterfeiting Act 1981
- 167) Fraud Act 2006
- 168) Hallmarking Act 1973
- 169) Health and Safety at Work Act 1974
- 170) Housing Act 2004
- 171) Insurance Brokers (Registration) Act 1977
- 172) Intoxicating Substances (Supply) Act 1985
- 173) Legislative and Regulatory Reform Act 2006
- 174) Licensing Act 1964
- 175) Licensing Act 2003
- 176) Lotteries and Amusements Act 1976
- 177) Malicious Communications Act 1988
- 178) Manufacture and Storage of Explosives Regulations 2005
- 179) Marriage Act 1949
- 180) Materials and Articles in Contact with Food Regulations 1985
- 181) Measuring Container Bottles (EEC Requirement Regulations) 1977
- 182) Medicines Act 1968
- 183) Mock Auctions Act 1961
- 184) Motor Cycle Noises Act 1987
- 185) National Lottery Act 1993
- 186) Natural Mineral Water Regulations 1985
- 187) Nurses Agencies Act 1957
- 188) Opticians Act 1989
- 189) Offensive Weapons Act 1996

- 190) Performing Animals (Regulation) Act 1925
- 191) Personal Protective Equipment (EC Directive) Regulations 1992
- 192) Petroleum (Consolidation) Act 1928
- 193) Petroleum (Transfer of Licences) Act 1936
- 194) Pigs (Records, Identification and Movement) Order 1995
- 195) Poisons Act 1933
- 196) Poisons Act 1972
- 197) Poultry (Water Content) Regulations 1984
- 198) Prices Acts 1974
- 199) Prices Act 1975
- 200) Proceeds of Crime Act 2002
- 201) Property Misdemeanors Act 1991
- 202) Protection of Animals Acts 1911
- 203) Registration Service Act 1953
- 204) Rent Act 1965
- 205) Rent Act 1977
- 206) Road Traffic Act 1972
- 207) Road Traffic Act 1974
- 208) Road Traffic Act 1988
- 209) Road Traffic (Foreign Vehicles) Act 1972
- 210) Road Traffic Regulation Act 1984
- 211) Road Traffic Offenders Act 1988
- 212) Safety of Sports Grounds Act 1975
- 213) Schedule Prices Act 1974
- 214) Scotch Whisky Act 1988
- 215) Solicitors Act 1974
- 216) Telecommunications Act 1984
- 217) Textile Products (Indication of Fibre Content) Regulations 1986
- 218) Theft Act 1968
- 219) Theft Act 1978
- 220) Timeshare Act 1992
- 221) Tobacco Advertising and Promotions Act 2002
- 222) Trade Descriptions Act 1968
- 223) Trade Marks Act 1994
- 224) Trade Representations Act 1972
- 225) Trading Representations (Disabled Persons) Act 1958
- 226) Trading Stamps Act 1964
- 227) Unsolicited Goods and Services Act 1971
- 228) Unsolicited Goods and Services Act 1975
- 229) Vehicles (Crime) Act 2001
- 230) Video Recordings Act 1984
- 231) Weights and Measures Act 1976
- 232) Weights and Measures Act 1985

# Council Procedure Rules

## PROCEDURE RULES

### PART A –COUNCIL PROCEDURE RULES

#### **1 Council meetings**

- 1.1 The Council will decide when its meetings will take place. Details will be contained in a calendar of meetings which will be approved by the Council.
- 1.2 Meetings will be held at a time and a place (or places) to be agreed by the Council. The Chairman, 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 or by the Chairman, or 8 members of the Council can ask the Chairman, in writing, to call a special meeting. If the Chairman does not agree, then those Members can call the meeting by giving written notice to the Monitoring Officer. The Monitoring Officer, in consultation with the Chairman, may also call a special meeting.
- 1.4 Before the start and at the end of each meeting, Members and Officers will stand whilst the Chairman and the Vice-Chairman enter and leave the room.

#### **2 Chairman and Vice Chairman of the Council**

- 2.1 At its Annual Meeting, the Council will elect its Chairman and appoint its Vice-Chairman for the following year.
- 2.2 The Chairman of the Council, or in his absence the Vice-Chairman (who will have the same powers and duties as the Chairman), will preside at meetings of the Council. Where both the Chairman and Vice-Chairman are absent, the Council will appoint another Member, other than a Member of the Cabinet, to chair the meeting, who will have the same powers and duties as the Chairman.

#### **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 Chairman will adjourn the meeting. Where the Chairman does not give a date and/or time, all business not completed will be considered at the next 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 Order Of Business**

- 5.1 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 Chairman has agreed that it is urgent and cannot wait until the next meeting. The Chairman 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.
- 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 Chairman shall sign the Minutes.

## **8 Record of Cabinet Decisions and Minutes of Committees and Sub - Committees**

- 8.1 The Record of Decisions of the Cabinet and the Minutes of any other Committees will be submitted to the next ordinary meeting of the Council.
- 8.2 The Record of Decisions will be noted and the Minutes will be received by a decision of the Council.
- 8.6 Any question about the accuracy of any matter before the Council from the Cabinet or a Committee must be considered and determined by the Cabinet or that Committee at its next meeting. It is not a matter for the Council.

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

- 9.1 All matters for decision by the Council (except any Notices of Motion under Procedure Rule 12 and any urgent items) shall be included with the agenda.
- 9.2 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 and may reserve the right to speak until later in the debate.
- 9.3 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.

## **10 Motions Moved Without Notice**

- 10.1 Appendix 1 lists those motions and amendments which can be moved at a Council meeting without notice.

## **11 Public speaking and questions at Council meetings**

- 11.1 A Member of the Council may ask the Chairman, 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.
- 11.2 A Member may ask the nominated/designated representative of the Cheshire Fire Authority or the Cheshire Police Authority any question about the responsibilities of his/her respective Authority.
- 11.3 Questions must be sent in writing to the Monitoring Officer at least three clear working days before the meeting.
- 11.4 The Chairman may agree to take urgent questions where he considers that it has not been possible for a Member to give the required notice, provided that a copy of the question is given to the Monitoring Officer before the meeting starts.
- 11.5 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.
- 11.6 Following the answer to each question, the questioner may ask a supplementary question which relates to the initial answer. A reply may not be given if the question is: not related to the initial answer; is unduly lengthy; or is inappropriate. The Member answering the supplementary question will decide whether or not to reply.
- 11.7 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.
- 11.8 A public speaking time and public question facility will apply to Council meetings, as detailed in Appendix 7.

## **12 Notices of Motion**

- 12.1 A notice of motion must relate to matters for which the Council has responsibility or which affect its area.
- 12.2 The arrangements for submitting and dealing with notices of motion are set out in Appendix 2.

## **13 Rules of Debate**

- 13.1 The rules of debate to be followed at Council meetings are set out in Appendix 3.

## **14 Rescission of Earlier Resolution**

- 14.1 Subject to Rule 14.2, 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 six months or which is to the same effect as one which has been rejected within that period.
- 14.2 Such a motion may be moved if:
- (a) it is recommended by the Cabinet or a Committee; or
  - (b) notice of such motion has been given under Procedure Rule 12 and signed by at least 8 elected Members of the Council.

## **15 Voting**

- 15.1 Voting will be by a show of hands.
- 15.2 When a Member asks for a recorded vote to be taken, and 8 other Members stand in their places to support the request, the vote will be recorded to show whether each Member voted for or against the motion or abstained.
- 15.3 A recorded vote will not be taken if the vote has already begun to be taken by a show of hands.
- 15.4 Members must be in their designated seats for their vote to be counted. The Chairman may agree to waive this requirement before the vote is taken.
- 15.5 A Member may require, after a vote is completed, that the Minutes of the meeting record how he/she voted or abstained.
- 15.6 A Member may, immediately after the item of business is voted upon, request that a lost motion or amendment be recorded in the minutes.
- 15.7 Where there are equal votes cast for a motion or amendment the Chairman or the person presiding will have a second or casting vote.

## **16 Offices and Appointments**

- 16.1 A secret ballot will be held to elect or appoint the Chairman and Vice-Chairman of the Council, the Leader and Deputy Leader of the Council or Members to any office or position where more than one person is nominated.
- 16.2 If a secret ballot is held and no person receives more than half of the votes cast, the name of the person with the least number of votes will be withdrawn. Further ballots will be held until one person receives a clear majority.
- 16.3 The Chairman, or person presiding, will have a second or casting vote where the votes are equal.



## **17 Election of Chairman of Committees and Sub-Committees**

- 17.1 The Chairman and Vice-Chairman of every Committee and Sub-Committee will be elected at the Annual Meeting of Council each year.
- 17.2 The Member elected to each office must be a Member of the relevant Committee or Sub-Committee.
- 17.3 Where a vacancy occurs in any office, an election will be held at the next ordinary meeting of the Council unless the Council decides otherwise.
- 17.4 Unless the Council decides otherwise, the election will be conducted by a show of hands and may relate to a number of offices. Procedure Rule 16 will apply.
- 17.5 Where a 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.

## **18 Urgent Business – Non executive Matters**

- 18.1 An item of urgent business which has to be decided before the next meeting of the Council and which does not fall within the Cabinet's functions and responsibilities can be determined by the Chief Executive or her nominee, subject to the procedure in Appendix 4.

## **PART B – COMMITTEE AND SUB-COMMITTEE PROCEDURE RULES**

### **19 Committees and Sub-Committees**

19.1 The Committees and Sub-Committees the Council and their membership size will be:-

[These to be changed following Governance and Constitution Committee recommendations]

Committees	Size
<b>Scrutiny Committee</b>	<b>Fourteen Members</b>
<b>Health and Adult Social Care Scrutiny Committee</b>	<b>Fourteen Members</b>
<b>Staffing Committee</b>	<b>Seven Members</b>
<b>Standards Committee</b>	<b>Eight Members</b>
<b>Governance and Constitution Committee</b>	<b>Fourteen Members</b>
<b>Joint Liaison Committee</b>	<b>Five Members</b>
<b>Advisory Panel – People</b>	<b>Fourteen Members</b>
<b>Advisory Panel – Places</b>	<b>Fourteen Members</b>
<b>Advisory Panel – Performance and Capacity</b>	<b>Thirteen Members</b>

### **19.2 Other Committees and Sub-Committees**

The Council may appoint other Committees, Sub-Committees and Special Committees with delegated powers to act under specific terms of reference which must be set out in the Minutes.

### **20 Co-option**

20.1 A Committee or Sub-Committee may co-opt any person as a Member.

20.2 A 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.

20.3 Co-optees must not be elected Members of the Council. They shall not be entitled to vote at any meeting.

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

21.2 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 in order to comply with legal requirements.

## **22 Term of Office – Committees and Sub-Committees**

- 22.1 Committee and Sub-Committee Members will remain in office until their day of retirement as set out in the Cheshire (Structural Changes) Order 2008. The Council may, at any time, dissolve, alter or amend the membership of a Committee or Sub-Committee.

## **23 Change of Committee and Sub-Committee Places**

- 23.1 A Political Group may vary its representation on a Committee or Sub-Committee as set out in Appendix 5.

## **24 Powers of Committees, Sub-Committees and Officers**

- 24.1 Subject to Procedure Rule 4.1 relating to the Council (Matters Reserved for Decision by the Council), the functions, powers and duties to be exercised by Committees, Sub-Committees and Officers on behalf of the Council are set out in Part 3 of this Constitution (Responsibility for Functions).
- 24.2 In discharging those functions, powers and duties, the Committees, Sub-Committees and Officers have full delegated powers to take those decisions, subject to any specific reservations or exceptions contained in Part 3.
- 24.3 A Committee, Sub-Committee, or Officer may, at any time, decline to exercise a delegated power. The matter must then be considered and determined by the Council, Committee or Sub-Committee, as appropriate.
- 24.4 Part C of these Procedure Rules and Part 3 of the Constitution deal with those functions which are the responsibility of the Cabinet.

## **25 Urgent Business – Committees, Sub-Committees and Cabinet**

- 25.1 An item of urgent business which has to be decided before the next meeting of a Committee or Sub-Committee can be determined by the Chief Executive or her nominee, subject to the provisions of Appendix 4.
- 25.2 Appendix 4, suitably amended, will also apply to urgent Decisions in respect of all executive functions, including Key Decisions and non Key Decisions.

## **26 Changes to the Programme of Meetings**

- 26.1 Meetings of Committees and Sub-Committees will be set out in the calendar of meetings approved by the Council under Procedure Rule 1.1. There will be a presumption against alterations to the date, time and venue for meetings.
- 26.2 When it is necessary to alter the date, time and/or venue of a meeting, or to arrange a special meeting, the Monitoring Officer will consult the Chairman and Spokesmen of the relevant Committee or Sub-Committee before any action is taken.
- 26.3 The Chairman of the Committee or Sub-Committee will then determine the matter.

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

- 27.1 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. For the Standards Committee and Sub-Committees, other provisions will apply. The Monitoring Officer will provide further information where this is required.
- 27.2 This may be varied because of a legal requirement or by the Council.

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

- 28.1 The Minutes of a Committee or Sub-Committee must be confirmed at its next meeting.
- 28.2 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.
- 28.3 Where no issues of accuracy are raised, or after any motion has been dealt with, the Chairman shall sign the Minutes.
- 28.4 The Minutes of any Sub-Committee must be submitted to the next meeting of the parent Committee by the Sub-Committee Chairman.
- 28.5 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.
- 28.6 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 one hour before the start of the meeting.
- 28.7 Any question about the accuracy of any Minute of a body must be considered and determined by that body at its next meeting.

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

- 29.1 Appendix 1 lists those motions and amendments which can be moved without notice.

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

- 30.1 Appendix 3 sets out the rules of debate.

## **31 Voting**

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

- 31.3 A recorded vote will not be taken if the vote has already begun to be taken by a show of hands.
- 31.4 A Member may require, after a vote is completed, that the Minutes of the meeting record how he/she voted or abstained.
- 31.5 A Member may request that a lost motion or amendment be recorded in the minutes by requesting this immediately after the vote is taken.
- 31.6 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 is an equality of votes in respect of a motion, the motion will be lost.

## **32 Offices and Appointments**

- 32.1 A secret ballot will be held to elect or appoint Members to any office or position where more than one person is nominated.
- 32.2 If a secret ballot is held where more than two nominations are made and no person receives more than half the votes cast, the name of the person with the least number of votes will be withdrawn. Further ballots will be held until one person receives a clear majority.
- 32.3 Procedure Rule 31.6 will apply in cases where the votes are equal.

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

- 33.1 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.
- 33.2 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.

## **34 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.

## **35 Questions Submitted by Members of the Public**

- 35.1 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.

### **36 Reference of a Decision to the Parent Committee or Council**

- 36.1 Where a decision is made by a Committee or Sub-Committee, the resolution may be referred, by notice, to the Council or parent Committee, as appropriate, for reconsideration.
- 36.2 The notice must be in writing and be signed by 8 Members of the Council. The notice must be given to the Monitoring Officer, in writing, not later than 5.00pm on the fifth full working day after the meeting.
- 36.3 No action must be taken on the decision prior to its determination by the Council or Committee. Where action is necessary before the relevant meeting, the Chief Executive will consider whether a special meeting of the Committee or the Council, as appropriate, should be convened.
- 36.4 No resolution of a Committee or Sub-Committee can be subject to a notice under this Standing Order if, in the preceding twelve months, a similar resolution had been the subject of a notice under this Standing Order.
- 36.5 These provisions do not apply to decisions taken by the Cabinet where the 'call in' procedure is set out in the Scrutiny Procedure Rules.

### **37 Committee and Sub-Committee Agenda - Urgent Items of Business**

- 37.1 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.
- 37.2 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.

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

- 38.1 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.
- 38.2 A Member will be given, when he/she arrives at the meeting a copy of the agenda and relevant papers, subject to any restrictions imposed under Procedure Rule 49.
- 38.3 The Member has no right to vote, but may speak with the consent of the Chairman of the meeting.

### **39 Scrutiny Committees/Sub-Committees**

- 39.1 In applying these Procedure Rules to Scrutiny Committees and Sub-Committees, regard shall be had to the Scrutiny Procedure Rules which are contained in Part 4 of this Constitution.

## **PART C – PROCEDURE RULES RELATING TO EXECUTIVE ARRANGEMENTS**

### **General**

This Part sets out the Council's executive arrangements. It should be read in conjunction with the appropriate paragraphs of Part 1 of this Constitution and the Cabinet Procedure Rules contained in the Constitution.

### **40 The Executive Framework**

- 40.1 The Council shall have a Leader and Deputy Leader who will be Members of the Cabinet. The Council will make these appointments at its first meeting.
- 40.2 The Cabinet's responsibilities will consist of the following portfolios as agreed by the Council:-
- Leader (Community Leadership and Partners)
  - Deputy Leader (Community Empowerment)
  - Performance
  - Finance and Assets
  - Human Resources
  - Community Safety
  - Environment and Prosperity
  - Health and Wellbeing
  - Older and Vulnerable People
  - Children, Young People and Families
- 40.3 The Cabinet will comprise ten Members including the Leader and Deputy Leader. The Council will appoint an elected Member of the Council to each of the portfolios and will fill any vacancies which may arise from time to time.
- 40.4 The Leader and Deputy Leader may take a portfolio responsibility.
- 40.5 The Leader will chair meetings of the Cabinet or in his absence, the Deputy Leader will preside. Where both the Leader and Deputy Leader are absent, the Members present, may appoint one member of the Cabinet to chair that meeting.
- 40.6 The Cabinet cannot vary the portfolio responsibilities as listed in 40.2 above without the consent of the Council.
- 40.7 A member of the Cabinet can only be removed from office in year by a resolution of the Council. This does not preclude an office holder from resigning his/her position at any time. Where there is a delay between a resignation being tendered and the date of the next Council meeting in the case of the Leader's resignation, the Deputy Leader will chair Cabinet meetings. Where both the Leader and the Deputy Leader resign, the Monitoring Officer in consultation with the Chairman of the Council will call a special meeting of the Council. Where a Member of the Cabinet resigns and holds a portfolio responsibility, the Cabinet will reallocate that responsibility within its number until the Council has appointed a replacement.



## **41 The Executive Role**

- 41.1 The executive functions will comprise the executive responsibilities under the Local Government Act 2000, and associated legislation.
- 41.2 The role and responsibilities of the Cabinet are set out in more detail in Part 3 of the Council's Constitution.

## **42 Business Process and Decisions of the Cabinet**

- 42.1 The Cabinet, 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 Chief Finance Officer should always be obtained where there is doubt about vires or probity.
- 42.2 All items for decision by the Cabinet will be contained in a formal agenda as required by the Local Government Acts and Regulations in relation to confidential and exempt information.
- 42.3 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.
- 42.4 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 has been exercised until the call-in process has been concluded.
- 42.5 A written record will be kept of all Cabinet decisions by the Monitoring Officer 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 Scrutiny Procedure Rules).

## **43 Procedural Matters Relating To Cabinet Meetings**

- 43.1 No items of business shall be conducted at a Cabinet meeting where, at the beginning or during the meeting, there are fewer than 50% of Cabinet Members present.
- 43.2 Meetings of the Cabinet will be programmed into the Council diary prepared under Procedure Rule 1.1. 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.
- 43.3 The order of business at Cabinet meetings is a matter for the Cabinet to determine.
- 43.4 Records of Cabinet decisions must be confirmed at the next meeting.

- 43.5 In recording decisions of the Cabinet under Rule 42.4, the Monitoring Officer will set out the decision, the reasons for the decisions and alternative options considered as required under the Access to Information Procedure Rules in the Constitution.
- 43.6 An item of business which requires a decision cannot be dealt with by the Cabinet at a meeting unless it is included in the agenda for the meeting, or the Leader (or the person presiding) has agreed that it is urgent and cannot await the next meeting of the Cabinet. The reasons for taking the item as urgent business must be recorded in the Record of the Cabinet's meeting.
- 43.7 Voting at Cabinet meetings will be by a show of hands and any Member may require, after the vote is completed, that the Record of the meeting shows how he/she voted or abstained. Where there are equal votes cast, the Leader or the person presiding will have a second and casting vote. Voting for any office or appointment, including any paid appointment, where more than one person is nominated shall be by secret ballot conducted in accordance with Procedure Rule 16 in the Council Procedure Rules.
- 43.8 The Cabinet Procedure Rules set out the rights of the Chairmen and Spokespersons of Scrutiny Committees to attend Cabinet meetings and to speak.
- 43.9 The Cabinet may invite any person it/he/she consider appropriate, 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 are observed.
- 43.10 A mover of a motion under Procedure Rule 12 which has been referred to the Cabinet for consideration shall have the right to attend the meeting when the motion is under consideration and to explain the motion. The mover of the motion will be advised of when the matter is to be considered and will be sent a copy of the papers. This does not affect the right of the mover of the motion to attend a Scrutiny body when his/her motion is being considered.
- 43.11 In the case of any dispute during the proceedings of any Cabinet meeting, the Council's Constitution will apply and, after considering the application of the relevant Procedure Rule, the person presiding at the meeting will rule on the issue in question as set out in Procedure Rule 55.

#### **44 The Forward Plan and Key Decisions**

- 44.1 The Leader will ensure that the requirements of the Access to Information Procedure Rules in relation to the publication of the Cabinet's Forward Plan of Key Decisions are met.
- 44.2 Those decisions which are Key Decisions are defined in **[Cross refer with relevant paragraph of Part 2]**.

- 44.3 Where the Cabinet as a body is making Key Decisions, that meeting shall be held in public. Where a matter is to be considered and Regulation 7 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 is applicable then the meeting will be held in public. In both cases the public may be excluded from the meeting where confidential or exempt information is likely to be disclosed.
- 44.4 Where an officer exercising an executive function under delegated powers, receives a report which he/she intends to take into consideration when making a Key Decision that decision shall not be taken until the report has been made available for inspection by the public for three 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 Scrutiny Committee. The report must also include the list of background papers.
- 44.5 Where the inclusion of a matter in the Forward Plan is impracticable and the matter would be a Key Decision, that decision shall only be made:-
- (a) where the Monitoring Officer has informed the Chairman of the relevant Scrutiny 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) after five clear working days have elapsed following the day on which the Monitoring Officer made available the notice referred to in (b) above.
- 44.6 Where the date by which a Key Decision must be made makes compliance with the requirements under 44.5 above impracticable, the decision shall only be made where the decision maker has obtained agreement from:-
- (a) the Chairman of the relevant Scrutiny Committee; or
  - (b) if there is no such person, or if the Chairman of the relevant Scrutiny Committee is unable to act, the Chairman of the Council; or
  - (c) where there is no Chairman of either the relevant Scrutiny Committee or of the Council, the Vice-Chairman of the Council.

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 44.5 above was impractical.

- 44.7 The Leader shall submit a quarterly report to the Full Council containing details of each Key Decision taken during the preceding three months under 44.6 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.
- 44.8 Where an executive decision which was not classified as being a Key Decision has been made and the relevant 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 was not a Key Decision, the reasons for it.

## **PART D – PROCEDURE RULES: GENERAL PROVISIONS**

### **45 Records of Attendance**

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

### **46 Disclosure of Confidential/Exempt Matters**

#### **46.1 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 made available to the public or the press by or on behalf of the Council, the Cabinet, a Committee or Sub-Committee.

#### **46.2 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.

#### **46.3 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 46.1 or 46.2.

#### **46.4 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.

### **47 Disorderly Conduct**

## **47.1 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.

## **47.2 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.

## **47.3 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.

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

48.1 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.

## **49 Inspection of Documents**

### **49.1 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.

### **49.2 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.

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

Subject to Procedure Rules 46 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.

## **50 Provisions relating to Personnel Matters**

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

## **51 Sealing of Documents**

### **51.1 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.

### **51.2 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.

## **52 Signature of Documents**

- 52.1 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).

## **53 Variation and Revocation of Procedure Rules**

- 53.1 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.

## **54 Suspension of Procedure Rules**

### **54.1 Motion Required**

Subject to Rule 54.2, 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.

### **54.2 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.

## **55 Interpretation of Procedure Rules**

55.1 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.

## **56 Submission of Notices by Members – Electronic Means**

56.1 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.



**PROCEDURE RULES RELATING TO THE COUNCIL: PROCEDURE RULES 10 AND 29 - 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 54.
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 47 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.

## **PROCEDURE RULES RELATING TO THE COUNCIL: PROCEDURE RULES 12 - NOTICES OF MOTION**

### **1 Procedure**

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 office of the Monitoring Officer by whom it shall be dated, in the order in which it is received.

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

The summons for every ordinary meeting of the Council will set out 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 summons according to whether they relate to executive or non-executive functions but otherwise in the order in which they have been received.

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

Where a notice of motion is before the Council having been formally moved and seconded and the mover wishes subsequently to withdraw it, he/she with the consent of the seconder may do so in writing and with the consent of the Chairman of the Council again in writing.

### **4 Motions Not Moved**

If a motion set out in the summons is not moved either by a Member who gave notice of it or by some other Member on his/her behalf it shall, unless postponed by consent of the Council, be treated as withdrawn and shall not be moved without fresh notice.

### **5 Automatic reference to Cabinet, Committee/Sub-Committee – Non executive Function**

If the subject of any motion (which does not relate solely to any executive function or part of a function) comes within the powers, duties and responsibilities of any Committee or Sub-Committee or the Cabinet, it shall, when it has been moved and seconded, stand referred without discussion to such of those bodies as the Chairman may determine, for consideration and report. However, if the Chairman considers it conducive to the despatch of business, the motion may be dealt with at the meeting at which it is brought forward. Unless the Chairman has indicated that he/she proposes to deal with the motion at the meeting, the mover may formally move the motion and reserve the right to speak until the report on the motion comes before the Council.

Advice to the Council on any referred Notice of Motion under this section will be formulated by the Cabinet and by such other bodies (Committees, Sub-Committees, or Panels) as are deemed appropriate. The report to Council will set out the views of all bodies consulted on the Notice of Motion. The Minutes of a Committee or Sub-

Committee containing advice to the Council on any referred Notice of Motion shall be dealt with separately from the other Minutes of those bodies.

## **6 Automatic reference to the Cabinet – executive Function**

If the subject of any motion of which notice has been duly given comes solely within the powers, duties and responsibilities of the Cabinet, it shall, when it has been moved and seconded, stand referred to the Cabinet to determine subject to the advice from any other body whose views are sought as determined by Council. The mover on formally moving the motion has the right to speak to the Motion. The seconder may also speak to the Motion. The Chairman will allow a period of fifteen minutes for a debate on any such notices of motion. This period shall include any speeches made by the mover and seconder of the motion in question. At the end of the debate if sooner or upon the expiration of the fifteen minutes, the appropriate Cabinet Member shall have an opportunity to respond. No speeches including the response shall exceed five minutes. No amendments to the motion may be moved. The motion will then stand referred to the Cabinet.

There are no rights of “call in” or “reference to the Council” where the Cabinet has discharged a motion submitted under this Procedure Rule.

## **7 Deferment of a Notice of Motion**

Where a notice of motion has been moved and seconded, and referred for advice, the consideration of the motion may be deferred where the mover and seconder signify in writing his/her agreement to the deferral and the Chairman of the Council indicates, in writing, his/her agreement on behalf of the Council. The matter would then come to a subsequent meeting of the Council for report and decision.

## **PROCEDURE RULES RELATING TO THE COUNCIL: COMMITTEES AND SUB-COMMITTEES PROCEDURE RULES 13 AND 30 - 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. At meetings other than those of the full Council, the Chairman of that meeting 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 Seconders'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 shall stand and address the Chairman. 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 a protocol which makes provision for a limited number of speeches to be made on behalf of each Political Group, and which exceed the five minute limitation contained in these Rules. The Chairman will have discretion as to how such a protocol 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 47, 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 Chairman 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 Chair**

At the Council meeting whenever the Chairman 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.

## **PROCEDURE RULES RELATING TO THE COUNCIL, COMMITTEES AND SUB-COMMITTEES: PROCEDURE RULES 18 AND 25 - URGENT BUSINESS**

### **Non-executive Functions**

#### **1 Approval of Urgent Business**

Where any matter is urgent and cannot await the next meeting, the Chief Executive or her nominee may take the necessary action, provided that he/she has first consulted the relevant Chairman (or Vice-Chairman if he/she is not available).

#### **2 Consultation**

A copy of the consultation document shall be sent to the appropriate Cabinet Member, the Chairman and Spokespersons of the appropriate Scrutiny Committee, the party group leaders and the local Member.

#### **3 Written Approval**

Any such approval shall be in writing, consideration being given after consultation with the Chief Finance Officer and the Monitoring Officer.

#### **4 Obligations of the Monitoring Officer**

The Monitoring Officer shall forthwith supply a copy of any approval requiring a report to a Committee or Sub-Committee which has been given by him/her to the Chief Executive and the Chief Finance Officer.

#### **5 Report to Committee**

A report of any action under paragraphs 1 to 4 above shall be made available by electronic means to all Members of the Council.

### **Executive Functions**

#### **6 Consultation**

Where any matter is urgent and cannot await the next meeting of Cabinet, the Chief Executive or her nominee shall have sole discretion to decide the matter, having first taken into account any views of Members consulted under this procedure. A copy of the consultation document under this Procedure Rule shall also be sent to the Chairman and Spokespersons of the appropriate Scrutiny Committee, the appropriate Cabinet Member and the local Member.

#### **7 Written Approval**

Any such approval shall be in writing, and shall only be given after consultation with the Chief Finance Officer and the Monitoring Officer.



## **8 Obligations of the Monitoring Officer**

A copy of any approval which has been obtained under paragraphs 6 to 8 above shall be supplied forthwith to the Monitoring Officer and Chief Finance Officer.

## **9 Report to Cabinet**

A report of any decision under paragraphs 6 to 8 above shall be made available by electronic means to all Council Members.

## **10 Access to Information**

In processing and deciding any matter under paragraphs 6 to 10 above, the relevant requirements of the Access to Information Procedure Rules will apply, as set out in this Constitution.

**PROCEDURE RULES RELATING TO COMMITTEES AND SUB-COMMITTEES:  
PROCEDURE RULE NO 23**

**Procedure Rule 23 - Change of Committee/Sub-Committee Places**

- 1 All Members of a Political Group will be regarded as being reserve Members, who may take the place of an appointed Member to 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 of the Planning or Licensing Committee.
- 3 Members of the Cabinet shall not sit on or be nominated substitutes/reserve members for any Scrutiny bodies.
- 4 Any reserve member 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 representation on the Committee or Sub-Committee in question and the reserve Member who had been appointed 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.
- 7 For the avoidance of doubt, there are no change of places arrangements in respect of the Cabinet.

**PROCEDURE RULES RELATING TO COMMITTEES AND SUB COMMITTEES:  
PROCEDURE RULE NO 34 - 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 12 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 Scrutiny Committees or Sub-Committees exercising their rights under Section 21(8) 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 21(8), the restrictions in paragraph 3 on the number of items shall not apply.

## **PROCEDURE RULES RELATING TO COUNCIL MEETINGS, COMMITTEES AND SUB-COMMITTEES: PROCEDURE RULES NO 11 AND 35**

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.
3. Members of the public may speak on any matter relating to the work of the Council.
4. Members of the public will normally be allowed up to 5 minutes each to speak, but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.
5. 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.
6. Where a member of the public wishes to ask a question of a Cabinet member at a Cabinet meeting, 3 working days' notice must be given to the Democratic Services Manager.
7. 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.

### **Cabinet Procedure Rules**

#### **CABINET PROCEDURE RULES**

##### **1 Composition of the Cabinet**

- 1.1 As provided by Section 11(3) and (8) of the Local Government Act 2000, the Council's Cabinet shall consist of the Leader of the Council and two or more Members of the Council. The number of Members appointed to the Cabinet including the Leader shall not exceed ten.
- 1.2 The Council operates a model of Executive Arrangements which empowers the Leader to decide the Membership of the Cabinet and the responsibilities and decision-making powers of each Cabinet Member. Part 3 of this Constitution contains details of the delegations made by the Leader to each Cabinet Member.
- 1.3 At the Annual Meeting of Council, the Leader will present to the Council a written record of delegations made by him for inclusion in the Council's scheme of delegation at Part 3 of this Constitution. The document presented by the Leader

will contain the following information about executive functions in relation to the coming year:

- 1.3.1 the names, addresses and electoral divisions of the people appointed to the Cabinet by the Leader;
- 1.3.2 the extent of any authority delegated to Cabinet Members individually, including details of the limitation on their authority;
- 1.3.3 the terms of reference and constitution of such Cabinet committees as the Leader appoints and the names of Cabinet Members appointed to them;
- 1.3.4 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
- 1.3.5 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.
- 1.4 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.
- 1.5 Even where executive functions have been delegated, that fact does not prevent the discharge of delegated functions by the person of body who delegated them.

## **2 The law and executive functions**

- 2.1 Those responsible for discharging executive functions will ensure that they are acting within the law and this Constitution.
- 2.2 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.
- 2.3 The Cabinet may 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.

## **3 Conflicts of Interest**

- 3.1 Where the Leader or any Cabinet Member has a conflict of interest, he will follow the requirements of the Council's Code of Conduct for Members.
- 3.2 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 Standards Committee for a dispensation from the provisions of the Code.
- 3.3 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 action set out in 3.2 shall be considered.

#### **4 Meetings of the Cabinet**

- 4.1 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 sees fit. Locations of meetings will be published in the calendar of meetings.
- 4.2 The Cabinet may meet in public or in private, subject to legal requirements and the Access to Information Procedure Rules contained in the Constitution.
- 4.3 The Leader will preside at meetings of the Cabinet. If the Leader is absent then the Deputy Leader will preside.
- 4.4 All Members of the Cabinet shall be entitled to attend meetings of the Cabinet unless the Cabinet determine otherwise.
- 4.5 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 7.1 to 7.2 below.

#### **5 Quorum at Cabinet Meetings**

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

#### **6 Taking of Decisions by the Cabinet**

- 6.1 Decisions by the Cabinet, a committee of the Cabinet, or a sub committee of the Cabinet, will be taken in accordance with the Council's Access to Information Procedure Rules.

#### **7 Members attending and speaking at Cabinet Meetings**

- 7.1 The Chairman and Spokespersons of the Council's Scrutiny Committees shall be entitled at any formal public meeting of the Cabinet to speak to any matter on the agenda for that meeting.
- 7.2 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.

#### **8 Business at Cabinet Meetings**

- 8.1 The business to be transacted at meetings of the Cabinet will be set out in an Agenda for the meeting in question, subject to any requirements or exemptions under the Access to Information Procedure Rules.

- 8.2 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.
- 8.3 The Cabinet is obliged to consider matters referred to it by a Scrutiny Committee, or by the Full Council for consideration under the Scrutiny Rules.
- 8.4 The Cabinet will, at each formal meeting, confirm the record of decisions taken at its previous meeting as a correct record.
- 8.5 The Democratic Services Manager, 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.
- 8.6 In taking decisions, the decision-maker must satisfy itself that it has before it adequate and appropriate advice from its service, legal and financial advisers who shall 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 or probity then advice must be obtained from the Monitoring Officer and the Chief Finance Officer.
- 8.7 Any Member of the Cabinet may require the Monitoring Officer to place an item on the Agenda for a stipulated meeting of the Cabinet.
- 8.8 The Democratic Services Manager will ensure that any matters referred to the Cabinet by the Council or the Council's Scrutiny committee are placed on the Agenda for the next appropriate meeting of the Cabinet.
- 8.9 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.
- 8.10 The Head of the Paid Service, the Monitoring Officer and/or the Chief Finance 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.
- 8.11 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. Where there urgent business must be dealt with, the requirements of the Access to Information Procedure Rules must be complied with.
- 8.12 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.
- 8.13 Subject to 3 working days' notice being provided to the Democratic Services Manager, questions can be submitted by members of the public at meetings of

the Cabinet, in accordance with Council Procedure Rule No.35 and Appendix 7 of the Council Procedure Rules.

## **9 Voting at Cabinet Meetings**

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

## **10 Cabinet Committees/Sub-Committees**

- 10.1 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.

## **11 Motion Under Standing Order 12**

- 11.1 As prescribed in Rule 43.10 of Part C of the Council Procedure Rules, a mover of a motion under Standing Order 12 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.

## **12 Resolving Disputes**

- 12.1 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.

## **13 Reserves/substitute members**

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

## **14 Approval of Urgent Business**

- 14.1 Where any matter is urgent and cannot await the next meeting, the Chief Executive may take the necessary action, provided that she has first consulted the Leader (or Deputy Leader if he/she is not available). Appendix 4 of the Council Procedure Rules apply.

# **SCRUTINY PROCEDURE RULES**

## **1 Scrutiny Arrangements**



- 1.1 The Council has established Scrutiny arrangements in accordance with the Local Government Act 2000.
- 1.2 It is recognised that these arrangements are an important and integral part of the Council's functions, not only in relation to calling the Cabinet to account but in allowing all Members of the Council to participate in the development of the Council's policies, plans and strategies, including budgetary work, and to contribute to decision making in the Council, and to work with partners in developing services and improving outcomes for local people.
- 1.3 The role of the Council in scrutinising other public bodies such as the National Health Service is recognised and the Council's arrangements reflect these statutory responsibilities.
- 1.4 The Council's political structure seeks to provide a wide-ranging, robust and well managed Scrutiny function with particular emphasis on ensuring that the Council and its successors can meet obligations and deliver services effectively and as efficiently as possible to its citizens. The monitoring, reviewing and developing of the Council's policies, plans and strategies is also recognised as a key and important function for the authority on both the Cabinet and Scrutiny sides of the organisation.
- 1.5 The Council will keep under review its Scrutiny arrangements and will make changes where it considers these are appropriate and will lead to improvements and an improved Scrutiny function.

## **2 Scrutiny Structure**

- 2.1 Subject to any matters reserved to the Council, the Scrutiny Committees will oversee the discharge of the Council's Scrutiny functions and responsibilities. The detailed responsibilities of the Committees are set out in Part 3 of this Constitution.
- 2.2 The Committees may appoint such task and finish panels as they consider appropriate to undertake specific tasks on their behalf, with the same powers as those Committees. Whilst these will be on a task and finish basis in most cases, the Committees are not precluded from establishing such Panels on a more permanent basis subject to regular review. Task and finish panel members do not have to be members of the Scrutiny Committees, but may not be members of the Cabinet.
- 2.3 Where the Committees establish any Panel under 2.2 above, they will set out the name of the Panel, its membership (including the Chairman and, if appropriate, the Vice-Chairman) and the terms of reference including relevant dates for completion of the task or review.
- 2.4 The Council may from time to time, as it considers appropriate, review and change its Scrutiny arrangements.
- 2.5 The functions of the Council's Scrutiny Committees are set out in detail in Part 3 of this Constitution.

- 2.6 Any body established under these Scrutiny arrangements will be a politically proportionate body reflecting the overall political representation on the Council.
- 2.7 The Council will appoint the Chairman and Vice-Chairman of the Scrutiny Committees at its Annual meeting.
- 2.8 A Member who is appointed to and sits on the Cabinet shall not be appointed as a Member of any Scrutiny Committee, or any task and finish panel.
- 2.9 No Member of the Council shall be involved in scrutinising a decision where he/she has been directly involved.
- 2.10 The Council has appointed the following Scrutiny Committees:

**[Insert details of the appointed Committees as further details emerge]**

### **3 Co-option**

- 3.1 There are four statutory co-optees in respect of the Council's Education function as follows:
- A Church of England Diocese representative
  - A Roman Catholic Diocese representative
  - Two parent governor representatives
- 3.2 In respect of education matters only, as defined in the relevant guidance, the statutory co-optees will be voting members of the Scrutiny Committee. They will be invited to attend other Scrutiny Committee meetings (excluding Full Council) where Children's Services matters are under consideration, subject to any exclusions in law or statutory guidance.
- 3.3 At those other bodies to which they have not been appointed, they shall be entitled only to speak on matters relating to Children's Services issues. They may speak on other issues only with the consent of the Chairman.

The Scrutiny Committees shall be entitled to appoint persons to be non-voting co-optees taking into account any advice or guidelines issued from time to time by the Council. Such co-options may relate to a prescribed period of office or to specific issues under consideration. Any person co-opted under these arrangements will be entitled to participate fully in the work of the Committees subject to any conflicts of interests.

### **4 Work Programme**

- 4.1 The Scrutiny Committees will consult with other parts of the organisation as appropriate, including the Cabinet, on the preparation of any work programme.
- 4.2 The Committees will take into account any views expressed following consultation under 4.1 above in drawing-up and agreeing any work programme. It should also take into account the resources, both officer and financial, available to support its proposals.

4.3 Once any programme has been approved, a copy will be sent to all Members of the Council and all relevant officers.

4.4 The Scrutiny Committees shall respond, as soon as they may consider it is possible to do so, to requests from the Council and the Cabinet, to review particular areas of Council activities. Where they do so, they will report their findings and any recommendations back to the Cabinet and/or Council.

## **5 Agenda for Scrutiny Committees**

5.1 Matters to be considered will be set out in an Agenda, together with appropriate and relevant supporting papers.

5.2 Any Member of a Scrutiny Committee shall be entitled to require, in writing, that an item be included on the agenda, and such item shall appear on the agenda for the next meeting of the Committee in question. The Committee will decide how the item should be considered and whether or not it can be included in its work programme.

5.3 Similarly, the Leader of the Council or a Cabinet Member with specific portfolio responsibilities may give notice in writing requiring an item to appear on an agenda of a Scrutiny Committee, relating to their area of responsibilities. The Committee will decide how the item should be considered and whether or not it can be included in its work programme.

5.4 Subject to Council Procedure Rule 34 and Appendix 6 of the Council Procedure Rules, any other Member may give notice in writing to the Monitoring Officer, requesting an item to appear on an agenda of a Scrutiny Committee. The item shall be included after consulting the Chairman of the Committee.

5.5 Any Member raising an item under 5.2, 5.3 and 5.4 above shall be precluded from raising the matter again for a period of six months from the date it is considered by the Committee in question.

## **6 Policy Review and Development**

6.1 The Scrutiny Committees have a key role in policy and budget development.

6.2 The Budget and Policy Planning Framework contains details of the process by which the Scrutiny Committees may perform that role.

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

6.4 Scrutiny Committees may hold enquiries and investigate options for future direction in policy development and may appoint specialists to assist them in this process. They may visit sites, conduct public surveys, hold public meetings, commission research and undertake such other things they consider reasonable

and necessary to inform their deliberations. They may call witnesses on any matter under consideration and may pay to any specialists and witnesses a reasonable fee and expenses for doing so within budgetary provision.

## **7 Reports from the Scrutiny Committees**

- 7.1 The Council or Cabinet (as appropriate) shall consider any report from the Committees at its next programmed meeting.

## **8 Access to the Forward Plan**

- 8.1 The Scrutiny Committees will have access to the Cabinet's Forward Plan and timetable for decisions and intentions for consultation.

## **9 Rights of Scrutiny Members to documents**

- 9.1 In addition to their rights as Councillors, Members of Scrutiny Committees have the additional right of access to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.
- 9.2 Nothing in this paragraph prevents more detailed liaison between the Cabinet and the Scrutiny Committees depending on the particular matter under consideration.

## **10 Members and Officers giving account**

- 10.1 The Scrutiny Committees may scrutinise and review decisions made or actions taken in connection with the discharge of any Council function. As well as reviewing the documentation, in fulfilling its scrutiny role, it may require any Member of the Cabinet, to attend before it to explain in relation to matters within their remit:

- any particular decision or series of decisions;
- the extent to which the actions taken implement Council policy; and/or
- their performance.

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

- 10.2 Where any Scrutiny Committee requires an officer to attend to answer questions or discuss issues, this will be agreed with the Chief Executive.

Where it is agreed that an officer should appear to answer questions, their evidence should, as far as possible, be confined to questions of fact and explanation relating to policies and decisions. Officers may explain:-

- what the policies are;
- the justification and objectives of those policies as the Cabinet sees them;
- the extent to which those objectives have been met; and
- how administrative factors may have affected both the choice of policy measures and the manner of their implementation.

- 10.3 Officers may be asked to explain and justify advice they have given prior to executive decisions being taken. They may also be asked to explain and justify executive decisions they have taken under delegated powers.
- 10.4 Officers should not be expected and should avoid being drawn into discussions of politically contentious matters and any officer input should be consistent with the requirements for political impartiality.
- 10.5 The requirements of any protocols on Member/Officer relationships and the Officer Code of Conduct must be adhered to where an officer is attending the Scrutiny Committees.
- 10.6 Where any Member or Officer is required to attend a Scrutiny Committee under this provision, the Chairman of that Committee will inform the Monitoring Officer, who will inform the Member or Officer in writing giving, at least ten clear working days notice of the meeting. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the Committee. Where the account to be given to the Committee will require the production of a report, then the Member or Officer concerned will be given reasonable and sufficient notice to allow for its preparation.
- 10.7 Where, in exceptional circumstances, the Member or Officer is unable to attend on the required date, then the Committee shall, in consultation with the Member or Officer, arrange an alternative date for attendance.

## **11 Attendance by others**

- 11.1 The Scrutiny Committees may invite individuals other than those referred to in paragraph 10.1 and 10.2 above to address it, discuss issues of local concern and/or answer questions.

## **12 Call-in**

- 12.1 When a decision is made by the Cabinet, or a Committees or Sub-Committees of the Cabinet, by an individual Cabinet Member, or when a key decision is made by an officer with delegated authority from the Cabinet, the decision shall be published, by electronic means, and shall be available at the main offices of the Council normally within 2 clear working days of being made. All Members of the Council will be sent an electronic record of all such decisions within the same timescale.
- 12.2 Subject to paragraphs 12.3 and 12.4 below a decision taken and to which paragraph 12.1 above refers will not come into force, and may not be implemented, until the expiry of 5 clear working days after the decision was made and recorded.
- 12.3 Where a decision referred to in paragraph 12.1 has been made, any 8 or more Members of the Council may submit a call-in notice, in writing, within the period specified in paragraph 12.2 above, to the Monitoring Officer. Where the notice is valid, the decision cannot be implemented until the procedures in this section

have been followed. Where a valid notice is received the decision shall stand referred to the appropriate Scrutiny Committee for advice.

- 12.4 Where as a result of a corporate electronic system failure or planned shutdown, which prevents the issuing of or access to Cabinet decisions or the submission of a call-in notice by electronic means in accordance with the Council's call-in provisions, the periods for notification or submission shall be extended by the period of delay, provided that period is in excess of four hours. When, in the opinion of the Monitoring Officer, the period of delay is likely to extend beyond two clear working days, he/she shall agree with the Chairman of the appropriate Scrutiny Committee, alternative arrangements to avoid any delay in implementing Cabinet decisions not subject to "call-in".
- 12.5 The decision will be referred to the first available meeting of the appropriate Scrutiny Committee, subject to the Access to Information Procedure Rules.
- 12.6 The Committee may decide to offer no advice, in which case the decision may be implemented. Where advice is offered, the Cabinet will reconsider the decision as set out in paragraph 12.8 below.
- 12.7 Once the Scrutiny Committees has decided to offer advice or not to offer advice, no further call-in notices may be served in respect of that matter subject to the decision in question. This does not prevent the matter being scrutinised further by the appropriate Committee after the decision has been implemented in accordance with these rules.
- 12.8 Where a matter is considered and advice is offered by a Scrutiny Committee, its advice will be submitted to the Cabinet for a decision to be made on the matter. The Cabinet shall consider the advice but shall not be bound to accept it in whole or in part. It shall have sole discretion to decide on any further action to be taken in relation to the decisions in question, including confirming with or without amendment, of the original decision or deferment pending further consideration, or making a different decision. There are no further rights to enable a Member of the Council to submit a call-in notice. The decision may then be implemented.
- 12.9 If under this procedure the Scrutiny Committee, having considered the matter, indicates that it does not wish to offer any advice to the Cabinet, then the decision can be implemented immediately.
- 12.10 A submitted call-in notice can only be withdrawn with the written consent of all of its signatories.
- 12.11 The "call-in" facility does not apply to the determination of a Motion under Standing Order 12 (Notices of Motion) – Appendix 2.

### **13 Call-in and Urgency**

- 13.1 The call-in procedure set out above shall not apply where the decision being taken by the Cabinet is urgent. A decision will be urgent if any delay, caused by the call-in process, would be likely to seriously prejudice the Council's or the public's interests. The Chairman of the appropriate Scrutiny committee or, in his/her absence, the Chairman of the Council must agree that the decision

should be treated as urgent, and that the call-in procedure should not apply. In the absence of the Chairman, the Vice-Chairman's consent shall be required. In the absence of both, the Chief Executive or her nominee's consent shall be required. Where such agreement is reached, all Members of the Council shall be notified by electronic means.

## **14 The Party Whip**

- 14.1 It is generally accepted that the Party Whip should be suspended in respect of Scrutiny matters. However, when considering any matter in respect of which a Member of the Scrutiny Committees is subject to a formal party whip, the Member must declare the existence of the Whip, and the nature of it before the commencement of the Committee's deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the Minutes of the meeting.

## **15 Procedure at Scrutiny Committees Meetings**

- 15.1 Scrutiny Committees shall consider the following business:

- record of the last meeting;
- consideration of any matter referred to the Committee by the Council or by the Cabinet;
- consideration of any matter referred to the Committees for advice in relation to call-in or a decision;
- responses of the Cabinet on reports of the Scrutiny Committees; and
- the business otherwise set out on the agenda for the meeting.

- 15.2 Where a Scrutiny Committee conducts investigations (e.g. with a view to policy development), it may also ask people to attend to give evidence at its meetings, which are to be conducted in accordance with the following principles:

- the investigation is to be conducted fairly and all Members of the Committees are to be given the opportunity to ask questions of attendees, and to contribute and speak;
- those assisting the Committees by giving evidence are to be treated with respect and courtesy; and
- the investigation to be conducted so as to maximise the efficiency of the investigation or analysis.

- 15.3 Following any investigation or review, the Committee shall prepare a report, for submission to the Cabinet and/or Council as appropriate and shall, unless there are exceptional reasons, make its report and findings public.

## **16 Matters within the remit of more than one Scrutiny Committee**

- 16.1 Where a matter before a Scrutiny Committee also falls within the remit of one or more Scrutiny Committee, the decision as to which body will consider it, including any arrangements for joint working or sharing information, will be resolved by the Chairmen and Vice Chairmen of the Scrutiny Committees concerned.

# Access to Information Procedure Rules

## *ACCESS TO INFORMATION PROCEDURE RULES*

### INTRODUCTION

The access to information rules which apply to Council meetings and committees of the Council are set out in sections 100A-H and Schedule 12A of the Local Government Act 1972. As the Council is functioning under an executive form of governance it is bound by further access to information rules contained in The Local Authorities (Executive Arrangements) (Access to Information) (England)

**Regulations 2000 (as amended). These rules comply with both statutory provisions.**

#### 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. These can be found on the Council's website or obtained from the Westfields
- 1.4 These rules do not affect any more specific right 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 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 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 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 chair 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
- (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.
- (d) Copies of the agendas of Cabinet meetings will be circulated to all Members

- 5.2 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.

**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 four 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 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 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, and**
  - (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.

- (c) that resolution states, by reference to reasons given in a relevant report or otherwise, in all the circumstances of the case, 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
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).  "Financial or business affairs" includes contemplated, as well as past or current, activities	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  Information within paragraph 3 is not exempt if it must be registered under (a) the Companies Act 1985; (b) the Friendly Societies Act 1974; (c) the Friendly Societies Act 1992; (d) the Industrial and Provident Societies Acts 1965 to 1978; (e) the Building Societies Act 1986; or (f) the Charities Act 1993.
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the

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

## **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.**

**The following will also be exempt information for some meetings of the Standards Committee or a Sub-Committee of it<sup>1</sup>**

<sup>1</sup> Where a Standards Committee is convened to consider a matter referred under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008 or referred under section 58 (1)(c) of the Local Government Act 2000.

<b>Category</b>	<b>Condition</b>
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 standards committee, or to a sub-committee of a standards committee, set up to consider any matter under regulations 13 and 16 to 20 of the Standards Committee (England) Regulations 2008, (referrals to and references from Monitoring Officers) or referred under section 58(1)(c) of the Local Government Act 2000 (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

## 10.5 Procedure at Standards Committee (Complaints and reviews)

**When a meeting of a Sub-Committee of the Standards Committee is convened to consider a written complaint<sup>61</sup> or to review a decision<sup>62</sup> then Part 5A of the Local Government Act 1972 does not apply to those meetings. Regulation 8 of the Standards Committee (England) Regulations 2008 applies to those meetings generally and Regulation 8(5)(a) governs the production and publication of a written summary of the sub-committees decision.**

## 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

<sup>61</sup> Received under Section 57A(1) of the Local Government Act 2000

<sup>62</sup> Under Section 57B of the Local Government Act 2000

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 11 to 16 below also apply

A “key decision” means an executive decision which, is likely

- (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.

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 15 (general exception) or Rule 16 (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; and
- (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

## **13.0 THE FORWARD PLAN**

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

**Forward plans will be prepared by the Leader to cover a period of four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan. 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 14 days before the start of the period covered and made available to the relevant 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; and
- (g) **a list of the documents submitted to the decision taker for consideration in relation to the matter.**

**13.2.2 The Proper Officer will publish once a year a notice in at least one newspaper circulating in the area, stating:**

- (a) that Key Decisions are to be taken on behalf of the Council;
- (b) that a forward plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;
- (c) that the plan will contain details of the Key Decisions to be made for the four month period following its publication;
- (d) that each plan will be available for inspection at reasonable hours free of charge at the Council's offices;
- (e) that each plan will contain a list of the documents submitted to the decision takers for consideration in relation to the Key Decisions on the plan;
- (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the forward plan is available;
- (g) that other documents may be submitted to decision takers;
- (h) the procedure for requesting details of documents (if any) as they become available; and
- (h) the dates on each month in the following year on which each forward plan will be published and available to the public at the Council's offices.

**13.2.3 Exempt information (as defined in Rule 10) and the advice of political advisers need not be included in a forward plan and confidential information (as defined in Rule 9) cannot be included, 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 until it has been included in the next forward plan and until the start of the first month to which the next Forward Plan relates;
- (b) the Proper Officer has informed the chair of a relevant 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
- (c) 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**

**15.1.1 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 chair of the body making the decision, obtains the agreement of the chair of a relevant Scrutiny Committee that the taking of the decision cannot be reasonably deferred and the decision is urgent. If there is no chair of a relevant Scrutiny Committee, or if the chair of the relevant 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.**

**16.0 REPORTS TO COUNCIL**

**16.1 When a Scrutiny Committee can require a report**

Where an executive decision has been made and was not treated as a Key Decision and a relevant Scrutiny Committee thinks that it should have been treated as a Key Decision the Scrutiny Committee may require the Cabinet to submit a report to the Council within such reasonable time as the Scrutiny Committee specifies. The power to require a report rests with the Committee but is also delegated to the Chief Executive who shall require such a report on behalf of the Committee when so requested by the Chair of the Committee or any 5 Members. Alternatively, the requirement may be raised by resolution passed at a meeting of the relevant Scrutiny Committee.

**16.2 The Cabinet's report to Council**

**The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the resolution of the Scrutiny Committee, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual or body making the decision, and if the leader is of the opinion that it was not a key decision, the reasons for that opinion.**

### **16.3 Quarterly reports on special urgency decisions**

**In any event 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 Public access to reports intended to be taken into account**

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 report has been available for public inspection for at least five clear days.

### **18.2 Provision of copies of reports to 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 chair of every relevant 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 Directors. This does not require the disclosure of exempt or confidential information, or advice from a political adviser or assistant.

## **19.0 MEMBERS ACCESS – ADDITIONAL STATUTORY RIGHTS**

19.1 All Members will be entitled to inspect any document which is in the possession or under the control of the Council and contains material relating to

- (a) any future business to be transacted at a public meeting or
- (b) any business which has previously been transacted at any private meeting or
- (c) an executive decision previously made by an individual Member or
- (d) a Key decision already made by an Officer

19.2 Members have no right to inspect a document which discloses:

- (a) exempt information, unless it relates to category 3 (and is not information relating to terms proposed by or to the Council in the course of negotiation for a contract) or category 6 in paragraph 10.4; or
- (b) the advice of a political adviser or assistant

## **20.0 SCRUTINY MEMBERS ACCESS– ADDITIONAL STATUTORY RIGHTS**

**20.1 Subject to the limits below, a member of a Scrutiny Committee (including its Sub-Committees) will be entitled to copies of any document which is in the possession or control of the Cabinet or its Committees and contains material relating to**

- (a) business transacted at any meeting of the Cabinet or its committees; or**
- (b) a executive decision made by an individual member**
- (c) a Key Decision made by an Officer**

20.2 A Scrutiny member will not be entitled to:

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

## 21. 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

# Whistleblowing Protocol

[CHESHIRE EAST][CHESHIRE WEST] COUNCIL

## WHISTLE BLOWING PROTOCOL

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## 1.0 INTRODUCTION

- 1.1.1 As an employee, Member or contractor, supplier to or consultant with, the Council you may, from time to time, witness practices that seem suspicious. However, you may be deterred from expressing your concerns because you fear harassment or victimisation. You may feel that it may be easier to ignore the concern rather than to report your suspicions.
- 1.1.2 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we encourage employees and others with serious concerns about any aspect of the Council's work to come forward and voice those concerns without fear of reprisals. This policy document makes it clear that you can do so, without the fear of victimisation, subsequent discrimination or disadvantage.
- 1.1.3 These procedures are intended to encourage and enable you to raise serious concerns within the Council rather than overlooking a problem or 'blowing the whistle' outside. Premature or unnecessary publicity may damage the Council's reputation, impede proper investigations, or hurt individuals unnecessarily.
- 1.1.4 A Member shall not disclose confidential information, using the public interest exemption in the Council's Member Code of Conduct without first considering using the procedure in this Whistle Blowing Protocol to raise concerns about an issue, unless it is necessary for the disclosure to be made to the Police or a Regulatory Body.

## 2.0 PURPOSE & SCOPE

- 2.1.1 These procedures have been introduced to provide employees, Members and contractors, suppliers or consultants with a secure basis for reporting suspicions of impropriety, in the knowledge that the matter will be treated confidentially.
- 2.1.2 This policy covers the reporting of a malpractice, the information that will need to be recorded and the steps that need to be followed to ensure that you do not suffer any recriminations or victimisation.
- 2.1.3 These procedures are intended to supplement, rather than replace, existing Council policies and procedures (for example the Council's grievance procedures and the policies dealing with harassment) whereby employees of the Council may already raise complaints or matters of genuine concern with the Council. They are therefore designed to provide for those instances where the person reporting the matter feels that, for any reason, they cannot make use of other procedures.

2.1.4 This policy has been designed to take into account Human Rights considerations.

## 2.2 CONTRACTORS, SUPPLIERS AND CONSULTANTS

- 2.2.1 In your dealings with the Council you will often work very closely with Council employees and Councillors. You will also operate under the Council's procedures and policies. The Council is fully aware that if you notice anything suspicious, or come across malpractice, you may be concerned about your relationship or future

relationship with the Council if you raise this. As with employees and Councillors, the Council wants to encourage you to voice any concerns you may have, secure in the knowledge that the matter will be taken seriously and investigated, and that you and your organisation will not suffer any disadvantage.

### 3.0 LEGISLATION

3.1.1 The Public Interest Disclosure Act 1998 has been introduced to protect employees who expose serious wrongdoing in the workplace. It applies where a malpractice is disclosed involving:-

- a crime or breach of regulatory, administrative and common law;
- a miscarriage of justice;
- danger to health and safety;
- damage to the environment;
- unauthorised use of public funds;
- possible fraud and corruption; and
- sexual, physical or financial abuse of clients

3.1.2 The Act protects you from victimisation where you reasonably believe the information, and are acting in good faith.

3.1.3 A disclosure is protected if you have an honest and reasonable suspicion that a malpractice has occurred, is occurring or is likely to occur. As an employee you can raise the matter with your line manager who will refer it to one of the named below, or if you prefer direct to:-

- Head of Paid Service;
- Monitoring Officer;
- [Relevant Director];
- [Audit Manager].

3.1.4 Councillors can report suspicions to:-

- Head of Paid Service
- Monitoring Officer
- [Relevant Director];
- [Audit Manager]

A confidential record will be maintained by the [Audit Manager] of all concerns raised (except if the complaint is against the [Audit Manager's] Team).

3.1.5 It is important to note that in response to concerns raised with any of the above, they will initially act independently of each other when making investigations, except for the Audit Manager who may be asked to carry out the investigation.

### 4.0 SAFEGUARDS

#### 4.1 HARASSMENT OR VICTIMISATION

4.1.1 The Council is committed to good practice and high standards, and wants to be supportive of employees.

4.1.2 The Council recognises that the decision to report a concern can be a difficult one to make. It will not tolerate any harassment or victimisation and will protect you if you raised a concern in good faith.

4.1.3 If you happen to be involved in any disciplinary or redundancy procedures these will be kept separate from the investigation of your complaint.

## 4.2 CONFIDENTIALITY

4.2.1 The Council will protect the confidentiality of all matters raised by concerned employees and Councillors.

4.2.2 If there is any breach of confidentiality by any of the four named officers in paragraph 3.1.3, the employee raising the concern can take the appropriate action under the grievance procedures.

## 4.2.3 ANONYMOUS ALLEGATIONS

4.3.1 This policy encourages you to put your name to your allegation whenever possible.

4.3.2 This is because concerns expressed anonymously are much less powerful than those raised by an identified individual. Anonymous allegations will, however, be considered at the discretion of the Council.

4.3.3 In exercising this discretion the factors to be taken into account would include:-

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of confirming the allegation from attributable sources.

## 4.4 UNTRUE ALLEGATIONS

4.4.1 If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you. If, however, as an employee you make an allegation frivolously, maliciously or for personal gain, disciplinary action may be taken against you. In the case of Members, the Standards Committee will consider the matter and make recommendations to the Council.

## 5.0 PROCEDURES

### 5.1 RAISING A CONCERN

5.1.1 You can raise your concern orally, (i.e. face to face or over the phone) or in writing. If you write, mark the envelope 'personal, private and confidential' and if the concern is of a serious nature, hand deliver the envelope to the person you wish to report the matter to.

5.1.2 Whichever way you choose, please give as much information as you can. Remember also to give your name, job and say if you do not want to be contacted at work (if so, give your home address and phone number).

5.1.3 You should include the following:-

- background information;
- information as to why you are concerned;
- details of any other procedures which you have already used, and what happened;



- the names of the employee/Members involved and where they work (if applicable);
- dates or periods of time relating to the matter;
- the names and jobs of any other employees/Members who may support your concern.

5.1.4 The earlier you express your concern, the easier it will be to take action.

5.1.5 Although you will not be expected to prove beyond doubt the truth of an allegation, you will need to demonstrate that there are reasonable grounds for the concern.

5.1.6 You may find it easier to raise the matter jointly if there is another employee/Member who has the same concern, and will support your allegation.

5.1.7 You would be advised to invite your trade union representative, or another person, to be present during any meetings or interviews in connection with the concern raised. In this case you can remain anonymous when the concern is first raised, but you may have to be involved personally if the matter goes further.

## 5.2 HOW THE COUNCIL WILL RESPOND

5.2.1 One of those named in paragraphs 3.1.3 will firstly decide whether to carry out an investigation and determine which Council procedure it is appropriate to use.

5.2.2 If it is decided that the matter should be taken further under Whistleblowing procedures, the concern raised will be:-

- investigated by the Monitoring Officer, Management or [Internal Audit];
- referred to the police;
- referred to the external auditor;
- considered to become the subject of an independent inquiry;
- considered under the Council's Member Code of Conduct.

You may be interviewed by the person investigating the matter.

5.2.3 In order to protect individuals accused of a possible malpractice, enquiries will be made to decide whether an investigation is appropriate. Some concerns may be resolved by agreed action without the need for an investigation. If urgent action is required, this will take place before an investigation is undertaken.

## What You Will be Told

5.2.4 The person to whom you have raised your concern will contact you in writing within 10 working days detailing the following:

- acknowledging that the concern has been received;
- indicating how the Council intends to deal with the matter;
- giving an estimate of how long it will take to provide a final response;
- detailing any initial enquiries that have been made; and
- informing you whether further investigations will take place (and if not, why not).

5.2.5 The amount of contact you have with the people considering the matter will depend on the type of concern, the potential difficulties of the investigation and the availability of information. Wherever possible, you will be told the final outcome of any investigation.

5.2.6 The Council will take steps to minimise any difficulties you may experience as a result of raising a concern. For example, if required to give evidence in criminal or disciplinary proceedings, the Council will arrange for you to receive advice about the procedure.

### 5.3 THE RESPONSIBLE OFFICER

5.3.1 The Council's Monitoring Officer has overall responsibility for the maintenance and operation of this policy.

### 5.4 IF YOU ARE NOT SATISFIED WITH THE COUNCIL'S RESPONSE

5.4.1 This procedure is meant to give everyone an effective way to raise a concern within the Council (and if possible resolve it internally). However, if you are still unhappy after using the procedure (and getting a final written response) you are entitled to consider taking your concern elsewhere. If you do this, these are some of the contacts that are available:

- the Council's external auditors [insert link/contact details]
- UNISON Whistle blowing Hotline – 0800 597 9750
- Audit Commission Anti Fraud and Corruption Unit – 020 7630 1019
- The independent charity Public Concern at Work – 020 7404 6609
- a Citizens Advice Bureau
- the Standards Board for England – 0845 0788181
- a relevant professional or regulatory body
- a relevant voluntary organisation
- the police

Officer Code of Conduct

**CESHIRE EAST**

**CODE OF CONDUCT**

**FOR EMPLOYEES**

## **CONTENTS**

- 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 **A S P I R E** (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 item of stationery, you should report the circumstances and the type of hospitality to your Head of Service.

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)**

#### **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 the 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.**

## **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.

8.5 Membership of organisations with secrecy about rules, membership or conduct may be incompatible with your work. If, in connection with your employment with the Council, you use such membership for either your own, or someone else's personal or business gain, you will be in breach of the Code.

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 be in 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.**

## **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.**

## **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 CCT 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 held on computer 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 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

***DRAFT – These forms may have to be redrafted and referral points established post vesting day***

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.

This matrix signposts employees to other key Regulations & Standards, although this should only be used for guidance. Each heading is not mutually exclusive and an employee may find that all headings could apply to them.

**NOTE – These policies have yet to be developed for the new Council.**

APPLIES TO ALL EMPLOYEES	WORKING WITH THE PUBLIC	WORKING WITH SERVICE USERS	WORKING WITH RESOURCES	USING COMMUNICATIONS	WORKING WITH PARTNERS/OTHER ORGANISATIONS	WORKING WITH INFORMATION
Recruitment and Selection  Diversity  Dignity at Work  Health and Safety  Cheshire Standards  Confidentiality  Core Values  Working time regulations  Whistle Blowing	R & S  Diversity  Freedom of Information	Confidentiality Code  Standards of Conduct for Staff in Community Services (Vulnerable Adults)  Code of Conduct (Children) <i>tbc</i>  Integrity Code for Schools  Code of Conduct (schools)	Anti-fraud & Corruption  Financial Regulations	Acceptable Use Policy  IT Code of Practice	Confidentiality	Confidentiality  Data Protection  Freedom of Information

## 6. CHESHIRE EAST CORE VALUES “ASPIRE 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 make. Values underpin the culture of our authority and the way we conduct ourselves at work.

<b>Action</b> – take responsibility for making the right things happen	<b>Support</b> – work and learn together in order to succeed	<b>People</b> – put customer and community needs at the heart of what we do
<b>We will:</b> <ul style="list-style-type: none"> <li>• Implement agreed changes as quickly as possible</li> <li>• Balance urgency with quality and efficiency in delivery</li> <li>• Take responsibility for solving problems where possible</li> <li>• Be flexible about the way we work</li> </ul>	<b>We will:</b> <ul style="list-style-type: none"> <li>• Communicate clearly and openly</li> <li>• Share information and best practice with others</li> <li>• Work together being prepared to compromise</li> <li>• Encourage and support others to achieve their potential</li> </ul>	<b>We will:</b> <ul style="list-style-type: none"> <li>• Do our best to understand people's needs and requirements</li> <li>• Treat each person as an individual providing choice where possible</li> <li>• Work hard to make our processes simple</li> <li>• Agree realistic timescales and keep people informed</li> </ul>
<b>Integrity</b> – be open, honest and fair, expecting the same of others	<b>Recognition</b> – value all views, efforts and achievements	<b>Excellence</b> – strive to improve all that we do
<b>We will:</b> <ul style="list-style-type: none"> <li>• Treat everyone with dignity and respect</li> <li>• Speak up when others are behaving inappropriately</li> <li>• Face up to difficult or awkward questions and situations</li> <li>• Separate personal feelings from</li> </ul>	<b>We will:</b> <ul style="list-style-type: none"> <li>• Involve all members of our team, valuing their differences</li> <li>• Acknowledge everyone's efforts and contributions</li> <li>• Give and receive feedback positively and constructively</li> <li>• Celebrate success</li> </ul>	<b>We will:</b> <ul style="list-style-type: none"> <li>• Take the initiative and make suggestions</li> <li>• Keep up to date with new developments</li> <li>• Try new ideas and approaches</li> <li>• Reflect and learn from our own and others' experiences</li> </ul>

professional requirements			
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# Member/Officer relations protocol

## MEMBER/OFFICER RELATIONS PROTOCOL

### 1.0 INTRODUCTION

- 1.1 The aim of this Protocol is to guide Members and Officers of Cheshire East Council in their relations. It is hoped the Protocol will help build good working relationships between Members and Officers as they work together to build the new authority.
- 1.2 A strong, constructive, and trusting relationship between Members and Officers is essential to the effective and efficient working of the Council.
- 1.3 It is recognised that relationships between Members and Officers are very varied and can often be complex. Therefore, this Protocol does not seek to be comprehensive and may not cover all situations. However, it is hoped that framework it provides will serve as a guide to dealing with a wide range of circumstances.
- 1.4 This Protocol forms a key part of the Council's approach to corporate governance and its commitment to uphold standards in public life.

### 2.0 INTERPRETATION OF THE PROTOCOL

- 2.1 Members and Officers must observe this Protocol at all times.
- 2.2 The provisions of this Protocol will be interpreted having regard to the requirements of the Members' Code of Conduct, the Officers' Code of Conduct, the Council's Whistleblowing Protocol and the Council's policies, procedures and processes.
- 2.3 Where there is a conflict or discrepancy between this Protocol and the Codes and Policies referred to in 2.2 above then those Codes and Policies shall have precedence. Conventions will also be taken into account in cases of conflict or discrepancy. Any questions over interpretation will be decided by the Monitoring Officer in consultation with the Chief Executive.
- 2.4 It is recognised that, in the period preceding any Council Election or by-election, specific protocols are in place. These protocols will take

precedence over this Protocol where there is again conflict or a discrepancy.

- 2.5 This Protocol does not affect or interfere with any rights or protection which a person may have in law.

### **3.0 THE ROLE OF MEMBERS**

- 3.1 Members are accountable to the electorate who determine every four years the people they wish to represent them on the authority. Therefore, this Protocol recognises that Members are elected to serve the people of Cheshire East.
- 3.2 Members, as politicians, may express the values and aspirations of their party political groups but they must recognise that in their role as Members they have a duty to always act in the public interest.
- 3.3 Members may have a number of roles within the Council and need to be alert to the possible conflicts of interest that may arise.
- 3.4 At all times Members should be aware that the role they are performing may impact upon the nature of their relationship with Officers and the expectations that Officers may have of them.
- 3.5 Members are mainly responsible for:
- the political direction and leadership of the Authority
  - the determination of policies, plans and strategies
  - deciding matters to give effect to or implement those policies, plans and strategies particularly in service delivery terms
  - performing the Council's regulatory functions
  - monitoring and reviewing, primarily through the Executive and Overview and Scrutiny functions, the Council's performance in implementing its policies, plans and strategies and in delivering its services
  - participation in partnership working
  - representing the Council on national regional and local bodies and organisations

- representing the views of their communities and individual constituents

3.6 Some Members will have additional responsibilities relating to their membership of the Executive, Scrutiny Boards or other committees and sub-committees. The holding of these roles will involve a different relationship with certain Officers in areas where the Member has particular roles and responsibilities.

3.7 Members who serve on committees and sub-committees collectively have delegated responsibilities. These responsibilities may include deciding quasi-judicial matters which by law are excluded from the remit of the Cabinet.

3.8 Officers can expect Members:

- to act within the policies, practices, processes and conventions established by the Council
- to work constructively in partnership with Officers acknowledging their separate and distinct roles and responsibilities
- to understand and support the respective roles and responsibilities of Officers and their associated workloads, pressures and reporting lines
- to give political leadership and direction and to seek to further their agreed policies and objectives with the understanding that Members have the right to take the final decision in issues based on advice
- to treat them fairly and with respect, dignity and courtesy
- to act with integrity, to give support and to respect appropriate confidentiality
- to recognise that Officers work to the instructions of their senior Officers and not to individual Members
- not to subject them to intimidation, harassment, or put them under undue pressure. Members will have regard to the seniority of Officers in determining what are reasonable requests, having regard to the relationship between the Member and Officer, and the potential vulnerability of Officers, particularly at junior levels

- not to request them to exercise discretion which involves acting outside the Council's policies and procedures
- not to authorise, initiate, or certify any financial transactions or to enter into any contract, agreement or undertaking on behalf of the Council or in their role as a Member without proper and lawful authority
- not to use their position or relationship with Officers to advance their personal interest or those of others or to influence decisions improperly
- to comply at all times with the Members Code of Conduct, the law, the Constitution and such other policies, procedures, protocols and conventions agreed by the Council.

3.9 It is important that Members of the Authority:

- respect the impartiality of Officers and not undermine their role in carrying out their duties
- do not ask Officers to undertake work, or act in a way, which seeks to support or benefit a particular political party or gives rise to an Officer being criticised for operating in a party political manner
- do not ask Officers to exceed their authority where that authority is given to them in law, by the Council or by their Managers

3.10 The Head of Paid Service, the Monitoring Officer and the Chief Finance Officer (section 151 Officer) and other Statutory Officers have specific responsibilities placed on them by law. These responsibilities go beyond their obligations as employees of the Council. Where an Officer is discharging his/her responsibilities under any statutory office a Member or Members shall not:

- interfere with or obstruct the Officer in exercising those responsibilities
- victimise any Officer who is discharging or has discharged his/her responsibilities of the Statutory Office

## **4.0 THE ROLE OF OFFICERS**

4.1 The primary role of Officers is to advise, inform and support all members and to implement the lawfully agreed policies of the Council.

- 4.2 Officers are responsible for day-to-day managerial and operational decisions within the Council. Members should avoid inappropriate involvement in such matters.
- 4.3 In performing their role Officers will act professionally, impartially and with political neutrality. Whilst Officers will report a Members' view on an issue, the Officer should not be influenced or pressured to make comments, or recommendations which are contrary to his professional judgement or views.
- 4.4 Officers should:
- implement decisions of the Council and its subordinate bodies which are lawful, which have been properly approved in accordance with the requirements of the law and the Council's constitution, and are duly recorded.
  - work in partnership with Members in an impartial and professional manner
  - assist and advise all parts of the Council. Officers must always act to the best of their abilities in the best interests of the authority as expressed in the Council's formal decisions.
  - respond to enquiries and complaints in accordance with the Council's standards
  - be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for Members, the media or other sections of the public.
  - act with honesty, respect, dignity and courtesy at all times
  - provide support and learning and development opportunities for Members to help them in performing their various roles
  - not seek to use their relationship with Members to advance their personal interests or to influence decisions improperly
  - comply, at all times, with the Officer Code of Conduct, and such other Policies or Procedures approved by the Council
- 4.5 Officers have the right not to support Members in any role other than that of Member, and not to engage in actions incompatible with this Protocol. In particular, there is a statutory limitation on Officers' involvement in political activities.

- 4.6 Some Officers may be appointed to local, regional or national bodies because of their particular skills and expertise. They may be appointed specifically to represent the Council or in their personal capacity.

## **5.0 THE RELATIONSHIP: GENERAL**

- 5.1 Members and Officers are servants of the public. They are indispensable to one another. However, their responsibilities are distinct. Members are accountable to the Public, whereas Officers are accountable to the Council as a whole.
- 5.2 At the heart of the Codes, 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 nor seek to exert undue influence on the other party.

## **6.0 THE RELATIONSHIP: OVERVIEW AND SCRUTINY BODIES**

- 6.1 It is accepted that in carrying out the Council's overview and scrutiny functions Members may require an Officer to attend to answer questions or to discuss issues.
- 6.2 It is recognised by this Protocol that challenge in a constructive and non-confrontational way is important in ensuring policies and performance are meeting the Council's strategic objectives. Therefore, nothing in this Protocol is intended to stop Members holding Officers to account for decisions made under delegated powers. Nor is it intended to affect the Council's overview and scrutiny functions
- 6.3 When deciding whether to require an Officer to attend, the body will consider the seniority of the Officer it would be appropriate to invite. There is a presumption against inviting Officers outside the senior Officers' range to attend in this capacity. Requests for Officer attendance should be made to the Director concerned. Such requests should indicate in broad terms the areas which Members will want to discuss, and should give reasonable notice of the dates when attendance is needed
- 6.4 Where an Officer attends such a body his/her contribution should be confined to matters of fact and explanation. However, an Officer may be asked to explain and justify advice which he/she has given prior to a decision having been taken, including decisions taken by him/her under delegated powers.



- 6.5 Officers should not be drawn, overtly or covertly, into discussions of a political nature which would be inconsistent with the political neutrality requirement. Any questioning of an Officer should not be reasonably interpreted as constituting harassment.
- 6.6 In overview and scrutiny proceedings the capability or competence of Officers must not be questioned. The distinction needs to be drawn between reviewing the policies, performance and decisions of the Council or its services and the appraisal of staff's individual performance. The latter is not a function of overview and scrutiny bodies.
- 6.7 The approach here is consistent with the Overview and Scrutiny Procedure Rules as set out in the Council's Constitution.
- 6.8 In applying this part of the Protocol, account will be taken of any guidance agreed by Overview and Scrutiny bodies provided that guidance is consistent with the principles of this Protocol.

## **7.0 POLITICAL GROUPS**

- 7.1 The Chief Executive, together with Directors and Heads of Service and occasionally other employees all with the permission of the Chief Executive may at times decide that it is appropriate to attend a political group meeting with a view to briefing and advising on the formulation of policy. This may be of his/her own initiative or at the request of a political group. However, the decision on whether he/she should attend is the Chief Executive's, in either case.
- 7.2 If the Chief Executive decides that he/she or another Officer may attend a political group meeting and it concerns a proposed significant policy change which is about to be presented to a meeting of the Council, Executive Group or committee, then he/she must offer the facility to all other political groups within the Authority, indicating the area of policy upon which he/she is offering to brief/advise. He/she will inform the leader of the political group with whom he/she is having the meeting that he/she will be offering the facility to the other political groups.
- 7.3 Certain points must be clearly understood by all those participating in this process, Members and Officers alike. In particular:
- (a) Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if Officers are not expected to be present at meeting, or parts of meeting, when matters of party business are to be discussed;

(b) political 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

(c) similarly, where Officers provide information and advice for a political 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 Cabinet or relevant committee when the matter in question is considered.

7.4 Special care needs to be exercised whenever Officers are involved in providing information and advice to a political group meeting which includes persons who are not Members of the Council. Such persons will not be bound by the Model Code of Local Government Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons Officers may not be able to provide the same level of information and advice as they would to a Members only meeting.

7.5 Officers must respect the confidentiality of any political group discussions at which they are present in the sense that they should not relay the content of any such discussions to another political group.

## **8.0 ACCESS TO PREMISES**

8.1 Officers have the right to enter the Council land and premises to carry out their work. Some Officers have the legal power to enter property in the ownership of others.

8.2 Members have the right of access to Council land and premises to fulfil their duties.

8.3 When making visits as individual Members, Members should:

- notify and make advance arrangement with the appropriate manager or Officer in charge (unless this is not practicable);
- comply with health and safety, security and other workplace rules;
- not interfere with the services or activities being provided at the time of the visit; and

- notify ward Members beforehand if visiting somewhere outside his/her own ward.

## **9.0 USE OF COUNCIL RESOURCES**

9.1 All Members are provided with services such as typing, printing and photocopying and goods such as stationary and computer equipment, to assist them in discharging their roles as Members. These goods and services are paid for by public funds and should only be used for Council purposes.

9.2 Members should not ask Officers to provide resources or support which they are not permitted to give, for example support or resources

- which are to be used for business which is solely to do with a political party;
- for work in connection with a ward or constituency party political meeting or electioneering;
- for work associated with an event attended by a Member in a capacity other than as a Member of the Council;
- for private personal correspondence;
- for work in connection with another body or organisation where a Member's involvement is other than as a member of the Council; and
- which constitutes support to a Member in his/her capacity as a member of another authority.

## **10.0 BREACHES OF THE PROTOCOL**

10.1 Where a Member is dissatisfied with the conduct, behaviour or performance of an Officer, the matter should be raised with the appropriate Director or Head of Service. Where the Officer concerned is a Director, the matter should be raised with the Chief Executive, and in the case of a Head of Service with the appropriate Director. Where the employee concerned is the Chief Executive, the matter should be raised with the Monitoring Officer.

10.2 On the Members' side, where the relationship between Members and Officers breaks down or becomes strained, every effort will be made to resolve matters informally, through conciliation by an appropriate senior manager or Members. Officers will also have recourse to the Grievance

Procedure or to the Council's Monitoring Officer, as appropriate, in certain circumstances. In the event of a grievance or complaint being upheld, the matter will be referred to the Chief Executive who, having advised the Leader of the Council and the other appropriate Group Leaders, will decide on the course of action to be taken, following consultation with the Standards Committee if appropriate.

- 10.3 Breaches of the protocol by a Member may also constitute a breach of the Members Code of Conduct.

## **11.0 STATUS OF THIS PROTOCOL**

- 11.1 This Protocol was approved by Full Council on 24 February 2009. It now forms part of the Council's Constitution. As such, it is binding on all Members including co-opted and independent Members, and Officers.
- 11.2 This Protocol shall apply, as appropriate and necessary, to any person appointed individually or on behalf of a body or organisation to advise support or assist the Authority in its work.

## **12.0 TRANSITIONAL PERIOD**

- 12.1 Prior to 1 April 2009 this Protocol will apply to relationships between Cheshire East Council Members and Officers of the following organisations:
- 12.1.1 Cheshire County Council
  - 12.1.2 Chester City Council
  - 12.1.3 Congleton Borough Council
  - 12.1.4 Crewe and Nantwich Borough Council
  - 12.1.5 Ellesmere Port and Neston Borough Council;
  - 12.1.6 Macclesfield Borough Council and
  - 12.1.7 Vale Royal Borough Council
- 12.2 Prior to 1 April 2009 reference to the 'Council' should be interpreted as to include the 'Shadow Authority'.



# **FINANCE AND CONTRACT PROCEDURE RULES**



## FINANCE AND CONTRACT PROCEDURE RULES

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## **FINANCE AND CONTRACT PROCEDURE RULES**

### **Foreword**

- 1 Finance and Contract Procedure Rules provide the framework for managing the authority's financial affairs. They apply to every Member and Officer of the Authority and anyone acting on its behalf.
- 2 The Rules identify the financial responsibilities of the full Council, Cabinet and Scrutiny members, the Head of Paid Service, the Monitoring Officer, the Borough Treasurer and Head of Assets and other Chief Officers. Cabinet Members and Chief Officers should maintain a written record where decision making has been delegated to members of their staff, including seconded staff. Where decisions have been delegated or devolved to other responsible Officers, such as School Governors, references to the Chief Officer in the Rules should be read as referring to them.
- 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 Borough Treasurer and Head of Assets 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 Borough Treasurer and Head of Assets is also responsible for reporting, where appropriate, breaches of the Finance and Contract Procedure Rules to the Council and/or to the Cabinet Members.
- 5 Chief Officers are responsible for ensuring that all staff in their departments are aware of the existence and content of the authority's Finance and Contract Procedure Rules and other internal regulatory documents and that they comply with them. They must also ensure that an adequate number of copies are available for reference within their departments.
- 6 The Borough Treasurer and Head of Assets 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 Authority are required to follow.
- 7 The Rules set out the framework for managing the authority's financial affairs and although they can not cover every eventuality, the spirit of the Rules should always be followed. Where there is any uncertainty in



matters of interpretation, you are advised to consult the Borough Treasurer and Head of Assets and/or the Monitoring Officer. You are also advised to consult the Employee Code of Conduct or Members Code of Conduct .

## **A Financial Management**

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

Financial Management covers all financial accountabilities in relation to the running of the Authority, 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 chief officers

Other financial accountabilities:

- Virement
- Supplementary estimates
- Treatment of year end balances
- Accounting policies
- Accounting records and returns
- The annual statement of accounts

<b>A</b>	<b>Financial Management</b>
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### **The Full Council**

**A.1** The full Council is responsible for:

- Adopting and changing the Council's constitution and members' code of conduct;
- Approving the policy framework and budget within which the Cabinet operates;
- Approving and monitoring compliance within the Authority's overall framework of accountability and control. The framework is set out in its constitution.
- Monitoring compliance with the agreed policy and related Cabinet decisions;
- Approving procedures for recording and reporting decisions taken. This includes those key decisions delegated by and decisions taken by the Council and its committees. These delegations and details of who has responsibility for what decisions are set out in the constitution.

### **The Cabinet**

**A.2** The Cabinet is responsible for:

- Proposing the policy framework and budget to the full Council;
- Discharging cabinet functions in accordance with the policy framework and budget.

**A.3** Cabinet decisions can be delegated to:

- A committee of the Cabinet;
- An individual Cabinet member;
- An officer, or
- A joint committee.

**A.4** The Cabinet is responsible for establishing protocols to ensure that individual Cabinet members consult with relevant officers before taking a decision within his or her delegated authority. In doing so, the individual member must take account of legal and financial liabilities and risk management issues that may arise from the decision.

### **Cabinet Members**



- A.5** Individual Cabinet Members have decision making powers in accordance with the Constitution and the Scheme of Delegation.

## **Committees**

### **Scrutiny Committee**

- A.6** The Scrutiny Committee is responsible for:

- scrutinising cabinet decisions before or after they have been implemented;
- holding the cabinet to account;
- making recommendations on future policy options;
- reviewing the general policy and service delivery of the authority.

### **Governance and Constitution Committee**

- A.7** The Governance and Constitution Committee is an advisory body and reports to the full council. It has right of access to all the information it considers necessary and can consult directly with internal and external auditors.

- A.8** The committee is responsible for :

Reviewing:

- the external auditor's reports;
- the annual audit letter;
- internal audit's annual and interim reports.

Approving:

- the Council's Statement of Accounts;
- for signature by the Leader and the Chief Executive, the Council's Annual Governance Statement.

### **Standards Committee**

- A.9** The Standards Committee is established by the full council and is responsible for :

- promoting and maintaining high standards of conduct amongst councillors;
- advising the Council on the adoption and revision of the members' code of conduct;



- monitoring the operation of the code.

### **Other Regulatory Committees**

- A.10** Planning, conservation and licensing are not Cabinet functions but are exercised through the multi-party planning and licensing committee under powers delegated by the full council. The planning and licensing committee reports to the full Council.

### **Statutory Officers**

#### **Head of Paid Service (Chief Executive)**

- A.11** The Head of Paid Service is responsible for:
- the corporate and overall strategic management of the authority as a whole;
  - establishing a framework for management direction, style and standards;
  - monitoring the performance of the organisation;
  - together with the monitoring officer, the system of record keeping in relation to all the full Council's decisions (see below).

- A.12** The Head of Paid Service must report to and provide information for the Cabinet, the full Council, the Scrutiny Committee and other committees.

#### **Monitoring Officer**

- A.13** The Monitoring Officer for the Council is the Borough Solicitor. The Monitoring Officer is responsible for promoting and maintaining high standards of financial conduct and therefore provides support to the standards committee. The monitoring officer is also responsible for reporting any actual or potential breaches of the law or maladministration to the full council and/or to the Cabinet, and for ensuring that procedures for recording and reporting key decisions are operating effectively.

- A.14** The Monitoring Officer 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.15** The Monitoring Officer is responsible for advising all councillors and officers about who has authority to take a particular decision.

- A.16** The Monitoring Officer 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.17** The Monitoring Officer (together with the Borough Treasurer and Head of Assets) 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 budget. Actions that may be 'contrary to the budget' include:

- initiating a new policy which may have financial implications;
- committing expenditure in future years to above the budget level;
- incurring interdepartmental transfers above 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 Borough Treasurer and Head of Assets or their representative).

**A.18** The Monitoring Officer is responsible for maintaining an up-to-date constitution.

#### **Borough Treasurer and Head of Assets**

**A.19** The Borough Treasurer and Head of Assets has statutory duties in relation to the financial administration and stewardship of the authority. This statutory responsibility cannot be overridden. The statutory duties arise from:

- Section 151 of the Local Government Act 1972
- The Local Government Finance Act 1988
- The Local Government and Housing Act 1989
- The Accounts and Audit Regulations, as updated.

**A.20** The Borough Treasurer and Head of Assets is responsible for:

- in conjunction with the other chief officers, the proper administration of the authority'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.21** **Section 114** of the Local Government Finance Act 1988 includes a requirement of the director of finance to report to the full council, cabinet



and external auditor if the authority 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 authority
- is about to make an unlawful entry in the authority's accounts.

Section 114 of the 1988 Act also requires:

- the Borough Treasurer and Head of Assets 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 authority to provide the Borough Treasurer and Head of Assets 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.22** The Internal Audit Manager is appointed as the Council's Money Laundering Reporting Officer and will maintain and advise on Anti-Money Laundering procedures.

**A.23** They will be responsible for notifying the National Criminal Intelligence Service (NCIS) 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 Cabinet Member for Finance will be kept informed of any notifications to NCIS and of any issues arising from them.

### **Schemes of Delegation**

**A.24** 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.

### **Chief Officers**

**A.25** 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.

**A.26** Chief officers are responsible for:

- ensuring that cabinet members are advised of the financial implications of all proposals and that the financial implications have been agreed by the Borough Treasurer and Head of Assets.
- ensuring that cabinet members are advised of legal implications of all proposals and that the legal implications have been agreed with the Monitoring Officer.
- signing contracts on behalf of the Authority.
- consulting with the Borough Treasurer and Head of Assets and seek approval on any matter liable to affect the authority's finances materially, before any commitments are incurred.
- in conjunction with the Borough Treasurer and Head of Assets, the proper administration of the authority's financial affairs;
- ensuring that appropriate Schemes of Delegation are in place.

**Heads of Service**

**A.27** Heads of Service are those Officers that report directly to Chief Officers and are responsible for maintaining up to date Schemes of Delegation (A.24) in their service.

**Authorised Officers**

**A.28** Authorised Officers are those officers given specific delegated authority by their Head of Service as documented in that service's Scheme of Delegation and Financial Scheme of Delegation.

**Managing Expenditure**

**Scheme of Virement**

**A.29** 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.30** The Scheme of Virement is intended to enable the Cabinet, chief officers 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.31** The full Council is responsible for agreeing procedures for virement of expenditure between budget headings.



- A.32** Chief officers are responsible for agreeing in-year virements within delegated limits, in consultation with the Borough Treasurer and Head of Assets where required.

Key controls for the scheme of virement are:

(a) It is administered by the Borough Treasurer and Head of Assets within guidelines set by the full council. Any variation 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. Chief officers 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. The rules below cover virement; that is, switching resources between approved estimates or heads of expenditure. For the purposes of this scheme, a budget head is considered to be a line in the approved estimates report, or, as a minimum, at an equivalent level to the standard service subdivision as defined by CIPFA's Service Expenditure Analysis.

(c) Virement does not create additional overall budget liability. Chief officers 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. Chief officers must plan to fund such commitments from within their own budgets.

- A.33** Approval limits for virements are as follows:

Approval Level	Virement Amount/Percentage
Head of Service	Up to £100,000 or 10% of a net Service budget, whichever is the lowest. (Revenue)
Chief Officers	Greater than 10% of a net Service budget but less than £100,000 (Revenue)

	<p>Up to £100,000 between net Service budgets (Revenue)</p> <p>Up to £100,000 funded from underspends within the approved Service budget (Capital)</p>
Chief Officers in consultation with relevant Cabinet Member and Resources Member	Over £100,000 and up to and including £500,000 (Revenue/Capital)
Cabinet	Over £500,000 and up to and including £1,000,000 (Revenue/Capital)
Council	<ul style="list-style-type: none"> <li>▪ £1,000,000 or more; and/or</li> <li>▪ Significant ongoing financial implications; and/or</li> <li>▪ Significant policy change.</li> </ul> <p>(Revenue/Capital)</p> <p>“Significant” to be defined by the Borough Treasurer and Head of Assets or their representative.</p>

- No virements are permitted from ringfenced budgets.

### **Supplementary Estimates**

- A.34** Where services wish to undertake an activity not originally identified in the budget or extend an existing capital scheme where additional income becomes available in year, approval must be sought for a fully funded supplementary capital or revenue estimate.
- A.35** Any request for a supplementary capital or revenue estimate for £1,000,000 or more, whether or not the scheme is fully funded, must be approved by Council.
- A.36** Supplementary estimates which are not fully funded and are to be funded from general reserves or balances, regardless of value, must be approved by Council. Council approval is also required where there are significant implications (as determined by the Borough Treasurer and Head of Assets) for future year's budgets.
- A.37** Approval limits for fully funded supplementary capital and revenue estimates, (and schemes where funding is borrowed from reserves and which are subject to a guaranteed repayment plan and are therefore considered to be fully funded), are as follows:

Approval Level	Supplementary Estimate Amount
Chief Officers	Up to £100,000
Chief Officers in consultation with relevant Cabinet Member and Cabinet Member for Resources.	Between £100,000 and £500,000
Cabinet	Between £500,000 and £1,000,000
Council	Over £1,000,000

### **Treatment of Year End Balances**

- A.38** The full Council is responsible for agreeing procedures for carrying forward under- and overspendings on budget headings.
- A.39** A budget head is considered to be a line in the approved estimates report, or, as a minimum, at an equivalent level to the standard service subdivision as defined by CIPFA's Service Expenditure Analysis.
- A.40** Any residual overspending on a Service budget will be carried forward as the first call on the following year's budget.
- A.41** Any revenue underspending at the year end may be carried forward, subject to the agreement of the Cabinet on the advice of the Cabinet Member for Finance, except where any specific approval has already been given or where there is a specific grant condition requirement. All carryforward 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 purpose or issue. Chief Officers should include provisional indications of likely carry forward requests in their reports on the mid-year and three-quarter review of performance.
- A.42** 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, exceptionally, be carried forward subject to consideration by the Cabinet Member for Finance of the business case supporting the proposal. 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**

- A.43** The Borough Treasurer and Head of Assets is responsible for selecting accounting policies and ensuring that they are applied consistently.
- A.44** The Borough Treasurer and Head of Assets is responsible for the



preparation of the authority's statement of accounts, in accordance with proper practices as set out in the format required by the *Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice* (CIPFA/LASAAC), for each financial year ending 31 March.

**A.45** The key controls for accounting policies are:

- Systems of internal control are in place that ensure 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.46** The Borough Treasurer and Head of Assets 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.47** Chief officers are responsible for adhering to the accounting policies and guidelines set by the Borough Treasurer and Head of Assets.

### **Accounting Records and Returns**

**A.48** The Borough Treasurer and Head of Assets is responsible for determining the accounting procedures and records for the authority.

**A.49** All accounting procedures will be approved by the Borough Treasurer and Head of Assets.

**A.50** All accounts and accounting records will be compiled by the Borough Treasurer and Head of Assets or under his/her direction. The form and content of records maintained in other Directorates will be approved by the Borough Treasurer and Head of Assets.

**A.51** The key controls for accounting policies are:

- calculating, 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.52** The Borough Treasurer and Head of Assets is responsible for ensuring that the annual statement of accounts is prepared in accordance with the *Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice* (CIPFA/LASAAC). The full Council is responsible for approving the annual statement of accounts.



## **B Financial Planning**

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

The full Council is responsible for agreeing the Authority's policy framework and budget, which will be proposed by the Cabinet. In terms of financial planning, the key elements are:

- **The Corporate Plan** – this sets out the Authority's long term aims and objectives. It is regularly revisited to ensure that the Council's priorities remain relevant to its overall aims and to assess the progress being made in achieving these.
- **The Budget** - The authority is a complex organisation responsible for delivering a wide variety of services. It needs to plan effectively and to develop systems to enable scarce resources to be allocated in accordance with carefully weighed priorities. The budget is the financial expression of the authority's plans and policies.
- **The Capital Strategy** - Capital expenditure involves acquiring or enhancing fixed assets with a long-term value to the authority, 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.
- **Specific Service Plans and Strategies** which have a financial implication (see B.1)

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

- Policy Framework
- Strategic Planning Framework
- Budgeting
  - Format of the Budget
  - Revenue Budget Preparation, Monitoring and Control
  - Determination, Monitoring & Control of Affordable Borrowing
  - Resource Allocation
  - Capital Programmes
- Leasing and Rental Agreements
- Maintenance of Reserves
- Reporting

## **Policy Framework**

**B.1** The full Council is responsible for approving the policy framework and budget. The policy framework comprises the following statutory plans and strategies:

- Adult Learning Plan
- Annual Library Plan
- Capital Management Strategy
- Capital Programme
- Children and Young People Plan
- Contaminated Land Inspection Strategy
- Council's Corporate Plan
- Crime and Disorder Reduction Strategy
- Economic Strategy
- Housing Investment Programme (including Plans and Strategies within it)
- Licensing Authority Policy Statement
- Lifelong Learning Development Plan
- Local Area Agreement
- Local Development Framework
- Local Transport Plan
- Medium Term Financial Strategy
- Social Exclusion Strategy
- Sustainable Community Strategy
- Waste Strategy
- Youth Justice Plan

**B.2** The full Council is also responsible for approving procedures for agreeing variations to approved budgets, plans and strategies forming the policy framework and for determining the circumstances in which a decision will be deemed to be contrary to the budget or policy framework. Decisions should be referred to the full Council by the Monitoring Officer.

**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 budget policy framework within the financial limits set by the Council.

## **Strategic Planning Framework**

**B.4** Each year the Council produces:

- A Corporate Plan detailing its objectives and targets over a 3 to 4 year planning horizon.
- A Medium Term Strategy, including a Capital Strategy, detailing the financial and service scenario over a 3 to 4 year planning horizon and the policy and expenditure options required to respond to this scenario.

**B.5** The Borough Treasurer and Head of Assets 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. Individual Chief Officers 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 Borough Treasurer and Head of Assets.

**B.6** The Cabinet, advised by the Borough Treasurer and Head of Assets, Chief Officers 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 Scrutiny Committee before the Cabinet finalises its recommendations to Council. The final Budget policy and Council Tax precept 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 Borough Treasurer and Head of Assets. The draft budget should 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 Borough Treasurer and Head of Assets 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 Borough Treasurer and Head of Assets as soon as possible following approval by the full Council.
- B.12** It is the responsibility of chief officers to ensure that budget estimates reflecting agreed service plans are submitted to the Cabinet and that these estimates are prepared in line with guidance issued by the Cabinet.
- B.13** The Cabinet will then submit a 'final budget' to the full Council for approval.
- B.14** The Borough Treasurer and Head of Assets 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 additional net expenditure to either revenue or capital budgets without first having considered the advice of the Cabinet and the Borough Treasurer and Head of Assets on the financial implications arising.

### **Monitoring and Control**

- B.16** The Borough Treasurer and Head of Assets 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 chief officers to control income and expenditure within their area and to monitor performance, taking account of financial information provided by the Borough Treasurer and Head of Assets. They should report on variances within their own areas. They should also take



any action necessary to avoid exceeding their budget allocation and alert the Borough Treasurer and Head of Assets to any problems.

**B.18** The Borough Treasurer and Head of Assets is responsible for the following:

(a) To establish an appropriate framework of budgetary management and control that ensures that:

- budget management is exercised within annual cash limits unless the full council agrees otherwise
- each chief officer has available timely information on receipts and payments on each budget which is sufficiently detailed to enable managers 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 chief officer. 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) To administer the authority's scheme of virement.

(c) To submit reports to the cabinet and to the full council, in consultation with the relevant chief officer, where a chief officer is unable to balance expenditure and resources within existing approved budgets under his or her control.

(d) To prepare and submit reports on the authority's projected income and expenditure compared with the budget on a regular basis.

**B.19** Chief officers are responsible for the following:

(a) To maintain budgetary control within their departments, in adherence to the principles in B.17, and to ensure that all income and expenditure are properly recorded and accounted for.

(b) To ensure that an accountable budget manager is identified for each item of income and expenditure under the control of the chief officer (grouped together in a series of cost centres). As a general principle, budget responsibility should be aligned as closely as possible to the decision-making that commits expenditure.

(c) To ensure that spending remains within the service's overall cash limit, and that individual budget heads are not overspent, by monitoring the budget and taking appropriate corrective action where significant variations from the approved budget are forecast.

(d) To ensure that a monitoring process is in place to review performance levels/levels of service in conjunction with the budget and is operating effectively.

(e) To prepare and submit to the cabinet reports on the service's projected expenditure compared with its budget, in consultation with the Borough Treasurer and Head of Assets.

(f) To ensure 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
- materially extend or reduce the authority's services.

(g) To ensure compliance with the scheme of virement.

(h) To agree with the relevant chief officer where it appears that a budget proposal, including a virement proposal, may impact materially on another service area or chief officer's level of service activity, after having consulted with the Borough Treasurer and Head of Assets and the Cabinet Member for Resources.

(i) To ensure Schemes of Delegation are maintained for that service.

(j) A general duty to ensure best value is obtained.

### **Determination, Monitoring & 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 Borough Treasurer and Head of Assets 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 Borough Treasurer and Head of Assets is responsible for developing and maintaining a resource allocation process that ensures due consideration of the full council's policy framework.

**B.24** The Borough Treasurer and Head of Assets 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** Chief officers are responsible for:

- To work within budget limits and to utilise resources allocated, and further allocate resources, in the most efficient, effective and economic way.
- To identify opportunities to minimise or eliminate resource requirements or consumption without having a detrimental effect on service delivery.

### **Capital Programmes**

#### **Capital Expenditure**

- B.26** Capital expenditure is broadly defined as expenditure in excess of £10,000, on the acquisition of a tangible asset, or expenditure which adds to (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 in excess of £250,000 will be treated as separate schemes or provisions.
- B.28** An Option Appraisal in the form of a detailed Business Case Template, in a form agreed by the Borough Treasurer and Head of Assets, must be prepared for all capital proposals with a gross estimated cost in excess of £250,000, 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. A summarised version of the Business Case Template will also be required for all schemes over £100,000. These will be used as the basis for assessing the affordability and deliverability of the scheme, as well as for monitoring, reporting and post-implementation review.
- B.29** Option Appraisals, in the form of a Business Case Template, must also be prepared for all revenue proposals with a significant financial impact, risk profile or policy change, as specified by the Borough Treasurer and Head of Assets. The proforma, in a form agreed by the Borough Treasurer and Head of Assets, must include an assessment of the Service consequences, risk and impact on users, and include any differential



impact on particular groups or localities.

### **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 reconsidered.
- B.31** Departments 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 will be approved within the Capital Programme for schemes costing less than £250,000. Except in the case of provisions for blight on non-programmed capital schemes, a detailed breakdown of the expenditure proposed must be submitted for approval by the appropriate Cabinet Member as part of the policy and planning process. This requirement will also apply to block provisions included in the vehicle and equipment replacement programme.

### **Capital Monitoring and Amendments to the Capital Programme**

- 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 Borough Treasurer and Head of Assets 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 proforma where necessary.
- B.34** Any 'in year' approval sought for capital schemes in excess of £250,000 must be supported by a complete Business Case Template, in the format prescribed by the Borough Treasurer and Head of Assets, which has been endorsed by the officer Capital Appraisal Panel prior to submission to the appropriate Members.
- B.35** Project managers must ensure that the project specification remains consistent with the approved capital appraisal and continues to represent value for money for the Authority. Where project outcomes or costs alter significantly from those set out in the original appraisal a revised Business Case Template must be completed and submitted to the officer Capital Appraisal Panel.

### **Capital Receipts**



- B.36** The Borough Treasurer and Head of Assets must be informed of all proposed sales of land and buildings so that the effect on financial and property management can be assessed.
- B.37** The Borough Treasurer and Head of Assets will be responsible for the negotiations of all such sales.
- B.38** The Council will determine the amount of receipts to be set aside for the repayment of debt and how the balance of such receipts is to be used.

### **Leasing and Rental Agreements**

- B.39** 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 can be obtained from the Borough Treasurer and Head of Assets on general leasing arrangements and on whether the lease is a finance or operating lease. Borough Treasurer and Head of Assets approval must be obtained for all agreements which may involve a leasing charge.
- B.40** Leases relating to land or property also require the approval of the Chief Property Officer. Only the Monitoring Officer or his/her authorised deputies, or persons specifically authorised by the Service Scheme of Delegation, may sign such agreements.

### **Maintenance of Reserves**

- B.41** It is the responsibility of the Borough Treasurer and Head of Assets to advise the Cabinet and/or the full Council on prudent levels of reserves for the authority.
- B.42** The key controls are:
- To maintain reserves in accordance with the *Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice* (CIPFA/LASAAC) and agreed accounting policies.
  - For each reserve established, the purpose, usage and basis of transactions should be clearly identified.
  - Authorisation and expenditure from reserves by the appropriate chief officer in consultation with the Borough Treasurer and Head of Assets.
- B.43** The Borough Treasurer and Head of Assets is responsible for:
- Advising the Cabinet and/or the full council on prudent levels of



reserves for the Authority, and to take account of the advice of the external auditor in this matter.

**B.44** Chief officers are responsible for:

- Ensuring that resources are used only for the purposes for which they were intended.

## **Reporting**

**B.45** 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, collectively and individually, and the Scrutiny Committee after consulting the Borough Treasurer and Head of Assets 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.46** 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 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 Borough Treasurer and Head of Assets for any scheme estimated to cost in excess of £250,000, before it can be included in the Capital Programme.
- Quarterly reviews of revenue and capital expenditure with the first quarter report concentrating on the emerging budget issues resulting from a budget risk analysis, together with details of the action plans in place to mitigate budget risk.
- 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.47** 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 future year's budgets which may need consideration in the on-going Medium Term Strategy for Policy and Financial Planning.
- Items identified in Finance Procedure Rule re: approvals.
- Amendments to approved budgets (virements, SCE's 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 authority. 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 approving the authority's risk management policy statement and strategy and for reviewing the effectiveness of risk management. The Cabinet is responsible for ensuring that proper insurance exists where appropriate.
- C.2** The Borough Treasurer and Head of Assets is responsible for preparing the authority's risk management policy statement, for promoting it throughout the authority and for advising the Cabinet on proper insurance cover where appropriate.

### **Insurance**

- C.3** The Borough Treasurer and Head of Assets will maintain and administer the Council's insurances in accordance with the Risk Financing Strategy, agreed by Members, which describes the Council's approach to the financing of risk, its overall risk appetite and the level of funding available. The Borough Treasurer and Head of Assets is responsible for authorising the settlement or repudiation of insurance claims and associated costs. Advice will be sought from the Authority's insurance solicitors and insurers.
- C.4** Chief Officers and Heads of Service are responsible for informing the Borough Treasurer and Head of Assets 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 Borough Treasurer and Head of Assets.
- C.6** Chief Officers 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 Governance and Constitution Committee is responsible for determining the Risk Management Strategy, for implementing it, and monitoring and reviewing its effectiveness.
- C.10** The Borough Treasurer and Head of Assets develops the strategy and supporting framework on behalf of the Management Board. Governance and Constitution Committee scrutinise the Risk Management Process ensuring the Council's risks are managed effectively and that strategic decisions are informed by, and influence the Risk Register.
- C.11** Chief Officers are responsible for ensuring the Risk Management Strategy is implemented and that the Full Risk Management Cycle operates within their Department.

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 Borough Treasurer and Head of Assets.

- C.12** 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.13** 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.14** 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.15** Heads of Service will take account of, and address, corporate risks where appropriate and inform Internal Audit of any Service risks that should be considered significant enough to raise to the corporate level.
- C.16** 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.17** The corporate risk register will be reported to the Management Board and to the Governance and Constitution Committee in accordance with the budget reporting cycle.

### **Internal Controls**

- C.18** Internal control refers to the systems of control devised by management to help ensure the authority's objectives are achieved in a manner that promotes economical, efficient and effective use of resources and that the authority's assets and interests are safeguarded.
- C.19** The Borough Treasurer and Head of Assets 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 chief officers 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 2003 more specifically require that a “relevant body shall maintain an adequate and effective system of internal audit of its accounting records and of its system of internal control”.
- C.22** The CIPFA Internal Audit Code of Practice defines Internal Audit as “an assurance function that primarily provides an independent and objective opinion to the organisation on the control environment comprising risk management, control and governance by evaluating its effectiveness in achieving the organisation’s objectives.”
- C.23** Internal Audit fulfils the role of the Internal Audit function in the Council and provides assurance to the Section 151 officer, with regard to the effectiveness of the Councils 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 Internal Audit Manager 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 Councils objectives and an assessment of the risk which may affect the achievement of these objectives.
- C.26** The Internal Audit Manager is also responsible for reporting to those charged with Governance and currently satisfies this requirement by presenting an annual report to the Governance and Constitution 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 Governance and Constitution Committee. In addition any matters of material importance in relation to audit matters are also reported to the Cabinet and Governance and Constitution Committee.
- C.27** Audit staff will have full access to all premises, assets, records and third party fund transactions. With regards to organisations participating in partnering arrangements Audit staff shall have such access to premises, assets and records of the partner as is necessary for the purposes of the partnering arrangement, as detailed in Procedure Rule F.17. 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 Audit Commission is responsible for appointing external auditors to each local authority. 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 authority 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.30** The Borough Treasurer and Head of Assets is responsible for the development and maintenance of an anti-fraud and anti-corruption policy.
- C.31** The Council has an approved Safeguarding Resources Strategy (LINK)) which places responsibility for maintaining an anti fraud culture 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 Internal Audit Manager, in conjunction with other officers detailed in the Councils Investigation Protocols, will decide what steps are necessary.
- C.32** In line with the Safeguarding Resources Strategy and Investigation Protocols the Borough Treasurer and Head of Assets, Borough Solicitor and the Head of HR and Organisational Development, where appropriate, will, in consultation with the appropriate Chief Officer, decide whether any matter under investigation should be recommended for referral by the Chief Executive to the Police or the appropriate enforcement agency.

### **Assets**

- C.33** 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.34** Chief Officers 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.
- C.35** 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.36** Heads of Service are responsible for ensuring that all computer software used is properly licensed.
- C.37** Chief Officers 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 approach to property asset management is based on two main principles:
- Property is a corporate resource, owned by the Council, not by individual Departments. This principle underpins the fact that property is the Council's most expensive resource and that it needs to be managed proactively to support service delivery and improvement across all Departments.
  - Property is held only for the effective delivery of services to the Community. This is linked to a rigorous policy on property review and the disposal of any properties that are no longer needed or become unsuitable for current service requirements.
- C.39** The Council's policies, aims and objectives relating to property asset management are explained further in the Corporate Property Strategy and Asset Management Plan.
- C.40** Property assets are comparatively "illiquid" and changes necessarily take time to implement. Heads of Service should be aware of this when planning new initiatives or changes to service delivery patterns and must ensure that the Borough Treasurer and Head of Assets is consulted at the earliest possible stage of the planning process in order that appropriate advice and support can be given.

- C.41** Heads of Service are responsible for ensuring that property under their day to day control is occupied/used in accordance with all appropriate legal and regulatory requirements and that nothing occurs which might diminish the value of the asset. Particular care is required when carrying out alterations to a building and where any form of shared use with another organisation is planned. The advice of the Borough Treasurer and Head of Assets must be obtained before this is permitted.
- C.42** All property acquisitions, lettings and disposals must be negotiated and approved by the Borough Treasurer and Head of Assets and Borough Solicitor. 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 Borough Treasurer and Head of Assets 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 centre in order to fulfil its functions. Heads of Service are responsible for the control of stocks. They must ensure that stocks are appropriately 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. (Detailed guidance on limits is available from the Council's Insurance Section). If this is unavoidable in exceptional circumstances, the Chief Officer is responsible for making appropriate security arrangements.

### **Asset disposal/Write off**

- C.47** Chief officers and Heads of Service or their authorised officers, as specified in the Scheme of 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. Where the sum exceeds £5,000 approval must be sought from the Cabinet Member for Resources. Any write off which arises as a result of theft or fraud must be notified to the Internal Audit Manager immediately.

### **Treasury Management**

- C.48** The authority 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 Borough Treasurer and Head of Assets has delegated responsibility for implementing and monitoring the statement.
- C.50** All money in the hands of the authority is controlled by the Borough Treasurer and Head of Assets 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 Borough Treasurer and Head of Assets is responsible for reporting to the Cabinet a proposed 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 Borough Treasurer and Head of Assets, who is required to act in accordance with CIPFA's *Code of Practice for Treasury Management in Local Authorities*.
- C.53** The Borough Treasurer and Head of Assets 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 Borough Treasurer and Head of Assets to operate bank accounts as are considered necessary. Opening or closing any bank account shall require the approval of the Borough Treasurer and Head of Assets.

### **Investments and Borrowings**

- C.55** It is the responsibility of the Borough Treasurer and Head of Assets to:
- To ensure that all investments of money are made in the name of the authority or in the name of nominees approved by the full Council.
  - To ensure that all securities that are the property of the authority or its nominees and the title deeds of all property in the authority's ownership are held in the custody of the appropriate chief officer.
  - To effect all borrowings in the name of the authority.
  - To act as the authority's registrar of stocks, bonds and mortgages and to maintain records of all borrowing of money by the authority.

### **Trust Funds and Funds Held for Third Parties**

- C.56** It is the responsibility of the Borough Treasurer and Head of Assets to:
- To arrange for all trust funds to be held, wherever possible, in the name of the authority (e.g. 'Cheshire East 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 Borough Treasurer and Head of Assets, unless the deed otherwise provides.
  - To arrange, where funds are held on behalf of third parties, for their secure administration, approved by the Borough Treasurer and Head of Assets, 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** Chief Officers and Heads of Service are responsible, in consultation with the Head of Service for Human Resources (HR), for providing accurate and appropriate information and instructions to the HR Head of Service 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. Personnel will advise the Borough Treasurer and Head of Assets of relevant changes in respect of employee's pensions. The HR Head of Service 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 HR Head of Service 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 Chief Officers and Heads of Service and included in the Service Scheme of Delegation notified to the Borough Treasurer and Head of Assets.
- C.59** The Head of HR and Organisational Development 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 Borough Treasurer and Head of Assets and the Head of HR and Organisational Development. Appropriate Cabinet Member and Cabinet Member for Resources approval is required for proposals relating to SM1 and above.
- C.61** 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.

#### **Travelling and Subsistence**

- C.62** Heads of Service are responsible for instructing the HR Head of Service 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.63** 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.

- C.64** All claims for reimbursement must be made using appropriate official claim forms or via authorised electronic inputs.

### **Code of Conduct**

- C.65** 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 local government 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.

### **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 Internal Audit Manager 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 Internal Audit Manager 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** Chief Officers are responsible for ensuring that any third party funds controlled by Council staff are:-
- formally declared to the Internal Audit Manager as part of a register





kept by the Department/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 department.

**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.

<b>D</b>	<b>Financial Systems and Procedures</b>
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**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
    - 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 Council.
- D.3** Subject to any directions given by the Council, all arrangements with the Council's bankers must be made solely through the Borough Treasurer and Head of Assets. No bank accounts may be opened or arrangements made with any other bank except by agreement with the Borough Treasurer and Head of Assets.
- D.4** Bank transfers from the General Fund and subsidiary accounts must be signed by the Borough Treasurer and Head of Assets, or those officers authorised to sign through the agreed Scheme of Delegation.
- D.5** Cheques drawn must bear the mechanically impressed or facsimile signature of the Borough Treasurer and Head of Assets or be signed by the Borough Treasurer and Head of Assets or other officer authorised to sign through the agreed Scheme of Delegation.

### **Income**

#### **Generating Income**

- D.6** Local Authorities do not have general powers to trade with, or levy charges upon, other organisations or private individuals. The use of flexibilities in the Local Government Act 2003, its interpretation and application needs to be agreed in consultation with the Borough Solicitor. Chief Officers are responsible for ensuring that the appropriate legal authority for all income generating activities has been identified.
- D.7** Where it is possible to charge for goods or services, the charges must be based on the principle of full-cost recovery, including all service and corporate overheads. Where Chief Officers wish to charge more or less than the full cost, or where the proposal constitutes a new policy or a variation on previous practice the Borough Treasurer and Head of Assets must be consulted in advance. Member approval is required when the financial impact of any change is:

<b>Approval Level</b>	<b>Financial Impact of Change in Charges</b>
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Chief Officer	Up to and including £100,000
Borough Treasurer and Head of Assets in consultation with Cabinet Member for Resources	More than £100,000 and up to and including £500,000
Cabinet	Over £500,000 and up to and including £1,000,000
Council	£1,000,000 or more

- D.8** Charges must be reviewed annually in light of all relevant information, including consideration of appropriate inflation factors.

### **Collection of Income**

- D.9** Council officers must comply with arrangements determined by the Borough Treasurer and Head of Assets for the safe and efficient collection and recording of all money due to the Council.
- D.10** Chief Officers 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 Borough Treasurer and Head of Assets. These must include VAT where appropriate.
- D.11** The cost of collection should be taken into account when raising accounts. Chief Officers must ensure that the method of collection is appropriate to the value of the transaction.
- D.12** Chief Officers 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 the guidelines provided by the Borough Treasurer and Head of Assets to avoid incurring disproportionate banking charges on relatively low value transactions, taking into account local security arrangements.
- D.13** Chief Officers 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 mid year and outturn reports. 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.14** The Borough Treasurer and Head of Assets will monitor compliance with



Finance Procedure Rules D.11 and D13 and may, in circumstances where avoidable adverse cash flow has resulted, determine an appropriate interest charge against departmental budgets.

- D.15** Credit notes must be authorised by appropriate officers nominated in the local Scheme of Delegation.
- D.16** Any receipts, tickets or other documents used as receipts should be in a format agreed by the Borough Treasurer and Head of Assets. 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.17** Bad debts may be written off as follows:

<b>Approval Level</b>	<b>Bad Debt Amount</b>
Chief Officers and Heads of Service, or Authorised Officer as contained in the Scheme of Delegation, in consultation with the Borough Treasurer and Head of Assets.	Up to and including £2,500
Chief Officers and Heads of Service, in consultation with the Borough Treasurer and Head of Assets and Borough Solicitor.	Over £2,500 and up to and including £5,000.
Chief Officers and Heads of Service, in consultation with the Borough Treasurer and Head of Assets and Borough Solicitor and Cabinet Member.	Over £5,000 and up to and including £10,000.
Chief Officers and Heads of Service, in consultation with the Borough Treasurer and Head of Assets, Borough Solicitor, relevant Cabinet Member, and Cabinet Member for Resources.	Over £10,000 and up to and including £50,000.
Cabinet	Over £50,000.

Each Chief Officer shall provide an annual report to Scrutiny Committee as to bad debts and written off debts.

- D.18** Chief Officers 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.19** Chief Officers and Heads of Service are responsible for providing all appropriate information and instructions to the Head of Service responsible for the payment of creditors to allow for prompt and accurate payment for goods and services provided and for the analysis of expenditure.
- D.20** Except for purchases by visa purchase card, all purchases must be supported by an official requisition and purchase order unless previously agreed with the Borough Treasurer and Head of Assets. All purchases, including by visa purchase card, must have regard to these Finance Procedure Rules.
- D.21** All requisition and purchase orders must be authorised in accordance with the relevant service Scheme of Delegation to ensure that funds are available to pay for the purchase.
- D.22** Where a requisition for the purchase of goods or services exceeds £10,000 in value Finance and Contract Procedure rules E.33 – E.36 apply.
- D.23** 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 the terms and conditions for the goods and services to be provided.
- D.24** 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.25** Heads of Service must ensure robust processes to continually maintain service HR records and Schemes of Delegation so that electronic workflows associated with core financial systems are not compromised.
- D.26** All purchasing activity must be carried out in accordance with the Council's Procurement Strategy 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.27** Approval of the Borough Treasurer and Head of Assets 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.28** Heads of Service must consult the the Borough Treasurer and Head of Assets on appropriate arrangements for purchases of goods and services which can not be accommodated within standard ordering and payment processes.

#### **Payment of Invoices**

- D.29** All invoices must be sent directly by the creditor to the address stated on the official purchase order to enable prompt payment.
- D.30** 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.31** Invoices received without a valid purchase order number will be returned to the creditor as unauthorised for payment.
- D.32** 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 Borough Treasurer and Head of Assets. 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.33** Payment will only be made for goods and services which have been formally receipted in accordance with receipting procedures set out by the Borough Treasurer and Head of Assets .
- D.34** All purchasing activity must be carried out in accordance with the Council's Procurement Strategy and advice issued about 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.35** 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 to the Borough Treasurer and Head of Assets.
- D.36** Any such requests must be authorised by an officer designated with an appropriate approval limit in the relevant service Scheme of 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.37** Appropriately authorised requests for payment will be processed by the Borough Treasurer and Head of Assets and paid by BACS. Cheques will only be used in exceptional cases and by prior agreement.
- D.38** 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 Borough Treasurer and Head of Assets, other alternative options which may be more appropriate.
- D.39** 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.40** Heads of Service are responsible for the appropriate deployment and management of VISA purchase cards within their service.

#### **Local Bank and Imprest Accounts**

- D.41** Local bank and 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 Borough Treasurer and Head of Assets.
- D.42** Heads of Service are responsible for ensuring that where local arrangements are in place:
  - Local schemes of 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.43** Local arrangements may not be used in any circumstances to circumvent either the Councils Corporate Procurement Strategy 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.44** The Borough Treasurer and Head of Assets is responsible for paying all allowances to members.
- D.45** The Borough Treasurer and Head of Assets will make payments to any members entitled to claim allowances on receipt of the proper form, completed and certified in accordance with the Council's scheme for allowances.

### **Taxation**

- D.46** It is the responsibility of the Borough Treasurer and Head of Assets 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 authority employees on taxation issues.
- D.47** It is the responsibility of chief officers 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 authority are added to the authority'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 Borough Treasurer and Head of Assets.

### **Trading Accounts and Business Units**

- D.48** 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.

**D.49** It is the responsibility of the Borough Treasurer and Head of Assets to advise on the establishment and operation of trading accounts and business units.

**D.50** It is the responsibility of chief officers to:

- To consult with the Borough Treasurer and Head of Assets and Borough Solicitor 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 authority. 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.

## **E Contract Procedure Rules**

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

This section covers all aspects of procurement and Contracts procedures in relation to EU and National legislation.

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

The roles and responsibilities of:

- The Cabinet
- The Committees of the Cabinet
- The Statutory Officers
- All Officers procuring goods and services on behalf of the Authority

**Introduction**

- E.1** These Rules set a clear framework for the procurement of goods, works and services for the Council. This aims to ensure a system of openness, integrity and accountability where the probity and transparency of the process will be beyond reproach. Working within the Rules in turn leads to better value for money and gives confidence to all concerned that the Council is fulfilling its fiduciary responsibilities. These Rules apply to all



quotations (informal procurement with a value up to £50,000) and tenders (formal procurement over £50,000)]

- E.2** Any dispute or difference as to the interpretation of these procurement procedure rules shall be resolved by the Borough Solicitor in consultation with the Borough Treasurer and Head of Assets.
- E.3** There is a clear requirement for the Council to achieve Value for Money in its purchase of goods, works or services. These Contract Procedure Rules have been written to ensure that this requirement is achieved on behalf of the whole Council. Any procurement decision by a Service must therefore be made in the context of this overall Value for Money aims of the Council. It is a requirement that in all cases these Rules will be applied.
- E.4** These Rules will ensure that the Council will:
- get value for money;
  - keep within the law;
  - maintain standards of conduct;
  - be fair to suppliers;
  - protect officers;
  - demonstrate accountability for public money ;
  - meet its corporate and directorate aims and policies; and
  - comply with the Council's Procurement Strategy.
- E.5** Officers must procure goods and services in the first instance through Corporate Contracts, where these have been awarded. Details of current Corporate Contracts can be obtained from the Borough Treasurer and the Head of Assets. Failure to comply with this Rule may be considered a breach of the Officer Code of Conduct.

### **Compliance and Officer Responsibilities**

- E.6** Every contract made by or on behalf of the Council must comply with these Contract Procedure Rules and the associated detailed guidance.
- E.7** All Council employees and third parties/contractors engaged to act in any capacity to manage or supervise a Contract must comply with these Rules, and each Head of Service must ensure such compliance in the Service for which they are responsible. Failure to comply with these Rules or the associated detailed guidance may be considered a breach of the Officer Code of Conduct and may result in disciplinary action and legal proceedings against the officers or third parties concerned. All Council employees and third parties engaged on the Council's behalf must ensure



that any conflicts of interest are avoided. Any conflict of interest must be declared to appropriate line managers in the Council as defined and in line with the Officer Code of Conduct.

- E.8** Where a Chief Officer or his designated representative intends to seek an exception to these Rules, as they apply to contracts and tenders, he/she shall arrange for a report to be prepared and submit it for consideration and approval by the Borough Solicitor and the Borough Treasurer and Head of Assets prior to the start of the relevant procurement process.
- E.9** All such exceptions should be recorded in the delegated decisions register and available for inspection as required.
- E.10** National or European Union legislation overrides these Finance and Contract Procedure Rules.
- E.11** Where it becomes apparent that a Service has failed to comply with these Rules then the Chief Officer or his designated representative shall issue a report outlining the reasons for the non-compliance and the steps taken to prevent a re-occurrence. The Chief Officer or his designated representative will be required to submit the report to the Borough Treasurer and Head of Assets and Borough Solicitor before reporting to Governance and Constitution Committee.
- E.12** When any employee either of the Council or of a service provider may be affected by any transfer arrangement. Officers must ensure that Transfer of Undertaking (Protection of Employment) Regulations (TUPE) issues are considered and obtain legal advice before proceeding with inviting tenders and quotations.

### **Appointment of Consultants**

- E.13** Any appointment of a consultant or consultancy body is subject to these Rules and any detailed guidance. Advice should be sought from the Borough Treasurer and the Head of Assets prior to entering into any such arrangement.

### **Pre Contract Requirements**

- E.14** The Council's Service Schemes of Delegation set out the approvals necessary for different types of contract.
- E.15** Before beginning a purchase, the Authorised Officer responsible for letting the contract must:
  - make sure that the appropriate authority is in place to start the



process and spend the money in accordance with the appropriate 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 consultant's or other external charges or fees);
- make sure that the Forward Plan requirements have been followed where the purchase is a Key Decision.

**E.16** The Authorised Officer must ensure when entering into supply agreements that the requisition order and payment processes to be provided by the supplier are in accordance with Section D (Ordering and paying for work, goods and services) of these Finance and Contract Procedure Rules.

**E.17** For procurements above £10,000 advice should be sought from the Borough Solicitor as to the relevant form of Contract to be employed for the procurement.

### **General Requirements**

**E.18** Before beginning a purchase, the Authorised Officer responsible for it must also:

- Where the proposed value of the procurement is estimated to be over £50,000 where it is necessary due to the nature of the procurement, the appropriate Officer should seek advice from The Borough Treasurer and the Head of Assets and where appropriate enquire whether the service is able to be provided by an 'in-house' Provider;
- Carry out an options appraisal, to decide what procurement method is most likely to achieve the purchasing objectives, in a form specified by the Borough Treasurer and the Head of Assets;
- Assess the risks associated with the purchase and how to manage them;
- Prepare a procurement plan where the value of the purchase exceeds £50,000 or where the purchase poses a significant risk to the Council and send a copy to the Borough Treasurer and the Head of Assets;
- If the procurement is subject to European Procurement Rules, advice should be sought from the Borough Treasurer and the Head of Assets.
- Ensure that all bid evaluation criteria have been determined in advance; and
- Ensure that these Rules and any detailed guidance have been complied with, and that the proposed contract represents value for money.

## Contract Procedures

- E.19** The table below sets out which procedures must be followed for different contract values.

The Total Value of the contract is the Yearly contract value x Contract period in years (including any extension periods).

	<b>Total Value</b>	<b>Procedure to follow where no Contract exists</b>
<b>Informal</b>	Below £10,000	E-mail /telephone quotation(s)
	Above £10,000 but below £50,000 for goods, services and works.	Comparison of written quotations from at least 3 bidders.
<b>Formal</b>	Above £50,000 but below the EU threshold* for goods, services and works.	Formal tender process from at least 3 suppliers.
	Above the EU threshold* for goods, services and works.	Tender process in accordance with EU Procurement Rules.

\* See E.35 for EU thresholds.

## Exceptions to Requirements of Competition

### Framework Agreements

- E.20** Government and Local Government Framework Agreements may only be used for the procurement of goods or services if they can be clearly identified on contract schedules held by those bodies. The framework agreement must allow the Council to participate in such an agreement and must adhere to the principles of these Rules. Before starting any procurement guidance should be sought from the Borough Treasurer and the Head of Assets.
- E.21** Examples of Government Frameworks are found on the "Catalist" and the Office of Government Commerce (OgC Buying Solutions) website [www.ogcbuyingsolutions.gov.uk](http://www.ogcbuyingsolutions.gov.uk). Under these Framework Agreements already tendered under EU Rules value for money can be determined following the Catalist "mini competition" process set out on their website. Advice on the process should be sought from the Borough Treasurer and the Head of Assets.
- E.22** Framework agreements must be for a maximum of four years. If there is any doubt about their duration advice should be sought from the Borough Treasurer and the Head of Assets.

### **Other Exceptions to Requirements of Competition**

- E.23** A Delegated Decision form must be completed by the Chief Officer or his designated representative for every exemption listed below and sent for approval to the Borough Treasurer and Head of Assets and the Borough Solicitor. Any request to approve waiving of any Finance and Contract Procedure Rule is also subject to such approvals by the Borough Treasurer and Head of Assets and the Borough Solicitor.
- E.24** Provided that a proposed contract award complies with national and EU legislation and any other Finance and Contract Procedure Rule and subject to the Chief Officer or his designated representative keeping a record of the reasons, reported annually to the Borough Treasurer and the Head of Assets, then the competition requirements may not apply to:
- The purchase of goods or services or the execution of works which in the opinion of the appropriate Chief Officer or his/her Authorised Officer and the Borough Treasurer and the Head of Assets is certain are obtainable only from one source or contractor, and where no reasonably satisfactory alternative is available;
  - The purchase of a product required being compatible with an existing installation and procurement from any other source would be uneconomic given the investment in previous infrastructure as approved by the Chief Officer;
  - The instruction of, advice from, or service provided by Counsel or, by exception, Solicitors to act on the Council's behalf;
  - Procurements made from "Call Off" Contracts and Framework Agreements that have been subjected to competition or through ,or on behalf of, any local authority or Government consortium, association or similar body provided that tenders or quotations have been invited by these bodies and contracts placed in accordance with their procedures which are broadly equivalent to these Rules and also comply with any National or EU legislation;
  - Special education or social care contracts if, in the opinion of the Chief Officer, following consultation with the Borough Solicitor and the Borough Treasurer and the Head of Assets, it is considered the Client's interests are best met if there is exemption from the competition rules;
  - The exercise of statutory grant aid powers delegated to a Chief Officer or his/her Authorised Officer (which shall be specified by that Chief Officer or his designated representative in each case);
  - Circumstances which in the opinion of both the Borough Treasurer and Head of Assets and Borough Solicitor warrant an exception to the requirements for competition, to include, but not limited to when an emergency requires an immediate contract (which should in any





event be procured from an approved list of suppliers where available) or when exceptionally the Chief Officer his/her Authorised Officer considers that is inappropriate in the interests of the efficient management of the service;

- Any other general circumstances, up to the EU threshold, as agreed by both the Borough Treasurer and Head of Assets and the Borough Solicitor.

**E.25** If in written circumstances requiring only 3 quotations or tenders, quotations or tenders cannot be obtained due to lack of suitable contractors prepared to quote/tender then a record of the reasons for this action must be kept and be reported annually to the Borough Treasurer and the Head of Assets.

**E.26** The Chief Officer or his/her Authorised Officer must be satisfied that if three quotations/tenders have not been received that the offer accepted offers the Council best value and the prices are competitive. Advice from the Borough Treasurer and the Head of Assets should be sought as to the most appropriate form of Contract to employ for the procurement.

### **Variations and Contract Extensions**

**E.27** All variations must be in the form of written instruction to the contractor. Any such variation should be agreed, documented and signed by both parties.

**E.28** The Contract term cannot be extended where this would result in the value of the contract exceeding the European Procurement threshold. In such circumstances the advice of the Borough Treasurer and the Head of Assets should be sought.

**E.29** The term of a Contract may be extended with the approval of the Chief Officer or his/her Authorised Officer if there is provision within the Contract terms and conditions to extend and the agreement of the Borough Treasurer and Head of Assets has been received with regards to the budgetary provision. If the contract has already been extended to the full extent provided in the contract it cannot be extended further.

**E.30** If there is no provision within the contract terms and conditions for the Contract to be extended the approval of the Borough Solicitor and the Borough Treasurer and Head of Assets must be sought to any proposed extension of the term of contract, and a record kept by the Chief Officer and the reasons why.

### **Advertising of Procurement Opportunities**

- E.31** To determine the market for each procurement in excess of £10,000 the Chief officer should identify the most appropriate method of advertisement including but not restricted Local press, relevant trade journals, council websites and other websites. The Borough Treasurer and the Head of Assets will facilitate advertisement in the OJEU.

#### **Competition Requirements below £10,000**

- E.32** Officers must seek quotations so as to demonstrate Value For Money. Procurement of goods and services below £10,000 must be in accordance with 'Ordering and paying for work, goods and services' (D.19 – D.43).

#### **Competition Requirements for Procurements between £10,000 and £50,000**

- E.33** Procurement of goods and services must not be split to avoid a formal tender award procedure, or to have the effect by such a split indicate that the value of the goods or services would if not split breach the European Procurement Rules threshold.
- E.34** Records required to be kept under Contract Procedure Rules E.20 – E.26 and E.32 – E.53 shall be in a format to be determined by the Borough Treasurer and Head of Assets.

#### **Competition Requirements for Procurements over £50,000 but below the EU Procurement threshold**

- E.35** Where contracts have an aggregate value over the life of the contract estimated at £50,000 or more, a formal tendering procedure must be undertaken in a format to be approved by the Borough Treasurer and the Head of Assets. The invitation to tender must be advertised in an appropriate manner and tenders received must be dealt with and evaluated in accordance with these Rules. Subject to E37, either the Open or Restricted Procedures, described below, should be used as practicable. The full European Procurement Regime does not apply below the financial threshold (shown below) it is not imperative to publish an OJEU notice in these circumstances, however advertising in the OJ may be a consideration. Further advice can be sought from the Borough Treasurer and the Head of Assets.

#### **Competition Requirements under European Procurement Rules (currently applicable for Contracts valued as follows, until January 2010)**

Services	Goods	Works
£139,893	£139,893	£3,497,313

**These levels are set by the Public Sector Directive 2004/18/EC, The Public Contracts Regulations 2006, Council Regulation 1422/2007 (L317/34 5/12/07) Sterling Equivalents were published in C301/07 dated 13/12/07. Thresholds are net of VAT.**

**E.36** The procedures set out below follow the model set out in the European Procurement Rules. They represent best practice and should be adopted as the norm for all exercises over the threshold values. Either the Open or Restricted Procedure must be used as practicable. The Negotiated Procedure and Competitive Dialogue Procedure may only be used in exceptional circumstances and with the approval of the Borough Solicitor. Advice on the appropriate procedure to apply may be obtained from the Borough Treasurer and the Head of Assets or the Borough Solicitor.

### **Negotiated and Competitive Dialogue Tendering Procedure**

**E.37** The Negotiated and/or the Competitive Dialogue procedure should only be used in exceptional cases where advice has been sought from the Borough Treasurer and the Head of Assets and the Borough Solicitor.

### **General Procedure**

**E.38** Contracts that are subject to the EU procurement rules (and other contracts where that is appropriate) generally follow a three-stage process:

- **Stage 1 - PQQ**

This stage uses a Pre-Qualification Questionnaire (PQQ) to short-list those tenderers to be invited to submit a tender. Templates are available from the Borough Treasurer and the Head of Assets and;

- **Stage 2 – Tender**

This stage involves the preparation of a detailed tender specification and instructions which explains what is required to be provided and how tenders will be managed and evaluated. Bidders will submit their tenders based on the information provided in this document and give contract specific proposals (including as to delivery and price) and;

- **Stage 3 - Evaluation**

This will usually lead to the award of the contract. It is at this stage that any contract specific proposals (e.g. price and how the contract will be delivered) are assessed. Evaluation is dealt with in more detail below.

- E.39** Stage 1 PQQ - the only considerations are those matters which are relevant to the performance of the contract in question (e.g. financial standing, expertise, experience and technical capacity). There can be no consideration of the suppliers' proposals as to *how* the contract would be delivered.
- E.40** Once an organisation has been selected through the PQQ stage, they are deemed to be suitable to undertake the contract and they cannot be failed on the same criteria at the Tender and Evaluation stage (Stage 2 & 3) unless relevant changes occur during the later stages of the procurement process (e.g. a change in a supplier's financial standing).
- E.41** A minimum number of short-listed suppliers are then invited to submit tenders within a strict timetable. At the close of the period of time allowed for tender submission, each tender is evaluated against the criteria identified in the tender instructions/specification document sent out at Stage 3. (See paragraph E.42 below).
- E.42** If following the PQQ stage less than 3 organisations meet the selection criteria consideration should be given as to whether continuing with the process will achieve a competitive price, value for money and quality of services. A further advertisement may be required to achieve a better response and more tenderers.
- E.43** The Chief Officer or his/her Authorised Officer must keep a record of the reasons for this action and report these annually to the Borough Treasurer and the Head of Assets.

### **Open Tendering Procedure**

- E.44** All companies expressing an interest will receive an invitation to tender. There is no restriction or selection process prior to the dispatch of tenders.
- E.45** Public Notice must be given in relevant trade journals, newspapers, websites and the Official Journal of the European Union (OJEU) if the EU threshold is breached or exceeded, and where appropriate on the Council's Web-Site. At least 52 days public notice must be given in one or more local newspapers or trade journals circulating amongst such firms who undertake such contracts, and on the Council's Web-Site, setting out details of the proposed contract, inviting tenders from applicants and stating the last date on which tenders will be received. Tenders must be sent out within 6 days of a request. The OJEU must state the date and time of the opening of tenders whether or not the supplier is to be allowed to attend the tender opening.

- E.46** The time limits referred to in E.45 may be reduced by 5 days where electronic versions of the contract documents are made available or be reduced to a shorter period of generally not less than 36 days and in any event not less than 22 days where a prior information notice has been published in accordance with the EU Regulations. These two reductions in the periods of time may be combined. No decision to reduce those time limits must be taken without consulting the Borough Treasurer and the Head of Assets and the Borough Solicitor.
- E.47** If an alternative (variant) bid is to be permitted, the OJEU must say this. The Instructions for tendering specification document must give details of what is to be regarded as the minimum requirements of a variant bid. If these requirements are not met, a variant bid cannot be accepted.
- E.48** Evaluation of tenders submitted through the Open Procedure must be undertaken in accordance with the EU Procurement Regulations. All tenders submitted must be evaluated. The Open Procedure does not allow any negotiation with bidders.
- E.49** The Open Procedure may not be suitable where it is anticipated that there may be a large number of potential contractors interested in bidding for the contract. The Open Procedure is the most suitable for the procurement of non specialist goods such as stationary. The selection stage and the award stage can be undertaken simultaneously.

### **The Restricted Procedure**

- E.50** This is a two stage process involving the invitation of expressions of interest from interested bidders. A contract notice must be published in the OJEU allowing at least 37 days for receipt of expressions of interest from prospective bidders. A shortlist of bidders is then drawn up in accordance with qualification criteria. At least 5 bidders must be selected at this stage, based on economic standing and professional or technical ability. If an alternative (variant) bid is to be permitted, the OJEU must say this. The Instructions for tendering and specification document must give details of what is to be regarded as the minimum requirements of a variant bid. If these requirements are not met, a variant bid cannot be accepted.
- E.51** Those bidders on the shortlist must be invited to tender, allowing at least 40 days for receipt of completed tenders. Tenders are evaluated at the end of the 40 day period. No negotiation with bidders is allowed.
- E.52** The contract will be awarded in accordance with the criteria specified in the OJEU notice. An award notice must be published within 48 days. Unsuccessful tenderers must be de briefed.

- E.53** In circumstances of urgency, the time limits can be reduced. The 37 day period for expressions of interest may be replaced by a period of not less than 15 days. The time for inviting short listed suppliers to tender can be reduced from 40 to 10 days. No decision to reduce the time limits must be taken without first consulting with the Borough Treasurer and the Head of Assets and the Borough Solicitor.

### **Despatch of Tenders**

- E.54** If an invitation to tender is required such invitations can be made using any available form of communication providing all invited parties receive identical information despatched at the same time.

### **Submission and Receipt of Tenders**

- E.55** Tenders should be submitted as instructed in the tender documentation. Non compliance with this requirement will result in the tender not being considered. Electronic tenders should only be sought following advice from the Borough Treasurer and the Head of Assets.
- E.56** The tender must be submitted to the location, and by the time and date specified in the invitation to tender as being the last time and date for the receipt of tenders in the envelope provided bearing “ Tender “ or carrying any Tender label supplied with the Invitation to Tender.
- E.57** Where the Council estimates the tender value to be £50,000 or more, all tenders must be submitted to the Borough Solicitor.
- E.58** Unless it forms part of an electronic tender process tenders will be submitted in hard copy in the first instance and must bear no details of name, mark, slogan or logo of the contractor on the tender envelope. Non compliance with this requirement may result in the tender not being considered. The Borough Treasurer and the Head of Assets will in such circumstances determine whether it is in the interests of the Council to consider the relevant tender. Electronic versions of tenders must not be delivered or opened before the opening of hard copy tenders.
- E.59** The Council is not bound to accept the lowest (E.83) or any tender.
- E.60** Each tender submitted in accordance with the procedures detailed in E.55 – E.62 will remain in the custody of the Borough Solicitor until the time appointed for opening.
- E.61** Upon receipt of a hard copy tender the receiving officer must indicate on the envelope the date and time of its receipt.

- E.62** Tenders received after the date and time indicated for the receipt of tenders will not normally be considered except with the agreement of the Borough Solicitor and Borough Treasurer and Head of Assets. Such tenders will be opened and returned to the tenderer if they are not to be considered.

### **Opening and Registration of Tenders/Quotations**

- E.63** Tenders shall be opened at one time by the Borough Solicitor or his/her Authorised Officer, in the presence of the purchasing Chief Officer or his/her designated representative and Borough Treasurer and Head of Assets or his/her designated representative and any electronic tenders service provider, where applicable.

- E.64** The Authorised Officer must at the time the tenders are opened, record on the Register:

- the type of goods or materials to be supplied or disposed of, or the work or services to be carried out;
- the name of each contractor submitting a tender;
- the amount of each tender where appropriate
- the date of the opening of a tender
- the signatures of all persons present at the opening of each tender
- the reason for any disqualification of any tender
- the name of each contractor invited to tender but who did not submit a tender.

- E.65** Every written quotation obtained for each proposed contract must be opened at one time and details recorded by the Chief Officer or his/her Authorised Officer.

- E.66** Any request for an extension to the tender period must (in normal circumstances) be no later than 5 working days before the tender closing date. If the date is to be extended the revised date must be advised to all tenderers.

### **Errors in Tenders**

- E.67** Errors in Tenders shall be dealt with in one of the following two ways:

- the tenderer shall be given details of the error(s) found during the examination of the tender and shall be given the opportunity of confirming without amendment or withdrawing the tender; or
- Amending the tender to correct genuine error(s) provided that in this





case, apart from these genuine errors, no other adjustment, revision or qualification is permitted.

- E.68** Tender documents must state which method will be used for dealing with errors in tenders.

### **Exclusions of Tenders**

- E.69** No valid tender received should be excluded from the tender process without the approval of the Borough Solicitor and the Borough Treasurer and Head of Assets.

### **Evaluation of Tenders and criteria for selecting a supplier**

- E.70** All the procedures, with the exception of the Open Procedure, anticipate a selection process which involves at least two stages. The first stage is to draw up a shortlist of candidates who will be invited to submit tenders, and a second stage when the contract is awarded to one (or more) of the bidders. Where the procedure is a Negotiated Procedure or Competitive Dialogue Procedure when there may be an intermediate stage which allows further refinement of the shortlist.

- E.71** The following criteria (set out in Public Contracts Regulations 23, 24, 25 and 26) may be used to draw up the shortlist of those who are to be invited to tender:

- Suppliers who have, or whose directors have been convicted of certain offences listed in Public Contracts Regulation 23 are ineligible to submit bids and must not be included in the short list;
- A public authority can (but does not have to) refuse to shortlist businesses which are insolvent, have been convicted of a criminal offence relating to the running of the business, or committed grave misconduct in the running of the business
- Businesses can be excluded if they have not paid all their taxes or social security contributions
- Businesses can be excluded if they are not included on the appropriate trade register in their home state
- Public authorities are allowed to request evidence from prospective bidders to allow them to assess whether any of the above factors apply.
- Public authorities may make an assessment of bidders' economic and financial standing by taking into account all or any of the following:-
  - statements from the bidders' bankers or evidence of relevant professional indemnity insurance;
  - published accounts where publication of such accounts are a legal requirement;





- a statement covering the 3 previous financial years setting out the overall turnover of the bidder's business and the turnover in respect of the goods or services being provided.
- Technical or professional ability which can only be assessed against the criteria set out in the Regulations.

### **Acceptance of Tenders/Quotations**

- E.72** The award of a contract to the successful tenderer must be conditional upon the tender costs being within budgetary limits and subject to any prior Member decision making procedures.
- E.73** For goods and services procured in accordance with EU Procurement Rules notification to the successful tenderer of the award of the contract is subject to the 10 day "Alcatel" standstill period, (the Borough Treasurer and the Head of Assets can provide advice), and may, if a decision by Cabinet Members was required, involve the 5 working day 'call in' period. (see E.84)

### **Criteria for Awarding the Contract**

- E.74** There are only two possible criteria:

- Lowest price; or
- Most economically advantageous tender

NB where the selection is based on price the contract must be awarded to the bidder offering the lowest price unless it is made clear in its invitation to tender that it reserves the right not to award the contract at all.

- E.75** Where the winning bid is to be selected on the basis of the most economically advantageous tender, this is assessed from the point of view of the contracting authority. Criteria linked to the subject matter of the contract must be used to determine the most economically advantageous tender. These might include:

- quality;
- price;
- technical merit;
- aesthetic and functional characteristics;
- environmental characteristics;
- running costs;
- cost effectiveness;
- after sales service;
- technical assistance;
- delivery date;

- delivery period;
- period of completion

**E.76** The criteria to be used to evaluate bids and the weightings to be attached to them, or if weightings cannot be established, their relative importance, must be set out in the invitation to tender. However, it is not possible to take into account tenderer's experience, staffing levels, equipment or ability to perform the contract within a set timescale. These factors can only be considered at PQQ stage.

### **Specifications**

- E.77**
- Any technical specifications to be met by the goods, services or works to be provided must be set out in the contract documentation.
  - Technical specifications can include requirements relating to quality, environmental performance and accessibility or usability by the disabled (among others)
  - Any reference to British Standards in the specification must be followed by the words "or equivalent"
  - A public authority is only allowed to consider bids which vary from the requirements set out in the specification if the OJEU notice states that variants are permissible
  - Where variants are to be permitted the public authority must set out its minimum requirements.

**E.78** Subject to E.72 and E.73 above:

- in the case of a tender the Chief Officer or his/her Authorised Officer authorise the acceptance of the tender on behalf of the Council, such acceptance to be notified in writing to the successful tenderer in a manner specified by the Borough Solicitor; or
- in the case of a quotation the Chief Officer or his/her Authorised Officer may accept the quotation by issuing either an official order (which should be signed by the Chief Officer or his/her Authorised Officer (as set in the Scheme of Delegation) or an Agreement signed by the Borough Solicitor or his/her Authorised Officers, as set out in E.98 - E.111.

**E.79** If a decision is taken to abandon or to recommence a tender process in respect of which a contract notice has been published, each tenderer must be informed of the decision and the reasons for it, as soon as possible after it has been made.

### **Post Tender Negotiations (Open and Restricted Procedure)**

- E.80** Providing clarification of matters in the Invitation to Tender to potential or actual bidders or seeking clarification of a Tender, whether in writing or by way of a meeting, is permitted. However, the discussion with tenderers after submission of a Tender and before the award of a Contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must not be conducted. There are special rules relating to procurements using the Negotiated and Competitive Dialogue Procedures.
- E.81** Negotiations post-award of the Contract are only permissible in exceptional circumstances and should only be commenced after the Borough Treasurer and Head of Assets and the Borough Solicitor have given written approval of the procedure(s) to be adopted in any negotiation. The Borough Treasurer and the Head of Assets or the Borough Solicitor must be involved in the negotiation process and any consequent amendments to the contract terms and conditions must be approved by the Borough Solicitor.
- E.82** Where post-tender negotiation results in a fundamental change in specification (or contract terms) the Contract must not be awarded but re-tendered.

### **Best Offer**

- E.83** As a rule the award of a contract will be made to the organisation offering the lowest price, or in the case of a sale the highest price. The lowest price may not then be the “best offer” and may not merit award of the Contract. In assessing the tender however consideration may be given to quality, service and other determining factors as well as price. Where this is intended then this must be clearly set down in the tender documentation and the evaluation criteria. The Chief Officer or his/her Authorised Officer will record the detail of the contract award where the basis of the award is “best offer” rather than lowest price, which should then be reported to the appropriate Member. Advice should always be sought from the Borough Treasurer and the Head of Assets as to whether the “best offer” approach is appropriate in the circumstances.

### *Disclosure of Tender information and debriefing Tenderers*

#### **Procedure for Notification of Contract Award for EU Contracts**

- E.84**
- All participants in a tender procedure must be notified in writing as soon as possible after the successful bidder has been chosen.
  - The notice must set out the name of the successful bidder, the contract award criteria, the score received by the recipient of the notice and the score received by the successful bidder

- An unsuccessful bidder who makes a written request to the public authority for details of the reasons why it was unsuccessful by midnight on the second working day after despatch of notification that it has been unsuccessful, must be provided with this information within 7 days of the despatch of the original notice. If a request is made outside of this deadline, information must be made available within 15 days of the date of receiving the request. In both cases, the information to be provided is -
  - a) the reason(s) why the bidder was unsuccessful and;
  - b) the characteristics and relative advantages of the successful tender including the name of the successful tenderer.
- There must be a period of 10 days between the notification to the bidders of the successful bidder and the signature of the contract. This is to allow time for aggrieved parties to challenge the contract award process. This is the "Alcatel" standstill period referred to above
- A contract award notice must be published in OJEU within 48 days after the award of the contract
- Information may be withheld if disclosure would :
  - a) improve law enforcement;
  - b) otherwise be contrary to public interest;
  - c) prejudice the legitimate commercial interests of any economic operator or
  - d) might prejudice fair competition.

### **Challenging the award of a Contract**

**E.85** Any person who was eligible to bid for the contract (even if they did not bid) or actually bid for the contract can challenge the award of the contract on the basis that the Regulations have not been complied with:

- A person proposing to bring proceedings must notify the public authority concerned of that fact;
- The proceedings must be brought promptly, and in any event within 3 months from the date when the grounds for bringing proceedings first arose unless the Court considers there is good reason for extending the period;
- There are two possible remedies available to a party who wishes to challenge the award of a contract. The remedies available for a successful challenge are either the set aside of the award of the contract or damages. The contract can only be set aside prior to signature. After that the only remedy available is damages;
- Where the contract is set aside it may be necessary to carry out a



further procurement process to award the contract.

- E.86** Advice as to the extent and detail necessary for debriefing tenderers should be sought from the Borough Treasurer and the Head of Assets.

### **Keeping Written Records**

- E.87** The Chief Officer or his/her designated representative must keep proper written records of:

- the different stages of the tendering process including all the quotes and letters you have received, and notes of phone calls and meetings about selecting suppliers;
- the awarding of the contract;
- any information provided to tenderers or contractors; and
- any decisions made, together with the reasons for those decisions.

- E.88** Records must be kept for the periods set out in E.91.

### **Contracts Register**

- E.89** The Chief Officer or his/her designated representative must record on the Contracts Register held by the Borough Treasurer and the Head of Assets details of all contracts it has awarded with a total value of £50,000 or above including contracts above the EU threshold for goods and services.

### **Changes to Contracts**

- E.90** Contract Extensions/Variations which take place must be consistent with the term specified in the OJEU notice. Any extension provision must be consistent with the OJEU notice, otherwise it is a breach of the Regulations. Similarly any substantial variation of the contract may amount to a breach of the Regulations, such as a change to include the provision of additional services.

### **Storing Documents**

- E.91** All documents relating to a tender award must be kept at least 12 years. Officers must consider confidentiality when storing contracts and other information relating to tenders and agreements.

### **Requests for Information under the Freedom of Information Act**



- E.92** Before making any disclosures to third parties on any element of a procurement following a request under the Freedom of Information Act advice should be sought from the Borough Treasurer and the Head of Assets and the Borough Solicitor.

### **Contracts where the Council is the supplier**

- E.93** Any Service, including Cheshire Business Services where such exists whose goods, works or services have been subjected to competition and who has now been approved as a nominated supplier, or are included on the Council's electronic marketplace, or where there is a Corporate Contract in place, in accordance with the Procurement Strategy, for those particular goods or services must be the first choice for that particular procurement.

### **Collaborative and Partnership working**

- E.94** Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must also follow these Finance and Contract Procedure Rules (Section F).
- E.95** Collaborative and partnership arrangements include joint working where one partner takes the lead and awards contracts on behalf of the other partners, long term collaborative partnerships, pooled budgets and joint commissioning.
- E.96** Further guidance can be obtained from the Borough Treasurer and the Head of Assets and the Borough Solicitor.

### **E Procurement**

- E.97** The use of e-procurement technology does not negate the requirement to comply with all elements of these Finance and Contract Procedure Rules, particularly those relating to competition and value for money.

### **Written Contracts and Signing of Contracts**

- E.98** Every contract must be in writing and advice should be sought from the Borough Solicitor.  
The table below sets out which procedures must be followed for different contract values:

Total	Form of Contract
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Value	
Below £10,000	As per Section D – Ordering and paying for work, goods and services (D.19 – D.28).
Above £10,000	As for Below £10,000, plus:  The advice of the Borough Solicitor must be sought to agree an appropriate form of contract or written agreement which must be signed by the successful third party and on behalf of the Council by the Borough Solicitor and/or one of his/her authorised signatories, or by two of his/her authorised signatories.
Above £50,000	Formal contract executed under seal and attested by the Borough Solicitor or his/her authorised signatory.

### Content of Contracts

**E.99** The appropriate Chief Officer or his/her Authorised Officer must ensure that in addition to terms and conditions set out in E.103 every contract details:

- The goods, works and services, materials, matters to be carried out or supplied;
- The price to be paid and/or the amounts and frequency or the method of calculation of contract payments including the treatment of inflation, with a statement of discounts or other deductions including terms of payment and settlement periods;
- The time(s) within which the contract is to be performed;

**E.100** Every contract with an estimated value of £50,000 or more must state that if the third party fails to comply with its contractual obligations in whole or in part, the Council may:

- cancel all or part of the contract
- perform the contract
- recover from the firm any additional costs in completing the contract
- take other legal action against the contractor

### Contract Terms and Conditions

**E.101** A glossary set out in Annex 1 defines the terms used throughout this Section.

**E.102** The Rules set out below will apply to all contracts entered into by the Council involving goods, works or services, with the exception of

contracts of employment and contracts relating to the purchase or disposal of land and property. They will also apply to contracts entered into as where the Council acts as agent for another body, subject to the specific terms of the agency agreement.

**E.103** Advice should be sought from the Borough Solicitor, prior to taking action to secure quotations and tenders referred to in the following paragraphs, on the specific Conditions of Contract, in addition to any standard terms and conditions, appropriate in each individual case. They may include some or all of the following:

- Form of Contract
- Authorised Officer
- Modifications
- Bonds and Guarantees
- Contractors Obligations
- Contractors Employees
- Control and Supervision of Staff
- Complaints
- Confidentiality
- Health and Safety
- Agency
- Standards
- Observance of Statutory Requirements
- Gratuities and Inducements
- Indemnities and Insurance
- Use of Authority's Premises and Facilities
- Security
- Equipment and Materials
- Freedom of Information and Data Protection
- Royalties and Patent Rights
- Certificates and Payments
- VAT
- Equality and Diversity
- Fluctuations
- Review of Prices
- Assignment and Sub-Contracting
- Emergencies
- Default
- Termination
- Recovery of Sums Due (set off)
- Notices
- Waiver
- Special Conditions





All contracts must also include appropriate clauses referring to:

- Prevention of Corruption
- Assignment or sub-contracting without the Council's agreement
- Quality Standards
- Indemnities and Insurance
- Compliance with Council policies and procedures where appropriate (see E.105 to E.111)
- Where possible application of TUPE or a successor provision could apply then the Personnel and Pensions Services must be consulted.

**E.104** Unless the Borough Solicitor and the Chief Officer or his/her designated representative considers it to be unnecessary or impractical, every contract must provide that:

- Where under any contract, one or more sums of money are to be received by the Council, the contractor responsible for the payment of such sum or sums must pay interest at the rate stated in the contract from the date when payment is due until the date when payment is received;
- In the performance of the contract, the contractor must not act incompatibly with the rights contained within the European Convention on Human Rights or the Disability Discrimination Act;
- The contractor must provide any information reasonably requested relating to the performance of the contract to ensure that the Council meets its statutory obligations including under: Section 71 of the Race Relations Act 1976; Race Relations Amendment Act 2000; Best Value Legislation; Transfer of Undertakings and Protection of Employment Regulations; Code of Practice on Workforce Matters in Local Authority Service Contracts;
- In the performance of the contract, the Contractor must comply with the requirements of the Health and Safety at Work Act 1974, and of any other relevant Acts, Regulations, Orders or Rules of Law pertaining to health and safety;
- without prejudice, and subject to any other condition of the contract, no sub-letting by the contractor will relieve the contractor of its liability to the Council for the proper performance of the contract;
- the contractor must not sub-contract the contract or any part of the contract, without the prior written consent of the appropriate Chief Officer or his/her Authorised Officer who will take advice from the Borough Solicitor where appropriate.

**E.105** The contractor is responsible to the Council for the proper performance

and observance of all sub-contractors of all the Contractor's obligations under the contract as if references in the contract to "the contractor" were references to the sub-contractors. Failure or neglect by a sub-contractor is deemed to be failure or neglect by the contractor;

- E.106** The contractor is prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever any part of its contract, without the prior written consent of the appropriate Chief Officer or his/her Authorised Officer (following consultation with the Borough Solicitor and the Borough Treasurer and Head of Assets);
- E.107** All goods, works and services must comply with any appropriate European Union Specification or Code of Practice or British Standard Specification or British Standard Code of Practice or European Union equivalents in force at the date of tender/quotation;
- E.108** The Council is entitled to cancel the contract and to recover from the contractor the amount of any direct loss resulting from such cancellation, if the contractor or its employees or agents (with or without its knowledge):
- does anything improper to influence the Council to give the contractor any contract;
  - commits an offence under the Prevention of Corruption Acts 1889 to 1916 or under Section 117(2) of the Local Government Act 1972;
- E.109** Whenever under the contract any sum of money is recoverable from or payable by the contractor, this sum may be deducted from any sum due or which at any time may become due to the contractor under this or any other contract with the Council. Exercise by the Council of its rights under this clause will be without prejudice to any other rights or remedies available to the Council under the contract.
- E.110** The contractor must provide evidence of adequate insurance to cover both Public Liability and Employers' Liability. Indemnity Levels to reflect the risk to the Council which typically will be £10m for both public and employer liability policies. In some cases where the contract is of low risk this may be reduced to £5 million but advice should be sought from the Insurance team on indemnity levels before the issue of Invitations to Tender have been despatched.
- E.111** Any standard terms and conditions of contract submitted by contractors must not be accepted without advice from the Borough Solicitor. Proposed payment arrangements under a contract must be discussed



with and agreed by the Borough Treasurer and Head of Assets in advance of any contract being entered into.

### **Parent Company Guarantees and Performance Bonds**

**E.112** Advice of the Borough Treasurer and Head of Assets whether a parent company guarantee or performance bond is needed in cases where;

- there is doubt about the suppliers financial standing
- the contract poses a high risk to the Council

### **Performance Monitoring**

**E.113** During the life of the contract, the Authorised Officer should monitor the contract in respect of the following:

- Performance;
- Compliance with specification and contract;
- Cost;
- Any Best Value requirements;
- User satisfaction; and
- Risk management

**E.114** Where the contract is to be re-let this information should be available early enough to inform the approach to re-letting the subsequent contract.

<b>F</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. It must also act to achieve the promotion or improvement of the economic, social or environmental well-being of its area.

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

- Partnerships and Jointly Funded Projects
- Support to Other Organisations

## **Partnerships and Jointly Funded Projects**

**F.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

**F.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.

**F.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 Borough Treasurer and Head of Assets and the Borough Solicitor. This approval will also be required where any agreement requires the Council to act as guarantor for a third party or accountable body.

### **Definitions**

**F.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.

**F.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.

**F.6** The Rules set out in this section deal with the approach to Partnerships. Issues relating to the financial administration of such schemes are



described in the detailed guidance. Detailed partnership guidance is available in the separate documents 'Partnering Guidance' and 'European Transnational Project Handbook'.

### **Public/Public Partnerships**

- F.7** Defined 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**

- F.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**

- F.9** Where the Council leads on behalf of the Partnership or consortium and is responsible for the wider management of the Partnership.

#### **Accountable Body**

- F.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**

- F.11** Defined as involvement with a private sector organisation or commercial enterprise, excluding those where a formal contract has been agreed when Section E on Contract Procedure Rules of these Rules will apply. Any such involvement would be considered a non-accredited partnership and Rule F.12 would apply. Those contracts known as 'Partnering Contracts' and those funded by Private Finance Initiative (PFI's) are not covered by this rule and fall under Section E of the Rules.

### **Accredited Partners**

- F.12** All public sector bodies that have a proven track record of successful working in collaboration with the Council in various partnership arrangements have been identified as 'Accredited Partners', a list of which is held by the Borough Treasurer and Head of Assets. It is the responsibility of the Borough Treasurer and Head of Assets, in conjunction



with the External Funding and European Unit, to maintain this list and review it on an annual basis. Any subsequent changes, including additions and deletions will need approval from the Cabinet.

### **Non-Accredited Partners**

- F.13** Non Accredited partners include public bodies not specifically identified on the accredited list or private sector organisations. Where the Head of Service wishes to enter into a partnership or jointly funded project with another body not on the accredited list then he/she is required to consult with the Borough Treasurer and Head of Assets, Borough Solicitor and Head of HR and Organisational Development before following the approval route identified in F.19.

### **Key Controls**

- F.14** 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.

### **Responsibilities of Officers**

#### **Chief Officers**

- F.15** Chief Officers are responsible for ensuring that all funding notified by external bodies is received and properly recorded in the authority's accounts and that appropriate standards of probity, stewardship and best value are secured. This will include ensuring that audited accounts are prepared and presented on an annual basis and that all appropriate claims and returns are promptly and accurately submitted.
- F.16** 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**

**F.17** Before entering into any Partnership agreement involving joint funding, Heads of Service must consult the Borough Solicitor and the Borough Treasurer and Head of Assets, 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.

### **Approval Routes**





**F.18** 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.

**F.19** Following the officer consultation process and prior to entering into any agreement ,appropriate Member approval, based on the Councils 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 Councils financial planning cycle.*

#### **Accredited Body**

**F.20** The following can approve partnership proposals:

<b>Approval level</b>	<b>Amount</b>
Chief Officers	Up to and including £100,000
Chief Officer In consultation with Cabinet Member	Over £100,000 and up to £500,000
Cabinet	Over £500,000 and up to and including £1,000,000;
Council	£1,000,000 or more.

#### **Non-Accredited Body**

**F.21** The following can approve partnership proposals:

<b>Approval level</b>	<b>Amount</b>
Chief Officer in consultation with Cabinet Member for Finance	Up to £250,000
Cabinet	Over £250,000 and up to and including £500,000
Council	£500,000 or more

#### **Additional Funding Allocations or Policy Variations**

**F.22** 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 F.19 above. Where the additional funding constitutes a variation from the policy originally agreed by the Cabinet, then further approval from the Cabinet is required.

- F.23** 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**

- F.24** 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.

### **Reporting requirements**

- F.25** 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.
- F.26** 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 major partnership to the relevant Cabinet Member.

### **Accredited Partner List**

- F.27** This is a list that has been developed to support the approval process for partnership arrangements within the Council. It contains organisations with whom the Council has shared objectives and who have strong financial standing either individually, or through recognised established guarantors.
- F.28** A detailed list is held (and maintained) by the Borough Treasurer and Head of Assets and as a guide includes:
- All Local Authorities

- All Government Departments
- National Government Agencies
- Fire and Police Authorities
- Primary Care Trusts
- A number of Colleges and Universities
- Major National Voluntary Associations/Charities

**F.29** Additions to or deletions from the list require the express prior consent of the Cabinet. Approval will be subject to the completion of the relevant justification from the sponsoring Department.

**F.30** Please check with the Borough Treasurer and Head of Assets, or his/her nominated representative, prior to any partnership agreement, whether the organisation you are considering going into partnership with is on this list.

### **Support to Other Organisations**

**F.31** The Cabinet Member 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. This should specify the scale, nature and terms of such support, criteria for prioritisation and the process for allocation.

**F.32** Grants, donations and contributions will be paid by the Council in accordance with the policies determined under Finance Procedure Rule E.31 above, subject to there being adequate provision in service budgets.

**F.33** All financial support to other organisations should be supported by the appropriate written agreement template contained in the detailed guidance. This should be approved by the Borough Solicitor and signed by the relevant Head of Service (subject to any limits specified in local Schemes of Delegation) and the recipient body and include:

- terms of the agreement (i.e. service to be provided or delivered, management arrangements, performance standards, etc);
- date of payment, and frequency of instalments where appropriate;
- where the agreement extends beyond one year, arrangements for payments in future years;
- fallback position where the terms of the agreement are broken;
- arrangements for a report to be made to the Authority as to how the sums paid have been used in accordance with the principles set out in S137A of the Local Government Act 1972.

**F.34** 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.

## Glossary of Terms/Definitions

**Alcatel** – A ruling of the European Court of Justice which means there must be a period of time between the contract award decision and the formal award of the contract to let unsuccessful tenderers, if justified, try and set aside the contract award decision. There is now a requirement to give a **minimum of ten calendar days** standstill period between advising tenderers of the contract award decision and entering into a contractually binding agreement. Further information is available from the Procurement Unit.

*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 Authority.

**Blight** - An individual's property may be blighted if there is a proposal to build nearby and this will adversely affect the property. The Authority may be required to purchase the property under a Blight Notice.

**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 over £250,000 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. Each proposal will also be required to detail the risks involved, the impact on service users and how it feeds the Gershon efficiency targets.

**Capital Approval** - The capital programme provision as amended by any supplementary estimates or virements.

**Capital Expenditure** - Expenditure over £10,000 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 Authority'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.

**Carryforward** - An increase or reduction in a Service's new financial year budget, stemming from either an under or overspend in the previous year. All carryforwards (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.

**Commitment** - The value of any order or contract placed, prior to payment for goods / services having been made.

**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.*

*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)

**Official Journal of the European Union** - The daily publication of tender the European notices issued by the European Union.

**Option Appraisal/Business Case** – This is required for all Capital schemes over £250,000 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.

**Procurement** - The process of acquiring goods and services, which includes the choice of supplier, the specification of goods / services required and the initiation of a purchase order or contract agreement.

**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.

**Quotation** - Informal priced offer where the value is less than £50,000.

**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)

**Select List of Tenderers** - A list of persons or organisations selected to receive an Invitation to Tender (ITT) in respect of a specific contract.

**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.



*Standing Offer Contract - A contract entered into with the Council whereby the Contractor(s) guarantees offering a service or supplying goods at a Contract Price against an undetermined service level or quantity.*

**Starred Items** – being those items of policy or general provision identified within the policy and planning process, that need to be considered in further detail by Members before their implementation.

**“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.

*Tender - A formal priced offer where the value is greater than £50,000.*

**Tenderer** - Any person or organisation invited to submit a Tender.

**Third Party Funds** - Funds provided by outside bodies or individuals in support of Council activities, establishments or clients. Can sometimes be known as trust funds.

*Threshold - The financial level at which award of contract regimes under prevailing European Union Procurement Directives are applicable.*

**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.



Summary and Explanation, introductory chapters  
and other matters

Summary of how Cheshire East  
Council operates and makes  
decisions

# Summary of how Cheshire East Council operates and makes decisions

## Our Constitution

This document is our Constitution which sets out the basic rules of how the Council operates and makes its decisions.

The Council is responsible for an area of [ ] square miles, for [ ] people and a budget of [ ]. We make thousands of decisions each year affecting local people and have many powers which come from legislation. As a result, our decision-making and the structure of the Council are complex.

This Summary provides a brief guide to how we make our decisions and how we operate. Much more detail is contained in the rest of this Constitution and you should make contact with [ ] by e-mail [Hyperlink] or by telephone [ ] if you need any more information.

The Council is committed to operating in a way which is efficient, transparent and accountable to local people. If you have comments or suggestions, please make contact with [ ].

## When the Council was established

The Council started its life on 1<sup>st</sup> April 2009, when the former Cheshire County Council, Macclesfield Borough Council, Congleton Borough Council and Crewe and Nantwich Borough Councils were abolished.

On that date, the Council took responsibility for all local authority functions which had previously been dealt with by the County and district councils.

## Our Councillors

We have 81 elected Councillors who are Members of the Council until their terms of office end in 2011. Each Councillor represents the residents in their Ward, of which there are 27 in the Council's area.

The names, addresses and contact details of our Councillors can be found here [hyperlink].

Our Councillors are directly accountable to citizens for the running of the Council. Whilst they have a very broad role, they have a duty to represent the interests of all constituents in their ward. They may also represent the Council on external bodies at national, regional and local levels.



Councillors work closely with employed officers of the Council to develop policies and do other work so that the Council can deliver its vision, and to ensure that services are delivered to residents, businesses and visitors.

Councillors are expected to observe a Code of Conduct and Protocol on Member/officer Relations which are contained in this Constitution (see Part 5). We have a Standards Committee which is responsible for maintaining high standards of conduct amongst Councillors. The Committee also has responsibility for Town and Parish Councillors.

## **The Council and its decision-making structure**

All of our Councillors meet together a number of times each year as the Full Council. The Council has appointed a Cabinet and a number of committees to make decisions. The Council's programme of meetings can be viewed here [\[hyperlink\]](#).

Full Council appoints a Mayor and Deputy Mayor [\[hyperlink to Mayor and Deputy Mayor's details\]](#) of the Council and the Leader of the Council [\[hyperlink to Leader's details\]](#).

The Leader appoints 9 other Members who, together with him, form the Cabinet. The Cabinet can appoint committees, working groups or panels to carry out work on its behalf.

The following Councillors are Cabinet Members and have responsibilities in the following areas:  
[\[Insert hyperlinks to Members and list their Portfolios\]](#).

The law requires many of the Council's decisions to be made by the Council's Cabinet, Cabinet committees, or officers acting on its behalf. Other decisions, such as planning and licensing decisions, have to be made by committees of the Council, or officers acting on their behalf. Part 3 of this Constitution explains where the responsibility for decision-making rests.

We have 5 Overview and Scrutiny Committees which hold the Cabinet to account. These Committees report direct to the Council.

The Council's decision-making structure is set out in Table 1 below.

## **Your rights**

Everyone has an equal right to access Council services and to enjoy high standards of service in all that the Council does.

Members of the public have rights to:

- Vote at local elections;

- Attend the Council's meetings except where confidential or exempt information is being discussed;
- Contact local Councillors about any matters of concern;
- Contribute to investigations by the Overview and Scrutiny Committees;
- Complain where there are problems with Council services;
- Complain to the Commission for Local Administration (the Ombudsman) if the Council has not followed its procedures properly;
- Complain to the Council if they believe there is evidence that a Councillor has not followed the Council's Code of Member Conduct;
- Inspect the Council's accounts.

You also have rights to view public reports to the Council, the Cabinet and the Council's Committees. These rights are set out in more detail in the Access to Information Rules in Part 4 of this Constitution.

## **The Council's staff**

Councillors are supported by the Council's employees (officers) who provide advice, implement decisions and manage the day to day delivery of services.

Some officers have specific duties to ensure that the Council acts within the law, and uses resources wisely [[insert hyperlink to Monitoring Officer and S151 Officer contact details](#)].

The Council has a Management Board of the Chief Executive and two Directors. The Management Board provides strategic advice to the Council and co-ordinates the Council's activities to ensure high standards of performance. [[Hyperlink to Management Team contacts](#)].

Heads of Service report to the Management Board [[Hyperlink to Heads of Service contacts](#)].

The Council's management structure is set out in Table 2 below.

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

Part 2 of the Constitution contains different sections. Each section provides more information about the way the Council works and its values. The rights of Councillors and members of the public are also explained, as are the Council's decision-making arrangements.

*[Note-all hyperlinks to contain an information-note that this method may not be the best means by which contact can be made with Members/officers by members of the public]*

Table 1  
[Insert Council structure chart]

[Insert Management Structure chart]

## Chapter 1-The Constitution

### Introduction

Legislation requires the Council to prepare a document known as a "Constitution" which must contain a broad range of information, including details of the way the Council makes decisions and information about its Members (elected Councillors).

### The Constitution

This document is the Council's Constitution which sets out details of how the Council operates, how decisions are made, and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law, whilst others are chosen by the Council.

The Constitution is a document which explains how the Council's decisions are made and the rules which apply to the Council's business. It includes details of:

- the way in which meetings are conducted;
- the responsibilities of the Council, the Cabinet, the scrutiny committees and other committees;
- how Members are appointed to the Cabinet and other decision-making bodies;
- what allowances Members are paid;
- how Members and employed officers should behave;
- the work of the Council in its neighbourhoods, and with partner organisations;
- audit, financial and contract rules and procedures.

The Council will exercise all of its powers and duties according to the law and this Constitution.

### Purpose of the Constitution

The Council has a Corporate Plan, which contains details of its aims, objectives and targets.

The objectives of this Constitution are:

- To support the intentions of the Corporate Plan.
- To provide a framework for clear leadership to the community in partnership with its people, businesses and other organisations.



- Encourage the involvement of citizens in the Council's decision-making.
- To help Councillors effectively represent their constituents.
- To enable decisions to be taken efficiently and effectively.
- To create a powerful and effective means of holding decision-makers to public account.
- To ensure that those responsible for decision-making are identifiable and that the reasons for their decisions are explained.
- To provide a way in which the delivery of services to the community can be improved.
- To ensure that no one will review or scrutinise a decision for which they were responsible.

### **Interpretation**

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose the option which it considers to be closest to the objectives set out above.

## **Chapter 2-Cheshire East Council**

### **Composition of the Council**

The Council has 81 Members who are elected as Councillors. Each of them represents one of the Council's Wards, of which there are 27.

### **Politics**

The political composition of the Council is as follows:

[insert numbers of Members representing the different political groups]

[Insert the following details]

Council Leader and Conservative Group Leader  
Deputy Council Leader  
Labour Group Leader  
Deputy Labour Group Leader  
Liberal Democrat Group Leader  
Deputy Liberal Democrat Group Leader  
Independent Group Leader  
Deputy Independent Group Leader

[Insert table providing hyperlinks to political party, ward and contact details against the name of each Member]

### **Elections and Term of Office**



The Cheshire (Structural Changes) Order 2008 states that all of the Council's Members will retire in May 2011, after which there will be further elections. Elections will take place every four years afterwards.

### **Responsibilities and duties of all Councillors**

Councillors have the following responsibilities and duties:

- Together, they will set the Council's major plans, policies, strategies and the budget. They will take decisions together where required by law, or where the Council decides that collective decisions should be taken.
- To oversee the Council's strategic and corporate management.
- To represent their communities and the views of the people in their Wards, in the decision-making process.
- To support individuals in their dealings with the Council and to represent them in resolving concerns or grievances.
- To balance the different views of people within their Wards, with a view to representing their Ward as a whole.
- Participating in the decision-making and scrutiny processes of the Council.
- Where required, to represent the Council on national, regional and local bodies.
- To maintain the highest standards of conduct, and to observe the Council's Member Code of Conduct.

### **Councillors representing their communities**

All Councillors represent their constituents, and the Council sees this to be an important responsibility under this Constitution.

Councillors have an important job in consulting their communities on the development of policies, plans, strategies and other local initiatives. To enable Councillors to do this, the Council will ensure that suitable procedures and processes are in place.

### **Rights of Councillors**

Councillors will have access to any document, information, land or buildings of the Council where this is necessary to enable them to properly perform their role as a Councillor. This Council will act according to the law and this Constitution in this respect.

Councillors are not permitted to make available to the press or public any confidential or exempt information provided to them. Please see the Access to Information Rules in Part 4 of this Constitution and the Members' Code of Conduct in Part 5 of this Constitution for further information. These rules also apply to any person who is co-opted onto or appointed to serve on a body established by the Council.

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

At its first meeting in April 2009, and at each Annual Council meeting afterwards in May of each year, the Council will elect a Councillor to serve as the Council's Mayor. In the same way, it will also appoint a Deputy Mayor.

Where either office becomes vacant, the Council will elect/appoint a successor at its next meeting.

A Member of the Cabinet cannot be elected/appointed to either office.

Where both the Mayor and Deputy Mayor are absent from a meeting of the Council, the Council will appoint one of their non-executive Members to preside.

The Mayor is [insert hyperlink to name and contact details of the Mayor]. The Deputy Mayor is [insert hyperlink to name and contact details of the Vice Chairman].

## **Councillors' Scheme of Allowances**

All Councillors are entitled to receive those allowances which are contained in the Scheme of Allowances which is agreed by Council. The Scheme forms part of this Constitution at Part 6.

# **Chapter 3-Citizens and the Council**

## **Citizens' rights**

Citizens have a number of rights when dealing with the Council. Where dealing with specific services eg applying for a licence or housing benefit, they have additional rights. These are not referred to in this Constitution.

Citizens have the right to:

- Vote at local elections if they are registered to do so.
- Contact their local Councillor at reasonable times about matters of concern to them.
- Obtain a copy of this Constitution (at a reasonable cost).
- Inspect agendas for all Council meetings, either at the Council's offices, or on-line [insert hyperlink to the Council's website].
- Attend meetings all Council, Committee, Cabinet, and Scrutiny meetings, except where these are discussing exempt or confidential information.
- Speak at meetings, subject to certain rules contained in the Council Procedure Rules at Part 4 of this Constitution.

- Find out, from the Forward Plan [[insert hyperlink](#)], what major decisions (known as “Key Decisions”) are to be discussed by the Cabinet, its committees or by officers.
- Inspect all reports, including background papers used in preparing them, except where they contain exempt or confidential information.
- Inspect all Council decisions [[insert hyperlink to minutes pages of website](#)].
- Complain to the Council under the Council’s complaints scheme.
- Complain to the Commissioner for Local Administration (the Ombudsman) [[insert hyperlink to Ombudsman’s website](#)] if they think that the Council has not followed its procedures properly. However, the Ombudsman will usually only deal with complaints where the Council’s own complaints process has first been followed.
- Complain to the Council [[insert hyperlink to Monitoring Officer](#)] if they have evidence which they think shows that a Councillor has not followed the Council’s Members’ Code of Conduct.
- Inspect the Council’s accounts during the published inspection period each year, and make their views known to the External Auditor.

### **Citizens’ Responsibilities**

Citizens must not be violent, abusive or threatening to Councillors or officers of the Council, and must not wilfully harm property of the Council, Councillors or officers.

## **Chapter 4-The Full Council**

### **Policy Framework**

4.1 By law, the Council must have a Policy Framework. This is a list of plans and strategies which are relevant to the Council’s functions:

- 4.1.1 Annual Library Plan
- 4.1.2 Best Value Performance Plan
- 4.1.3 Children’s Services Plan
- 4.1.4 Community Care Plan
- 4.1.5 Community Strategy
- 4.1.6 Crime and Disorder Reduction Strategy
- 4.1.7 Early Years Development Plan
- 4.1.8 Education Development Plan
- 4.1.9 Local Transport Plan
- 4.1.10 Development Plan documents
- 4.1.11 Youth Justice Plan
- 4.1.12 [Annual Plan]
- 4.1.13 [Annual Report]
- 4.1.14 [Budget Strategy]
- 4.1.15 Corporate Plan
- 4.1.16 Housing Investment Programme documents

- 4.1.17 Local Agenda 21 Strategy
- 4.1.18 [Treasury Management Policy Statement and Treasury Management Strategy]
- 4.1.19 Licensing Authority Policy Statements under the Licensing Act 2003 and Gambling Act 2005
- 4.1.20 [Air Quality Strategy]
- 4.1.21 [Art Strategy]
- 4.1.22 [Benefit Fraud Strategy]
- 4.1.23 [Capital Programme]
- 4.1.24 [Capital Strategy and Asset Management Plan]
- 4.1.25 [Cheshire Waste Strategy]
- 4.1.26 [Consultation Strategy]
- 4.1.27 [Cultural Strategy]
- 4.1.28 [Derelict Land Strategy]
- 4.1.29 [Drug Action Strategy]
- 4.1.30 [Energy Efficiency Strategy]
- 4.1.31 [Enforcement Concordat]
- 4.1.32 [Equal Access Policy]
- 4.1.33 [Food Law Enforcement Service Plan]
- 4.1.34 [Health Improvement Plan]
- 4.1.35 [Information Systems Strategy]
- 4.1.36 [Investors in People Strategy]
- 4.1.37 [Lifelong Learning Strategy]
- 4.1.38 [Medium Term Financial Strategy]
- 4.1.39 [Organisational Development Plan]
- 4.1.40 [Play Strategy]
- 4.1.41 Procurement Strategy]
- 4.1.42 [Social Inclusion Strategy]
- 4.1.43 [Sport strategy]
- 4.1.44 [Strategy for Sport]
- 4.1.45 [Structure Plan Input]
- 4.1.46 [Youth Strategy]

- 4.2 The Budget comprises the allocation of financial resources to different services and projects, proposed contingency funds, the Council Tax base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.
- 4.3 Decisions to approve or adopt applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under Sections 32 or 43 of the Housing Act 1985.

## **Functions of the Full Council**

- 4.4 Only the Council will exercise the following functions:

- 4.4.1 electing/appointing the Council's Mayor and Deputy Mayor;
- 4.4.2 adopting and approving the Policy Framework and any of the policies in it, the Budget and those decisions in 4.3 of this Chapter;
- 4.4.3 subject to the urgency procedure in the Access to Information Procedure Rules (Part 4 of this Constitution), making decisions about any matter in the discharge of an executive function which is covered by the Policy Framework or the Budget, where the decision maker is minded to make it in a manner which would be contrary to the Policy Framework or contrary to/or not wholly in accordance with the Budget;
- 4.4.4 appointing the Leader;
- 4.4.5 taking decisions in respect of functions which are not the responsibility of the Executive, and which have not been delegated by the Council to Committees, officers or elsewhere;
- 4.4.6 agreeing and/or amending the terms of reference for Committees, deciding on their composition, and making appointments to them;
- 4.4.7 adopting a Scheme of Member Allowances;
- 4.4.8 changing the name of the area and conferring the title of Honorary Alderman or Freedom of the District;
- 4.4.10 confirming the appointment of the Head of Paid Service and, if appropriate, his/her dismissal;
- 4.4.11 making, amending, revoking, re-enacting, adopting or enforcing byelaws and promoting or opposing the making of local legislation or personal bills;
- 4.4.12 all local choice functions which the Council decides should be undertaken by itself, rather than the Cabinet;
- 4.4.13 all other matters which, by law, must be reserved to Council;
- 4.4.14 appointing the Council's Monitoring Officer and Section 151 Officer and, if appropriate, approving their dismissal;
- 4.4.15 adopting the Council's Codes of Conduct for Members and Officers; and
- 4.4.16 adopting the Council's Protocol on Member/Officer Relations.
- 4.4.17 adopting and changing the Constitution.

### **Council Meetings**

4.5 The following are the different types of Council meeting:

- 4.5.1 the Annual Meeting of the Council, which will be held in May;
- 4.5.2 ordinary meetings;
- 4.5.3 extraordinary meetings, which will be called as and when required in accordance with the Council Procedure Rules;

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

### **Responsibility for Functions**

4.6 The Council will keep a record of responsibilities for functions of its decision-making bodies. These are set out in Part 3 of this Constitution.

## Chapter 5-Chairing the Council

### 1. Civic Role

- 1.1 The Council's Mayor, supported by the Deputy Mayor will perform the Council's civic role.
- 1.2 This entails raising and maintaining the profile of the Council's area and its citizens. The aims and values of the Council will be promoted in an apolitical manner.
- 1.3 The Mayor will decide which civic and ceremonial functions to promote following consultations, where appropriate, with officers of the Council. These functions may include representing the Council at events organised by other local authorities or organisations.

### 2. Council Role

- 2.1 The Council's Mayor in 2009 was elected at the Council's first meeting in April 2009. In subsequent years, the Mayor will be elected at the Annual Council meeting in May. The Deputy Mayor is appointed at the same meeting.
- 2.2 The Mayor is responsible for:
  - 2.2.1 upholding and promoting the purposes of this Constitution and interpreting it, where necessary, with advice;
  - 2.2.2 presiding over meetings of the Full Council to ensure that business is carried out efficiently and effectively, whilst preserving the rights of Councillors and the interests of the Council's citizens;
  - 2.2.3 ensuring that, at Council meetings, matters of concern to local people can be debated through the appropriate Councillors;
  - 2.2.4 ensuring that Councillors not on the Cabinet, or who do not hold the Chairmanship of a main committee, are able to hold those office holders to account;
  - 2.2.5 promoting public involvement in the Council's activities and acting as a contact between members of the public and organisations and the Council;
  - 2.2.6 carrying out other roles on behalf of the Council;
  - 2.2.7 to be the conscience of the Council.
- 2.3 The Deputy Mayor will:

- 2.3.1 support the Mayor in his/her civic role and will also carry out civic duties on behalf of the civic office;
- 2.3.2 deputise for the Mayor in his/her absence .

### **3. Who may become Chairman or Vice Chairman**

- 3.1 Any elected Member of the Council shall be eligible for election to the office of Mayor, or appointment as Deputy Mayor, except for Members of the Cabinet.

## **Chapter 6-Scrutiny Committees**

- 1.1 As is required by the Local Government Act 2000, the Council has established an effective, robust and constructive overview and scrutiny function. This comprises [ ] Scrutiny Committees.
- 1.2 The Council fully supports the role of its Scrutiny Committees in holding the Cabinet and others to account in discharging their functions. The Council believes that the important parts of the role are:
  - To assist the Council and Cabinet in developing and reviewing its major plans, policies and strategies, which will set the climate in which the Cabinet and other decision-making bodies are required to operate
  - To undertake specific reviews of the Council's organisation and service provision so that improvements can be made to service delivery.
- 1.3 The Council's overview and scrutiny functions include responsibility for reviewing the health service provision within its area and beyond, health promotion and the health and well-being of local communities. This may be done in conjunction with other bodies/agencies.
- 1.4 This Chapter goes on to provide details of the Council's overview and scrutiny arrangements. For those seeking further information, this can be found in the Scrutiny Procedure Rules in Part 4 of this Constitution.

### **2 The Council's Scrutiny Committees**

- 2.1 The Council has established these Committees to oversee and develop the Council's overview and scrutiny function. They are politically balanced bodies and will discharge the duties contained in Section 21 of the Local Government Act 2000 (in the case of the Scrutiny Committee) and the Health and Social Care Act 2001 (in the case of the Health and Adult Social Care Scrutiny Select Committee), and under any relevant Regulations.



- 2.2 A Health and Adult Social Care Scrutiny Committee has been established to undertake the scrutiny role in relation to health service provision to the Council's people through the National Health Service and associated bodies. The Committee discharges the duties imposed on the Council under the Health and Social Care Act 2001.
- 2.3 The Minutes of meetings of the Scrutiny Committees will be submitted to the full Council at the appropriate meeting. Reporting lines to the full Council in respect of specific issues will be on an exception basis.

### **3 Review Panels**

- 3.1 The scrutiny committees may establish Review Panels which they consider necessary, after taking into account the availability of resources, the work programme and scope of the review in question. The role of Review Panels is to carry out in-depth examinations of particular aspects of the Council's functions, roles, responsibilities and service delivery.
- 3.2 The Committees will appoint Chairmen (and Vice Chairmen, if appropriate) of each Panel and agree the membership. This must be politically balanced.
- 3.3 Review Panels will be established normally on an ad hoc basis with specific time limited tasks. They may vary in size.
- 3.4 The reporting lines from Review Panels to other bodies shall be set at the scoping report stage. However, as a principle, major reviews and those of a cross cutting nature will normally be presented to the full Council.

### **4 Role of the Scrutiny Committees**

- 4.1 The Scrutiny Committees:
  - 1. will discharge the Council's functions under Section 21 of the Local Government Act 2000 (Overview and Scrutiny Committees);
  - 2. will be responsible for the Council's scrutiny function including the preparation, implementation, monitoring and review of an annual work programme for scrutiny and arrangements for the scrutiny of other public bodies particularly where required to do so by law;

3. may establish such Review Panels, appointing the Chairman in accordance with the Council's criteria and with such membership as it sees fit, to undertake scrutiny on a task and finish basis;
4. may ensure the Chief Executive and Management Board discharge their responsibilities effectively and efficiently in relation to the overview and scrutiny function;
5. will scrutinise decisions of or actions taken by the Cabinet, and offer advice or make recommendations on the matter under scrutiny once the Committee have considered the issues;
6. may scrutinise matters coming before the Cabinet for decision and respond appropriately to the Cabinet on the matter once the Committee has considered the issues fully;
7. will review or scrutinise decisions or actions taken in respect of any functions which are not the responsibility of the Cabinet and make reports or recommendations to the Council, or appropriate body of the Council;
8. may refer to the Council or appropriate Committee/Sub-Committee any matter which, following scrutiny, the Committee determines should be brought to the attention of the Council or the Committee or Sub-Committee;
9. may, if requested, offer any views or advice to the Cabinet in relation to any matter referred to the Committee for consideration;
10. may undertake general policy or other reviews with a cross-service approach wherever possible and make reports and recommendations to the Council (or other appropriate Council body) or the Cabinet to assist in the development of future policies and strategies;
11. may offer advice and make recommendations to the appropriate body of the Council on the development and review of policy;
12. may, in performing its role, the Committee may consult and involve the local community and other local public, private and voluntary bodies or organisations;
13. may review the Council's response to its obligations in respect of the overall performance management regime and, where appropriate, to advise the Cabinet or appropriate body of the Council of its findings;

14. may advise the Cabinet and Council, as appropriate, of the Scrutiny response to the formulation of the Council's Budget and performance management reports;
15. may recommend that a decision made but not yet implemented, and taken in respect of a function which is the responsibility of the Cabinet be reconsidered by the Cabinet;
16. may scrutinise decisions after implementation to examine their effect and outcomes;
17. may make reports or recommendations to the appropriate body of the Council in respect of any matters which affect the Council's area or its inhabitants;
18. may review and make recommendations in relation to matters which are not the direct responsibility of the Council but which affect the social, economic or environmental well-being of an area or the Council's area as a whole or under any statutory requirement or Council contract, procedure or practice;
19. will develop, maintain and monitor policies and procedures for handling complaints made against the Council and monitor on a regular basis the level and nature of complaints received and ensure that advice is formulated regarding action to be taken to address areas of concern;
20. will monitor the level and nature of Ombudsman complaints and advise the Cabinet, Committees, Sub-Committees and Departments and Services on remedial action as appropriate;
21. will ensure, in conjunction with the Standards and Governance and Constitution Committees, that the Council has in place appropriate mechanisms to protect organisational integrity, including the development of appropriate policies and guidance.
22. will consider and advise the Cabinet in respect of "call-in" notices under the Council's relevant procedures.

## **5 Role of the Health and Adult Social Care Scrutiny Select Committee**

The Health and Adult Social Care Scrutiny Select Committee will:-

1. fulfil the Health Scrutiny duties falling on the Authority by virtue of the Health and Social Care Act 2001 (consolidated into the NHS Act 2006) and subsequent relevant legislation and Government Guidance;

2. liaise with NHS Trusts on any matter relating to the planning, provision and operation of Health services in East Cheshire, including commenting on the annual “health check” of the performance of those Trusts;
3. respond to any formal consultations undertaken by relevant NHS Trusts on any substantial development or variation in service;
4. participate with other relevant local authorities in joint scrutiny arrangements of NHS Trusts providing cross-border services to East Cheshire residents, in particular the Cheshire and Wirral Partnership Foundation Trust;
5. prepare an annual Work Programme and commission scrutiny reviews to ensure that all sections of East Cheshire’s local communities have equal access to Health services and have an equal chance of a successful outcome from those services;
6. liaise with the Local Involvement Network (LINK) for East Cheshire, commissioning work and receiving reports and recommendations as appropriate;
7. deal with any matter referred by the Department of Health, the Local Involvement Network or by the Council;
8. offer advice to the Cabinet on Key Decisions relating to the operation of the Council’s Adult Social Care functions;
9. receive reports from the Council’s external inspectors on its Adult Social Care responsibilities and to offer advice thereon to the Cabinet;
10. keep under review the Council’s performance management arrangements in relation to its Adult Social Care responsibilities and offer advice as appropriate;
11. deal with any Health or Adult Social Care matter which is the subject of a Call-In, a Councillor Call for Action or Local Petition;
12. provide a regular programme of training and development for all Members and Co-opted Members involved in the work of the Committee;

## **6 Chairmen and Vice Chairmen of Scrutiny Committees**

- 6.1 Appointments to these offices shall be made by the Council at its first and at each Annual Meeting.

## **7 Membership of Scrutiny Committees**

- 7.1 The Scrutiny Committee will comprise 15 Members.
- 7.2 The Health and Adult Social Care Scrutiny Select Committee will comprise 14 Members.
- 7.3 The Scrutiny Procedure Rules, contained in Part 4 of this Constitution, set out arrangements for co-option to Scrutiny Committees.

## **8 Proceedings of Committees**

- 8.1 Conduct of the proceedings at Scrutiny Committees shall be in accordance with the Council and Scrutiny Procedure Rules as appropriate.

# **Chapter 7-The Cabinet**

## **1. Role**

- 1.1 The Cabinet carries out those duties and responsibilities which are not the responsibility of any other part of the Council.
- 1.2 Some of the Cabinet's responsibilities are "local choice" functions, which Council has chosen to delegate to the Cabinet.
- 1.3 Other functions are the responsibility of the Cabinet because the law says so.

## **2. Composition**

- 2.1 The Cabinet consists of the Leader of the Council, and 9 other Councillors. The Leader of the Council is appointed by Full Council, but the Leader is responsible for appointing the other 9 Members of the Cabinet, and for notifying Council of such appointments.
- 2.2 No deputy or substitution arrangements will apply to the Cabinet, and neither the Mayor or Deputy Mayor may be appointed to the Cabinet.

## **3. The Leader**

- 3.1 The Leader will hold office until:
  - 3.1.1 he/she resigns from the office of Leader;
  - 3.1.2 he/she becomes ineligible to be a Councillor of the Council, either for a specific period, or indefinitely;
  - 3.1.3 he/she ceases to be a Councillor;
  - 3.1.4 he/she is removed from office by a resolution of the Council;
- 3.2 Where there is a vacancy in the office of Leader, the Deputy Leader will assume the responsibilities of the Leader until the next meeting of the Council.

- 3.3 Where both the Leader and Deputy Leader cease to hold office at the same time, the Council's Mayor shall call a meeting of the Full Council as soon as possible.

#### **4. Other Cabinet Members**

- 4.1 Other Members of the Cabinet will hold office until any of the events listed in 3.1.1-3.1.3 above, which apply to ending the term of office of the Leader, apply to them collectively or individually as Cabinet Members; or until the Leader brings their term of office to an end.

#### **5. Proceedings of the Cabinet**

- 5.1 Proceedings of the Cabinet shall be conducted in accordance with the Council and Cabinet Procedure Rules, which are part of this Constitution.

#### **6. Responsibility for Functions**

- 6.1 The Leader will ensure that a record is kept of the executive functions which are the responsibility of individual Cabinet Members, any Cabinet Committee or Sub-Committee, officers or joint arrangements.

6.2

#### **7. Policy Advisory Panels**

- 7.1 The Cabinet is supported on policy development issues by three Policy Advisory Panels, chaired by representatives of the Cabinet.
- 7.2 The role of these Panels is to advise the Cabinet on policy development or strategic issues with policy implications. The focus of their work is upon strategic policy direction rather than operational issues.
- 7.3 The Panels are not decision-making bodies and do not fall within the Access to Information Rules. They report to the Cabinet on an exception basis.
- 7.4 The Panels deal with three distinct areas of work, headed: People, Places and Performance & Capacity.

#### **8. Cabinet Members**

- 8.1 The following are the Council's Cabinet Members:

Councillor Wesley Fitzgerald (Leader)

Councillor Roland Domleo (Deputy Leader)-Adult Services Portfolio  
Councillor David Brickhill-Environmental Services Portfolio  
Councillor Paul Findlow-Children and Family Services Portfolio  
Councillor Peter Mason-Procurement, Assets and Shared Services Portfolio  
Councillor David Brown-Performance and Capacity Portfolio  
Councillor Frank Keegan-Resources Portfolio  
Councillor Andrew Knowles-Health and Wellbeing Portfolio  
Councillor Jamie Macrae-Prosperity Portfolio  
Councillor Brian Silvester-Safer and Stronger Communities Portfolio

## Chapter 8-Regulatory and Other Committees

### 1. Regulatory Committees

- 1.1 The Council will appoint those Committees which are listed in Part 3 of this Constitution: Responsibility for Council Functions.
- 1.2 These committees of the Council must be politically balanced.
- 1.3 The powers and duties of these Committees are set out in Part 3.

### 2. Other Committees

- 2.1 The Council will appoint such other Committees as it considers are needed to exercise any of its functions and take those decisions which are not the responsibility of the Cabinet.
- 2.2 Details of these Committees are also set out in Part 3 of this Constitution.

## Chapter 9-The Standards Committee

### 3. Establishment of the Committee

Part III of the Local Government Act 2000 requires the Council to establish a Standards Committee.

### 4. Composition

- 4.1 The Standards Committee will be composed of:
  - 4.1.1 8 Councillors
  - 4.1.2 5 Statutory Independent Members, who will be entitled to vote at meetings, but who are not Councillors or officers of the Council;
  - 4.1.3 3 Parish Members. At least one Parish Member must be present when matters relating to Parish Councils or their Members are being considered;
- 4.2 A Member of the Cabinet may not chair the Standards Committee.

### 5. Role and Functions

The Committee will be responsible for

- discharging the Council's functions under Part III of the Local Government Act 2000;
  - considering and granting, or otherwise, dispensations in respect of Members' Interests when so enabled under Part III of the Local Government Act 2000;
  - promoting high standards of ethical behaviour by developing, maintaining and monitoring codes of Conduct for Members of the Council (including Co-opted Members and other persons acting in a similar capacity) and for employees in accordance with best practice and Government guidance;
  - advising the Council on the adoption or revision of the Codes of Conduct for Members and Officers;
  - ensuring that Members receive advice and training as appropriate on the Members' Code of Conduct;
  - issuing advice to Members on the treatment of personal interests and on conduct matters generally;
  - ensuring that the Council maintains appropriate links with the Standards Board for England and the Commission for Local Administration in England (Ombudsman);
  - referring issues, which impinge on staff conduct, performance, terms of employment, training and development to the appropriate and responsible Executive Member and/or Manager;
  - promoting high standards of responsiveness by the Council to its clients and contacts
- (a) advising other persons/bodies on probity and ethics as appropriate, particularly where that person or body is exercising functions on behalf of the Council; and
- (b) supporting the Council's statutory officers as appropriate or their authorised deputies, in the performance of their duties.

#### **4 Standards Complaints Sub-Committee**

- 4.1 The Standards Committee may delegate the conduct of a local standards hearing to a Standards Complaints Sub-Committee in accordance with the Council's approved procedure.



## Chapter 10-[Area][Neighbourhood] Working

*[As Area/Neighbourhood working arrangements emerge, full details need to be provided here. These should include:*

- *Core Purpose*
- *Operating Principles*
- *Terms of Reference*
- *Public Involvement*
- *Conflicts of Interest*
- *Access to Information]*

## Chapter 11-Joint Arrangements

### 11.1 ARRANGEMENTS TO PROMOTE WELL BEING

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

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

### 11.2 JOINT ARRANGEMENTS

- (a) The Council may establish joint arrangements with one or more local authorities and/or their Executives to exercise functions which are not executive functions in any of the participating authorities, or advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities;
- (b) The Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities;
- (c) Except as set out below, the Cabinet may only appoint Cabinet members to a joint committee and those members need not reflect the political composition of the local authority as a whole;
- (d) The Cabinet may appoint members to a joint committee from outside the Cabinet in the following circumstances:-

- the joint committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Cabinet may appoint to the joint committee any Councillor who is a member for a ward which is wholly or partly contained within the area;

The political balance requirements do not apply to such appointments.

- (e) Details of any joint arrangements including any delegations to joint committees will be found in the Council's scheme of delegations in Part 3 of this Constitution.

### **11.3 ACCESS TO INFORMATION**

- (a) The Access to Information Rules in Part 4 of this Constitution apply.
- (b) If all the members of a joint committee are members of the Cabinet in each of the participating authorities, then its access to information regime is the same as that applied to the Cabinet.
- (c) If the joint committee contains members who are not on the Cabinet of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

### **11.4 DELEGATION TO AND FROM OTHER LOCAL AUTHORITIES**

- (a) The Council may delegate non-executive functions to another local authority or, in certain circumstances, the executive of another local authority;
- (b) The Cabinet may delegate executive functions to another local authority or the Executive of another local authority in certain circumstances;
- (c) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.

### **11.5 CONTRACTING OUT**

The Council (for non-executive functions) and the Cabinet may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under Section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under

usual contracting principles, provided there is no delegation of the Council's discretionary decision-making.

## Chapter 12-Officers of the Council

### **1 Definition**

- 1.1 The term “officers” means all employees and staff employed or engaged by the Council to carry out its functions. It includes those under short-term, agency or other non-employed situations. It does not apply to any person employed by contractors who are carrying out work or duties for the Council under contracts.

### **2 Management Structure**

- 2.1 The Council will employ/engage such officers as it considers necessary to carry out its functions.

### **3 Management Board**

- 3.1 The Council's Management Board comprises the following officers who shall be regarded as “Chief Officers”

- Chief Executive
- Director-People
- Director-Places
- Section 151 Officer
- Monitoring Officer
- Head of Human Resources
- Head of Policy and Performance

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

- 4.1 The Head of the Paid Service is the Chief Executive.
- 4.2 The Head of the Paid Service cannot be appointed as the Council's Monitoring Officer.
- 4.3 The Head of the Paid Service may hold the position of the Section 151 Officer if he/she is a qualified accountant.

### **5 Monitoring Officer**

- 5.1 The Borough Solicitor is designated as the Council's Monitoring Officer.
- 5.2 The [insert titles] are designated as the Deputy Monitoring Officers.

- 5.3 The Monitoring Officer may appoint, in writing, further deputies as he/she considers appropriate.

## **6 Section 151 Officer**

- 6.1 The Borough Treasurer and Head of Assets is designated as the Section 151 Officer. He or she may appoint, in writing, a deputy as appropriate.

## **7 Functions of the Head of the Paid Service**

- 7.1 The Head of the Paid Service will report to the full Council on the manner in which the Council develops its functions and the co-ordination of those functions as well as the number and grade of officers, (and their organisation), required to support the Council in delivering its services. He/she also has statutory functions in relation to staff.

## **8 Functions of the Monitoring Officer**

- 8.1 The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available to Members, staff and the public.
- 8.2 After consulting with the Head of Paid Service and the S151 Officer, the Monitoring Officer will report to the full Council, (or to the Cabinet 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 would give 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.
- 8.3 The Monitoring Officer will help to promote and maintain high standards of conduct by providing support to the Standards Committee.
- 8.4 The Monitoring Officer will receive and act on reports made by ethical standards officers and decisions of case tribunals.
- 8.5 The Monitoring Officer will conduct investigations into matters referred by ethical standards officers and make reports or recommendations in respect of them to the Standards Committee.
- 8.6 The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the Policy Framework.

- 8.7 The Monitoring Officer will provide advice to all councillors on issues in relation to the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy and Planning Framework.
- 8.8 The Monitoring Officer cannot be the Section 151 Officer or the Head of Paid Service.
- 8.9 The Monitoring Officer will ensure that executive decisions, the reasons for those decisions, relevant officer reports and background papers are made publicly available as soon as possible.

**9 Functions of the Borough Treasurer and Head of Assets (Section 151 Officer)**

- 9.1 After consulting with the Head of Paid Service and the Monitoring Officer, the Borough Treasurer and Head of Assets will report to the full Council (or to the Cabinet in relation to an executive function) and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- 9.2 The Borough Treasurer and Head of Assets will have overall responsibility for the administration of the financial affairs of the Council.
- 9.3 The Borough Treasurer and Head of Assets will contribute to the corporate management of the Council, in particular, by providing professional financial advice.
- 9.4 He/she will provide advice on issues to all councillors in relation to the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework issues and will support and advise councillors and officers in their respective roles.
- 9.5 He/she will provide, as appropriate, financial information to the media, members of the public and the community.

**10 Duty to provide sufficient resources to the Monitoring Officer and Section 151 Officer**

- 10.1 The Council will provide the Monitoring Officer and S151 Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed in their statutory roles.

## **11 Returning Officer**

- 11.1 The Chief Executive has been appointed by the Council as the Returning Officer for Council Elections.

## **12 Conduct**

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

## **13 Employment**

- 13.1 The recruitment, selection and dismissal of officers will comply with the Staff Employment Rules as set out in this Constitution.

# **Chapter 13-Decision-making**

## **1. Responsibility for decision-making**

- 1.1 The Council makes many decisions relating to matters within its area. So that members of the public are clear about what decisions are made and what part of the Council or individual has responsibility for particular types of decisions, the Council will keep a record of these things. This record is set out in Part 3 of this Constitution.
- 1.2 The Council, the Cabinet, the Leader of the Council and any Committee or Sub-Committee of the Council may delegate a function or decision to a Committee, Sub-Committee or officer on a permanent or one-off basis. Permanent delegations are explained in Part 3 of this Constitution, including in various Schemes of Delegation which can be found there.
- 1.3 The Cabinet has delegated decision-making powers to individual members of the Cabinet, and details can also be found in Part 3.

## **2. Principles of decision-making**

- 2.1 The following principles will apply to the way in which the Council makes its decisions:
- The Council will take into account all relevant considerations and will ignore those which are not relevant.
  - A realistic evaluation of alternatives will be made and consultation will take place through access by the public to those making decisions.
  - The Council will take decisions which are proportionate to the desired outcome.

- When it makes decisions, the Council will take professional advice from officers.
- Human rights will be respected.
- The Council makes a presumption that its decision-making processes will be open.
- The Council will be clear in its aims and desired outcomes.
- When executive decisions are taken, the options available will be explained, as well as the reasons for the decision.

### **3. Types of decision and the decision-takers**

#### **3.1 Decision-making by the Full Council**

When the Council makes decisions, it will follow the Council Procedure Rules which can be found in Part 4 of this Constitution.

#### **3.2 Decision-making by the Cabinet**

Part 4 of this Constitution contains the Cabinet Procedure Rules, which will be complied with when the Cabinet makes decisions.

#### **3.3 Decision-making by Scrutiny Committees**

The Council's Scrutiny Committees must follow the Scrutiny Procedure Rules when they make decisions. These Rules are contained in Part 4 of this Constitution.

#### **3.4 Decision-making by other Committees and Sub-Committees established by the Council**

The Council Procedure Rules, contained in Part 4 of this Constitution, will be followed when Committees and Sub-Committees of the Council make decisions.

#### **3.5 Decision-making by Council bodies acting as tribunals**

On occasions, the Council, a Councillor or officer act as a tribunal or in a quasi-judicial manner when they determine the civil rights, obligations or criminal responsibility of individuals. When this happens, they will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

### **4. Key decisions**

- 4.1 Certain types of decisions made by the Cabinet, individual Cabinet Members, Committees, Sub-Committees of the Cabinet and officers are “Key Decisions”. Except in cases of urgency, these types of decision receive special advance publicity so that members of the public and Councillors are able to consider the implications of the decision. They may also seek to influence the decision by making contact with the decision-maker. Key Decisions appear on the Council’s Forward Plan, which can be viewed on the Council’s website, or in hard copy form at the Council’s offices.
- 4.2 The statutory definition of a Key Decisions, as contained in paragraph 8 of Part III of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, is as follows:-

“an executive decision which, is likely –

- (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.”

*[this to be updated according to any revised definition of Key Decision]*

- 4.3 *[The Council has decided that the letting of any contract by the Council’s [Business Services Officer] or the Council’s [Policy Officer], which involves the provision of services to, or the purchase of goods and services by the Council shall be excluded from the definition of a Key Decision where such contracts relate mainly to the internal workings of the authority and do not therefore have a significant impact directly on local communities in the same way as other Key Decisions. Such contracts include advertising, library books, vehicles, consumables, food, gas, electricity and cleaning of Council premises.]*

## Chapter 14-Finance, Contracts and Legal Matters

### 1. Financial Management

- 1.1 The Council has agreed certain financial rules which are contained in Part 4 of this Constitution. The Council will manage its financial affairs in accordance with these rules.

### 2. Contracts



- 2.1 The Council has also agreed a set of rules for contracts. Every contract made by the Council will comply with these rules, which can be found in Part 4 of this Constitution.

### **3. Legal Proceedings**

- 3.1 The Borough Solicitor is authorised to institute, defend or participate in any legal proceedings or to take other action where this is necessary to give effect to decisions of the Council or in any case where he/she considers that it is necessary to protect or further the Council's interests.

### **4. Signing etc of documents**

- 4.1 Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Borough Solicitor or other person authorised by him/her unless any enactment otherwise authorises or requires, or the Council has given the required authority to some other person.
- 4.2 Any contract entered into on behalf of the Council shall be made in accordance with the Council's Finance Procedure Rules. In the absence of any authority given to a specific officer all such contracts must either be signed by at least the Borough Solicitor or his/her authorised deputy, plus another of his/her authorised deputies or be made under the common seal of the Council.

### **5. The Council's Common Seal**

The Common Seal of the Council will be kept in a safe place in the custody of the Borough Solicitor. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which, in the opinion of the Borough Solicitor, should be sealed. The affixing of the Common Seal will be attested by the Borough Solicitor or one of his/her authorised deputies.

## **Chapter 15-Management of the Constitution**

### **1 Review**

- 1.1 The Governance and Constitution Committee, in consultation with other appropriate Members, the Monitoring Officer and Section 151 Officer, will monitor and review the Constitution to make sure that its aims and principles are given full effect.

- 1.2 In doing this, the Committee will need to be aware of the strengths and weaknesses of the Constitution, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1. To do this, the Committee may require:

- meetings between Members and officers of the Council;
- an audit-trail of a sample of decisions to be carried out;
- issues raised by Members, officers, the public and other relevant stakeholders to be recorded and assessed;
- the Council's practices to be compared with those in other local authorities, or national examples of best practice.

## **2 Changing the Constitution**

- 2.1 Changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Governance and Constitution Committee.
- 2.2 The Council will take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals to change the "Leader and Cabinet" style of government set out in this Constitution.

## **3 Suspension of the Constitution**

- 3.1 The Articles of this Constitution may not be suspended. However the Procedure Rules set out in this Constitution may be suspended by the full Council to the extent permitted by those Rules and the law.
- 3.2 A motion to suspend any rules cannot be moved, without notice, unless at least one half of the whole number of councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking into account the purposes of the Constitution set out in Article 1.

## **4 Interpretation**

- 4.1 The ruling of the Council's Mayor as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution.

## **5 Publication**

5.1 The Borough Solicitor:

- will give a printed copy of this Constitution to each Member of the authority upon delivery of that individual's declaration of acceptance of office on the Member first being elected to the Council;
- will ensure that copies are available for inspection at council offices, libraries and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee;
- will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary.

# Proper Officer Provisions

## PROPER OFFICER PROVISIONS

<b>LOCAL GOVERNMENT ACT 1972</b>		
<b>SECTION</b>	<b>SUBJECT MATTER</b>	<b>PROPER OFFICER</b>
83	Declaration of acceptance of office by chairman, vice-chairman or councillor	Lead Officer of Joint Implementation Team
84	Receipt of resignation of office by person elected	Lead Officer of Joint Implementation Team
88(2)	Convening of meeting of Shadow Council to fill casual vacancy in office of chairman	Interim Monitoring Officer
89(1)(b)	Receipt of notice of casual vacancy of councillor from two local government electors	Lead Officer of Joint Implementation Team
96(1)	Receipt of notice of interests in contracts or proposed contracts	Interim Monitoring Officer
96(2)	Recording of disclosures of interests made under section 94 and of notices under section 96(1)	Interim Monitoring Officer
100B(7)(c)	Supply of documents to press	Interim Monitoring Officer
100C(2)	Written summary of exempt proceedings	Interim Monitoring Officer
100D(1)(a)	Compilation of list of and inspection of background papers	Each Member of Joint Implementation Team
100F(2)	Exclusion of document containing exempt information	Interim Monitoring Officer
151	Arrangements for proper	Interim Chief Finance

	administration of Shadow Council's financial affairs	Officer
223(1)	Appearance of Council in legal proceedings	Interim Monitoring Officer
225	Deposit of documents	Interim Monitoring Officer
228(3)	Accounts to be open to inspection	Interim Chief Finance Officer
229(5)	Certification of photographic copies of documents	Interim Monitoring Officer
234(1) and (2)	Authentication of documents	Interim Monitoring Officer
Schedule 12 para 4(2)(b)	Signature of summons to council meeting	Interim Monitoring Officer
Schedule 12 para 4(3)	Receipt of notices regarding address to which summons to meeting is to be sent	Interim Monitoring Officer
Schedule 14 para 25(7)	Certification of resolutions under para 25	Interim Monitoring Officer
<b>LOCAL GOVERNMENT FINANCE ACT 1988</b>		
114	Officer responsible as regards reports	Interim Chief Finance Officer

<b>LOCAL GOVERNMENT AND HOUSING ACT 1989</b>		
2(4)	Deposit of list of politically restricted posts	Lead Joint Implementation Team Officer for Human Resources

15-17	Receipt of various notices relating to political groups under relevant Regulations	Interim Monitoring Officer
	Local Authorities (Standing Order) England Regulations 2001	Lead Joint Implementation Team Officer for Human Resources

**Representation of the People Act 1983**

Section 8	Electoral Registration Officer for the registration of electors	Chief Executive
Section 35	Returning Officer for the election of Councillors for the District and parishes within the District	Chief Executive