

# CHESHIRE EAST COUNCIL

# CONSTITUTION

## Chapter 3 Procedure Rules-Remember to delete when complete

Date	Version	Author	Summary of amendments made
15.03.21	1	J Barnes BB	Update
22.03.21	2	J Barnes BB	Update s151 to Chief Finance Officer; various minor amends
25.03.21	3	J Barnes BB	Incorporate feedback from DB & AT
8.04.21	4	J Barnes BB	Updated following receipt of councillor comments and Constitution Committee; removal of virtual meeting rules
20.04.21	5	J Barnes BB	Updated following Council on 19 April – removal of length of meetings
18.05.21	6	D Brown CEC	Update for 22 June 2021
25.05.21	7	V Barman BB	Updated to include Constitution Committee on 29 April – added SOs re budget meeting voting as required by 2001 Regs

EDITION: April 2021

## Chapter 3

### Procedure Rules

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This part of the Constitution covers the following areas:

Part	Title	Contents
1	<a href="#">Rules of Procedure</a>	<p>This part sets out the rules of procedure relating to meetings and decisions of the Council covering:</p> <ol style="list-style-type: none"><li>1. Council Meetings</li><li>2. Committee and Sub-Committee Meetings</li><li>3. Scrutiny Procedure Rules</li><li>4. General Provisions</li></ol> <p>Appendix: Public Speaking</p>
2	<a href="#">Access to Information Procedure Rules</a>	<p>This part sets out the rights to access documents and information of the Council and the obligations to publish and make information available.</p>
3	<a href="#">Budget and Policy Framework Procedure Rules</a>	<p>This part sets out the rules providing the framework for managing the Council's financial affairs.</p>
4	<a href="#">Finance Procedure Rules (FPRs)</a>	<p>This part sets out the rules relating to the financial operation of the Council, covering:</p> <ol style="list-style-type: none"><li>1. Introduction</li><li>2. Financial Management</li><li>3. Financial Planning</li><li>4. Risk Management and Control of Resources</li><li>5. Financial Systems and Procedures</li><li>6. External Arrangements</li></ol>

Part	Title	Contents
5	<a href="#"><u>Contract Procedure Rules (CPRs)</u></a>	<p>This part sets out the rules covering the way in which the Council contracts with other organisations, covering:</p> <ol style="list-style-type: none"> <li>1. General Rules</li> <li>2. Rules which apply to ALL contracts</li> <li>3. Contracts below the Public Procurement Threshold</li> <li>4. Contracts at or above the Public Procurement Threshold</li> <li>5. Procedures for ALL Requests for Quotation and Invitations to Tender</li> <li>6. Contracts and Post Procurement Requirements</li> <li>7. Waiver and Breach</li> </ol>
6	<a href="#"><u>Employment Procedure Rules</u></a>	<p>This part sets out the rules relating to the recruitment, appointment and dismissal of senior staff.</p>

## Chapter 3 – Part 1

### Rules of Procedure

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#### **1. Council Meetings**

- 1.1 The Council will decide when and where its meetings will take place. Details will be contained in a calendar of meetings which will be approved by the Council.
- 1.2 The Mayor, or the Council, can agree to hold a meeting at a different place or time.
- 1.3 An extraordinary meeting can be called by resolution of the Council or by the Mayor, or five Councillors can ask the Mayor, in writing, to call a special meeting. If the Mayor does not agree within 7 days, then those Councillors can call the meeting by giving written notice to the Monitoring Officer, provided the purpose of the meeting is a valid one.
- 1.4 The Monitoring Officer, in consultation with the Mayor, may also call a special meeting, taking into consideration the subject matter of the request, its urgency and impact on the Council, Councillors and their constituents.
- 1.5 Before the start and at the end of each meeting, Councillors and Officers will stand whilst the Mayor and the Deputy Mayor enter and leave the room when the Mayor or Deputy is wearing his or her robes.

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

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

#### ***Quorum***

- 1.8 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 falls below 21, the Mayor will adjourn the meeting. Where the Mayor does not give a date and/or time to re-convene, all business not completed will be considered at the next scheduled meeting.

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

- 1.9 The Council will decide such matters as required by the law, and those matters set out in **Chapter 2** of this Constitution.

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

- 1.10 The Council has adopted **Error! Reference source not found.** – these are for guidance only [as follows](#):-

#### **Agenda for Annual Council Meeting**

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

#### **Agenda for Ordinary Council Meetings**

- Apologies for Absence
- Declarations of Interest
- Approval of Minutes of previous meeting
- Mayor's Announcements
- Leader's Announcements
- Public Questions
- Recommendations from Committees
- Notices of Motion
- Questions from Councillors

- 1.11 Business shall be dealt with in the order in which it is set out in the agenda unless the Mayor (or the Council) decides otherwise.

#### ***Urgent Business***

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

#### ***Confirmation of Minutes***

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

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

- 1.15 When the item is reached on the agenda, the appropriate Chair of the relevant Committee will, where appropriate, move the recommendation or advice, or endorsement of a Committee decision. Another Councillor may second the motion.
- 1.16 The Chair cannot ask the Council to agree to withdraw a recommendation of a Committee unless new and relevant information has become available after the decision of the body concerned. The information must be disclosed to the Council.

***Withdrawal of Motion***

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

***Motions Moved Without Notice***

- 1.18 Motions and amendments which can be moved at a Council meeting without notice are:
- (a) Appointment of a Chair for the meeting.
  - (b) Motions relating to the accuracy of the minutes of the Council, a Committee or Sub-Committee.
  - (c) That an item of business specified in the summons should have precedence.
  - (d) Reference to a Committee or Sub-Committee.
  - (e) Appointment of or appointment to Committees, Sub-Committees occasioned by an item mentioned in the summons to the meeting.
  - (f) Receipt of Records of Decisions and Minutes of Committees and Sub-Committees
  - (g) Adoption of recommendations of Committees and Sub-Committees and any consequent resolutions.
  - (h) That leave is given to withdraw a motion.
  - (i) Receipt of reports of officers and any consequent resolutions.
  - (j) Extending the time limit for speeches.
  - (k) Amendment to motions.
  - (l) That the Council proceed to the next business.
  - (m) That the question be now put.
  - (n) That the debate be now adjourned.
  - (o) That the Council do now adjourn.
  - (p) Authorising the sealing of documents.
  - (q) Suspending Procedure Rules, in accordance with Procedure Rule 4.17.
  - (r) Motion under Section 100A(4) of the Local Government Act 1972 to exclude the press and public.
  - (s) That a Councillor named under Procedure Rules 4.6 and 4.7 should not be heard further or should leave the meeting.
  - (t) Giving consent of the Council where consent of the Council is required by these Procedure Rules.

***Questions at Council meetings***

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- 1.19 A Councillor may ask the Mayor or the Chair of a Committee any question about a matter which the Council, or the Committee has powers, duties or responsibilities.
- 1.20 A Councillor may ask the nominated/designated representative of the Cheshire Fire Authority or the Cheshire Police and Crime Panel any question about the responsibilities of his/her respective Authority.
- 1.21 All questions must be sent in writing to the Monitoring Officer at least 3 clear working days before the meeting.
- 1.22 There will be a maximum Councillor question time period of 30 minutes. A maximum period of 2 minutes will be allowed for each Councillor wishing to ask a question during Councillors' question time. The Mayor or person presiding will have discretion to vary this requirement where he/she considers it appropriate.
- 1.23 Those Councillors submitting more than one question in writing may indicate the priority of importance of each question.
- 1.24 Questions will be selected by the Mayor taking into account the time available.
- 1.25 Questions in writing will not be read out at Council meetings.
- 1.26 All Questions will be brief, clear and focussed.
- 1.27 Questions must relate to the functions of the Council and the area of Cheshire East. No questions will be allowed which, in the opinion of the Monitoring Officer are:
  - inappropriate, frivolous, derogatory, offensive, vexatious or otherwise improper;
  - related to a Council employment or staffing matter;
  - potentially defamatory; or
  - substantially the same as any question submitted to a meeting of Council during the preceding 6 months.
- 1.28 Questions will be asked and answered without discussion. In replying, the Councillor responding will use all reasonable endeavours to address the matters raised in the question. The Councillor responding may: decline to answer any question; or may: reply direct; or reply by reference to a publication; or reply by written answer within 10 working days with a copy to all Councillors (except where the response contains exempt or confidential information), or refer the question to an appropriate Committee.
- 1.29 Following the answer to each question, the Mayor may permit the questioner to ask a concise and focussed supplementary question which relates to the subject matter of the initial question and answer.

- 1.30 Where a question relates to a matter that appears on the agenda for that meeting, the question shall be put and answered at the start of the consideration of that matter unless the Mayor considers otherwise.
- 1.31 There will be a maximum public question time period of 30 minutes. A maximum period of 2 minutes will be allowed for each person wishing to ask a question in public question time. The Mayor or person presiding will have discretion to vary this requirement where he/she considers it appropriate. Questions must be sent in writing to the Monitoring Officer at least 3 clear working days before the meeting. Rules 1.24 – 1.30 above will also apply to public question time.

### ***Notices of Motion***

- 1.32 A notice of motion must relate to matters for which the Council has responsibility or which affects its area.
- 1.33 Notice of every motion (other than a motion which 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 7 clear working days before the next meeting of the Council, to the Monitoring Officer or the Head of Governance and Democratic Services by whom it shall be dated, in the order in which it is received.
- 1.34 Councillors are permitted to submit Notices of Motion in email and electronic form.
- 1.35 The Monitoring Officer shall, if need be, give a ruling as to whether the Motion is relevant and acceptable.
- 1.36 A Motion which, in the opinion of the Monitoring Officer is:
- inappropriate, frivolous, derogatory, offensive, vexatious or otherwise improper;
  - related to a Council employment or staffing matter;
  - potentially defamatory; or
  - substantially the same as any motion submitted to a meeting of Council during the preceding 6 months

will be returned to the Councillor who submitted it along with an explanation in writing to the Councillor about why it will not be included on the agenda for the meeting.

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

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



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

- 1.38 A Notice of Motion will be regarded as withdrawn if:
- (a) prior to the Council meeting, an indication to this effect is given in writing to at least one of the above-named officers by the Councillor who submitted the Notice, or
  - (b) at the Council meeting, oral notice to this effect is given by the Councillor who submitted the Notice, or
  - (c) the Notice of Motion is not moved and seconded at the meeting of Council.

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

- 1.39 When a Motion has been moved and seconded the mover and seconder shall jointly be allowed a total period of 2 minutes in which to explain the purpose of the motion before it is dealt with. The Mayor may then decide that the motion shall stand referred without discussion to such of those bodies as the Mayor may determine, for determination. However, if the Mayor considers it conducive to the despatch of business, the motion may be dealt with at the meeting at which it is initially considered.

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

- 1.40 Each motion will then be referred to the relevant decision-making body for determination, without the need for any reference back to Council except where:
- (a) arising from consideration of the motion, the Committee recommends to the Council a change to the Constitution, or
  - (b) there is some other legal or Constitutional requirement for the matter to be referred back to Council.
- 1.41 Unless the Chair of the appropriate decision-making body agreed there were good reasons not to do so, notices of motion must be referred to that body within two meeting cycles, and the proposer of the motion would be consulted before the body decided the matter.
- 1.42 At the meeting of the body to which the motion has been referred for consideration, the proposer of the motion if present shall be invited to speak first, followed by the seconder. The matter will then be opened up to wider discussion.

### ***Rules of Debate***

#### ***Motions and Amendments***

- 1.43 No motion or amendment shall be discussed unless it has been proposed and seconded. Where required by the Mayor, motions or amendments shall be put in writing and handed to the Mayor before they are further discussed or put to the meeting. The Mayor may, at his/her discretion, allow a motion or amendment to be put which is not in writing, provided

that the Mayor has concluded that the wording of the motion or amendment is understood by all members of the body concerned.

### ***Seconders's Speech***

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

### ***Only One Councillor to Stand at a Time***

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

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

- 1.46 A Councillor 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 Councillors when the Council is agreeing a budget, or where the Council, Committee or Sub-Committee otherwise agrees, no speech will exceed 3 minutes.
- 1.47 In advance of the meeting at which the Council is due to agree a budget, the Council's Political Groups may agree that a limited number of speeches will be made on behalf of each Political Group, which exceed the 3 minute limitation contained in these Rules. The Mayor will have discretion as to how this will be implemented at the meeting and, where no agreement can be reached between the Political Groups, whether and (if so) how any extension of the 3 minute limitation might be permitted to operate.

### ***When a Councillor may speak again***

- 1.48 At a Council meeting a Councillor 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 1.53 (Right of Reply) or 1.55 (closure)
  - (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 1.54 (b) to (j), below when the procedure in those paragraphs shall be followed.

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

- 1.49 An amendment must be relevant to the motion and shall be to:
- (a) leave out words
  - (b) leave out words and add others
  - (c) insert or add words
- but such amendment shall not have the effect of negating the motion before the Council.

### ***Number of Amendments***

- 1.50 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 Mayor 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.

### ***Status of Amendments***

- 1.51 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.

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

- 1.52 A Councillor 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. At least 24 hours' notice should be provided of any proposed amendment to the Monitoring Officer. In both cases, the consent of the Council is required. There should be no discussion on whether consent should or should not be given.

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

- 1.53 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.

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

- 1.54 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, a Committee or Sub-Committee for consideration or reconsideration
  - (g) that the question be now put
  - (h) that a Councillor be not further heard
  - (i) by the Chair under paragraph 4.7, that a Councillor do leave the meeting
  - (j) a motion under Section 100A(4) of the Local Government Act 1972 to exclude the public.

### ***Closure Motions***

- 1.55 A Councillor may move, without comment, at the conclusion of a speech of another Member, "That the Council proceed to the next business", "That the question be now put", "That the debate be now adjourned", or "That the Council do now adjourn". When one of these Motions has been seconded the Mayor shall proceed as follows:
- (a) on a motion to proceed to next business - unless in his/her opinion the matter before the meeting has been insufficiently discussed, he/she shall first give the mover of the original motion the right of reply, and then put to the vote the motion to proceed to next business
  - (b) on a motion that the question be now put - unless in his/her opinion the matter before the meeting has been insufficiently discussed, he/she shall put to the vote the motion that the question be now put and, if it is passed, give the mover of the original motion the right of reply before putting the motion to the vote
  - (c) on a motion to adjourn the debate or the meeting - if in his/her opinion the matter before the meeting has been insufficiently discussed on that occasion he/she shall put the adjournment motion to the vote without giving the mover of the original motion the right of reply on that occasion.

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

- 1.56 A Councillor 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 Councillor 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.

***Ruling of Chair on a Point of Order/Personal Explanation***

- 1.57 The ruling of the Chair 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.

***Respect for the Chair***

- 1.58 At the Council meeting whenever the Mayor rises during a debate any Councillor then standing shall sit down and the Council shall be silent.

***Rescission of Earlier Resolution***

- 1.59 Subject to paragraph 1.60, no motion or amendment shall be moved at a meeting of the Council to rescind any resolution of the Council which was passed within the preceding 6 months or which is to the same effect as one which has been rejected within that period.

- 1.60 Such a motion may be moved if:

1.60.1 it is recommended by a Committee, or

1.60.2 notice of such motion has been given under paragraph 1.33 and signed by at least 8 Councillors.

***Voting***

- 1.61 Voting will be by a show of hands.
- 1.62 When a Councillor asks for a recorded vote to be taken, and 8 other Councillors support the request, the vote will be recorded to show whether each Councillor voted for or against the motion or abstained.
- 1.63 A recorded vote will not be taken if the vote has already begun to be taken by a show of hands.
- 1.64 Councillors must be in their designated seats for their vote to be counted. The Mayor may agree to waive this requirement before the vote is taken.
- 1.65 A Councillor may require, after a vote is completed, that the Minutes of the meeting record how he/she voted or abstained.
- 1.66 A Councillor may, immediately after the item of business is voted upon, request that a lost motion or amendment be recorded in the minutes.
- 1.67 Where there are equal votes cast for a motion or amendment the Mayor or the person presiding shall have a second or casting vote.

***Voting at Budget meetings***

- 1.68 Immediately after any vote is taken at a budget decision meeting of an authority there must be recorded in the minutes of the proceedings of that meeting the names of the persons who cast a vote for the decision or against the decision or who abstained from voting.

- 1.69 In paragraph 1.68

(a) “budget decision” means a meeting of the authority at which it—

(i) makes a calculation (whether originally or by way of substitute) in accordance with any of sections 31A, 31B, 34 to 36A, 42A, 42B, 45 to 49, 52ZF, 52ZJ of the Local Government Finance Act 1992; or

(ii) issues a precept under Chapter 4 of Part 1 of that Act, and includes a meeting where making the calculation or issuing the precept as the case may be was included as an item of business on the agenda for that meeting;

(b) references to a vote are references to a vote on any decision related to the making of the calculation or the issuing of the precept as the case may be.

### ***Offices and Appointments***

~~4.68~~1.70 A vote will be held to elect or appoint the Mayor and Deputy Mayor of the Council, the Leader of the Council and Councillors to any office or position where more than one person is nominated.

~~4.69~~1.71 If more than one person is nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person (from the number of Councillors present).

### ***Election of Chairs of Committees and Sub-Committees***

~~4.70~~1.72 The Chairs and Vice-Chairs of the Council's committees and sub-committees shall be allocated to the political groups each year at the Annual Meeting of Council. Nominations to Chairs and Vice-Chairs shall be notified by the Council's Group Leaders or Group Whips in writing or by email to the Head of Democratic Services and Governance and shall thereafter be published on the Council's website. Such nominations shall be in accordance with the relevant numerical allocations made by Council in relation to the body in question.

~~4.71~~1.73 A Councillor appointed as Chair or Vice-Chair must be a member of the relevant Committee or Sub-Committee.

~~4.72~~1.74 Where a vacancy occurs in the office of Chair or Vice-Chair, the relevant Group Leader or Whip shall nominate a replacement.

~~4.73~~1.75 Where both the Chair and Vice-Chair are absent from a meeting of the relevant body, a Chair will be appointed from those Councillors of the body present, provided the meeting is quorate.

~~4.74~~1.76 A description of the [Role and Responsibilities of a Chair](#) of a meeting is available.

## **Urgent Decisions Taken Outside of Meetings**

### ***Definition of an urgent decision***

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

### ***Urgent Decisions***

**1.761.78** If a decision would normally be required to be made by full Council and it has to be decided before the next meeting of the Council, the decision may be made by the Chief Executive or in his/her absence the Deputy Chief Executive (or in their absence the Chief Executive's nominee) in consultation with Group Leaders and the Mayor (or in his/her absence the Deputy Mayor) subject to the following requirements being met:

- (a) The decision-maker is satisfied that the matter is urgent and cannot await the next meeting of the Council, or an urgently convened Council meeting;
- (b) The decision is reported for information to the next available meeting of the Council;
- (c) The provisions of legislation are complied with;
- (d) Advice has been taken from the Chief Executive, the Council's Monitoring Officer and Chief Finance Officer;
- (e) All Councillors are notified of the decision taken by electronic means.



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

- 2.1 The standing committees and sub-committees of the Council and their membership size are set out in **Chapter 2 Part 4** of the Constitution.

### ***Co-option***

- 2.2 A committee or sub-committee may co-opt any person as a non-voting member.
- 2.3 The Scrutiny Committee (or any sub-committee) may co-opt persons to advise and/or assist in the scrutiny of particular areas of the Committee's functions.

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

- 2.4 Where a by-election takes place during the year, and following receipt of notice from a Political Group, the Council will decide upon the composition of Committees and Sub-Committees to reflect any change in political balance.

### ***Substitution Arrangements***

- 2.5 A Political Group may appoint a substitute Member to a Committee or Sub-committee. All members of a Political Group will be regarded as being reserve members, who may take the place of an appointed Councillor at a particular meeting of a committee or sub-committee, but see further below in respect of the need for appropriate training.
- 2.6 In respect of the Planning and Licensing Committees, each Political Group will, by notice to the Monitoring Officer, nominate appropriately trained Councillors to be reserve Members for those Committees. Such reserve Councillors may take the place of an appointed Councillor at a particular meeting of the Planning or Licensing Committee in question.
- 2.7 In addition to being appropriately trained, a substitute Councillor for a planning committee meeting must be a member of another planning committee or in the pool of planning substitutes.
- 2.8 Any reserve Councillor acting as substitute shall inform the Chair at the beginning of the meeting. The outgoing Councillor 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 Councillor shall become the representative on the Committee or Sub-Committee for the same period. At the end of the meeting, the outgoing Councillor shall resume his/her place on the Committee or Sub-Committee in question and the Councillor who had been appointed as substitute in his/her place shall revert to being a reserve member.

### ***Notice of Meetings***

- 2.9 The Monitoring Officer shall give notice of meetings and distribute agendas to all members of the Committee or Sub-Committee. Agendas will be made available to members by electronic means and a paper copy



can be supplied when requested from the Head of Democratic Services and Governance.

***Urgent Decisions***

- 2.10 An item of urgent business which has to be decided before the next meeting of a Committee or Sub-Committee can be determined as follows:
- 2.11 The Chief Executive or in his/her absence the Deputy Chief Executive (or in their absence their nominee) in consultation with the Chair and/or Vice-Chair of the relevant Committee or sub-committee has delegated authority to take any decision subject to the following requirements being met:
- (a) The decision-maker is satisfied that the matter is urgent and cannot await the next meeting of the Committee or Council, or an urgently convened Committee or Council meeting;
  - (b) The decision is reported for information to the next available meeting of the Committee or Council;
  - (c) The provisions of legislation are complied with;
  - (d) Advice has been taken from the Chief Executive, Council's Monitoring Officer and Chief Finance Officer;
  - (e) All Councillors are notified of the decision taken by electronic means.

***Changes to the Calendar of Meetings***

- 2.12 Meetings of Committees and Sub-Committees will be set out in the calendar of meetings approved by the Council. There will be a presumption against alterations to the date, time and venue for meetings.
- 2.13 A meeting of a decision-making body scheduled in the Calendar of Meetings may be cancelled or changed by the Monitoring Officer following consultation with the Chair provided that, wherever possible, such cancellation or change takes place at least five clear working days before the scheduled date of the meeting to enable sufficient public notice to be given.
- 2.14 When it is necessary to arrange a special meeting, the Head of Democratic Services and Governance will consult the Chair and Spokespersons of the relevant Committee or Sub-Committee before any action is taken.

***Quorum at Committees and Sub-Committees***

- 2.15 Business cannot be transacted at meetings of Committees and Sub-Committees unless there is at least one third of the members of the body present, subject to a minimum of 3 where the total membership of any Committee or Sub-Committee comprises eight or fewer members. The quorum of one third of the membership will be rounded up where this cannot readily be divided by 3.
- 2.16 These arrangements may be varied because of a legal requirement or by the Council.

***Minutes of Committees and Sub-Committees***

- 2.17 The Minutes of a Committee or Sub-Committee must be confirmed at its next meeting where possible.
- 2.18 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.
- 2.19 Where no issues of accuracy are raised, or after any motion has been dealt with, the Chair shall sign the Minutes.
- 2.20 The Minutes of any Sub-Committee must be submitted to the next meeting of the parent Committee by the Sub-Committee Chair.
- 2.21 Councillors may ask a question or comment on any Minute. The Chair 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.
- 2.22 Where a Councillor has a question or comment on an exempt, private or confidential Minute, the question or comment must be given in writing to the Monitoring Officer at least 24 hours before the start of the meeting.

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

- 2.23 [Error! Reference source not found.](#) The Council Procedure Rules set out those motions and amendments which can be moved without notice in rule 1.18.

***Public Speaking and Questions***

- 2.24 A total period of 15 minutes will be usually be allocated for members of the public to ask questions at Committee meetings.
- 2.25 Members of the public are required to give 3 clear working days' notice of their intention to make use of the questions facility.
- 2.26 Members of the public may ask questions on any matter relating to the agenda of the Committee, provided that the Chair retains the discretion to rule a question out of order and require the member of the public to cease speaking if the questioner mentions matters that are:
- inappropriate, frivolous, derogatory, offensive, vexatious or otherwise improper;
  - related to a Council employment or staffing matter;
  - potentially defamatory; or
  - substantially the same as any question submitted to a meeting of Council during the preceding 6 months.
- 2.27 At meetings of Committees, members of the public will be allowed up to 2 minutes each to speak, subject to the Chair having discretion to vary this requirement where he/she considers it appropriate.

- 2.28 Further information is included within the [Appendix on Public Speaking](#).

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

- 2.29 Rules of debate shall be the same as for Council meetings.

***Voting***

- 2.30 Voting at Committee and Sub-Committee meetings will be by a show of hands.
- 2.31 When a Councillor asks for a recorded vote to be taken, and one other Councillor supports the request, the vote will be recorded to show whether each Councillor present voted for or against the motion or abstained.
- 2.32 A recorded vote will not be taken if the vote has already begun to be taken by a show of hands.
- 2.33 A Councillor may require, after a vote is completed, that the Minutes of the meeting record how he/she voted or that he/she abstained.
- 2.34 A Councillor may request that a lost motion or amendment be recorded in the minutes by requesting this immediately after the vote is taken.
- 2.35 Where there are equal votes cast for a motion or amendment, the person presiding at the meeting will be entitled to, and shall exercise, a second or casting vote. However, where there remains an equality of votes in respect of a motion, the motion will be lost.

***Offices and Appointments***

- 2.36 A vote will be held to elect or appoint Councillors to any office or position where more than one person is nominated.
- 2.37 If more than one person is nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes of those present for one person.

***Mover of a Motion at Council: Attendance at Committee and Sub-Committee***

- 2.38 Where a question or motion has been referred under paragraph 1.28 or 1.43 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 within a period of up to 3 minutes.
- 2.39 The questioner or 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.

***Requests by Councillors for Items of Business to be included on Agendas of a Committee or Sub-Committee***

**Agenda Items Submitted By Councillors**

- 2.40 This facility does not apply to special meetings of Committees and Sub-Committees.
- 2.41 A Councillor may, by notice given to the Monitoring Officer no later than 10 clear working days before the appropriate meeting, request that an item of business be included on the agenda of a Committee or Sub-Committee.
- 2.42 A Councillor 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.
- 2.43 This procedure shall not apply where the item of business, if agreed, would have the effect of rescinding or amending any resolution passed by a Committee or Sub-Committee of the Council within the preceding 6 months.
- 2.44 Items arising from such notices shall appear on the agenda at the end of the Part 1 or 2 business.
- 2.45 Sections 9J, 9JA or 9JB Local Government Act 2000 and Regulations enable a Councillor to request that an item of business is added to an agenda of the Scrutiny Committee provided it is not an excluded matter and is relevant to the functions of the Scrutiny Committee (principally flood risk management; health; and crime and disorder reduction).

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

- 2.46 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 5 clear working days before the meeting or, where the meeting is convened at short notice, from the time the meeting is convened.
- 2.47 The Chair 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 Chair's ruling and the reasons for urgency will be recorded in the Minutes of the meeting.

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

- 2.48 Notwithstanding their rights as a member of the public, a Councillor 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, subject to below;
  - when exempt or confidential business is transacted, the Councillor seeking to attend a meeting on the basis of the above sub-paragraph must have the prior agreement of the Monitoring Officer in consultation

with the Chair of the Meeting on the basis that the Councillor has a "need to know" about the exempt or confidential business to be transacted.

- 2.49 For clarification, nothing in the paragraph above shall require a Councillor to obtain any prior agreement before attending the open session of any meeting of a Committee or Sub-Committee.
- 2.50 Where a Councillor has permission to attend a meeting that is not open to the public, he/she will be given a copy of the agenda and relevant papers upon arrival at the meeting.
- 2.51 The Councillor has no right to vote and may speak only with the consent of the Chair of the meeting.
- 2.52 At meetings of the Strategic Planning Board and Planning Committees, Councillors' speaking rights are subject to the protocol on public speaking entitled '[Public Speaking Rights at Strategic Planning Board and Planning Committees](#)'.

***Respect for the Chair***

- 2.53 In Committee or Sub-Committee meetings, whenever the Chair rises from his/her seat, Councillors should remain in their seats and the Committee or Sub-Committee shall be silent.

### **3. Scrutiny Committee Procedure Rules**

#### ***Agenda for Scrutiny Committee***

- 3.1. The Scrutiny Committee may hold enquiries in relation to matters within its Terms of Reference and may appoint specialists to assist 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.

#### ***Reports from the Scrutiny Committee***

- 3.2. The Council or a Committee (as appropriate) shall consider any report from the Scrutiny Committee at its next programmed meeting.

#### ***Councillors and Officers Giving Account***

- 3.3. Where the Scrutiny Committee requires an officer to attend to answer questions or discuss issues, this will be agreed with the Chief Executive.
- 3.4. 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:
- (a) what the policies are
  - (b) the justification and objectives of those policies as the Committee sees them
  - (c) the extent to which those objectives have been met, and
  - (d) how administrative factors may have affected both the choice of policy measures and the manner of their implementation.
- 3.5. Officers may be asked to explain and justify advice they have given prior to decisions being taken. They may also be asked to explain and justify decisions they have taken under delegated powers.
- 3.6. 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.
- 3.7. The requirements of the Councillor/Officer Protocol and the Officer Code of Conduct must be adhered to where an officer is attending a meeting of the Scrutiny Committee.
- 3.8. Where any Councillor or officer (with the Chief Executive's agreement) is required to attend the Scrutiny Committee under this provision, the Chair of that Committee will inform the Monitoring Officer, who will inform the Councillor or officer in writing, giving at least 10 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 Councillor or officer concerned will be given reasonable and sufficient notice to allow for its preparation.

- 3.9. Where, in exceptional circumstances, the Councillor or officer is unable to attend on the required date, then the Committee shall, in consultation with the Councillor or officer, arrange an alternative date for attendance.
- 3.10. As well as reviewing the documentation, in fulfilling its scrutiny role, it may require any Councillor or Officer, to attend before it to explain in relation to matters within their remit:
- (a) any particular decision or series of decisions;
  - (b) the extent to which the actions taken implement Council policy; and/or
  - (c) performance of the function

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

#### ***Attendance by Others***

- 3.11. The Scrutiny Committee may invite individuals other than Councillors and officers to address it, discuss issues of local concern and/or answer questions.

#### ***The Party Whip***

- 3.12. 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 Committee is subject to a formal party whip, the Councillor 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.

#### ***Joint Scrutiny Protocol***

- 3.13. The Council has approved a joint scrutiny protocol for Cheshire, Merseyside and Wirral to consider consultations by NHS bodies or service providers in connection with substantial developments or variations in service. Nominations to any joint scrutiny committee established under the protocol will be made by the Chair of the Scrutiny Committee.
- 3.14. Where the Scrutiny Committee conducts investigations (e.g. with a view to policy review), it may also ask people to attend to give evidence at its meetings, which are to be conducted in accordance with the following principles:
- (a) The investigation is to be conducted fairly and all members of the Committee are to be given the opportunity to ask questions of attendees, and to contribute and speak

- (b) Those assisting the Committee by giving evidence are to be treated with respect and courtesy, and
  - (c) The investigation to be conducted so as to maximise the efficiency of the investigation or analysis.
- 3.15. Following any investigation or review, the Committee shall prepare a report, for submission to the appropriate Committee and/or Council as appropriate and shall, unless there are exceptional reasons, make its report and findings public.
- 3.16. There is no facility to allow questions by members of the public at meetings of the Scrutiny Committee. However, a period of 10 minutes will be provided at the beginning of such meetings to allow members of the public to make a statement on any matter that falls within the remit of the committee, subject to individual speakers being restricted to 3 minutes.



#### 4. General Provisions

##### ***Records of Attendance***

- 4.1 Councillors attending a meeting of which they are a member must sign their name on the attendance sheet provided.

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

##### ***Matters not open to the Public or Press***

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

##### ***Matters which may prejudice the interest of the Council***

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

##### ***Decisions or Proceedings of the Council, Committees, Sub-Committees, Panels and Boards***

- 4.4 No Councillor shall, without the consent of the Chair 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
  - (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 4.2 or 4.3.

##### ***Prohibited Disclosure***

- 4.5 The press and public shall be excluded during the consideration of any item of business which would be likely to disclose exempt or confidential information.

##### ***Disorderly Conduct***

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

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

***Persistent Misconduct***

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

***General Disturbance***

- 4.8 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.

***Disturbance by members of the Public***

- 4.9 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.

***Inspection of Documents***

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

- 4.10 Members of Council, decision-making and other bodies will be provided with electronic copies of agenda papers, and a written request may be made to the Head of Democratic Services and Governance for paper copies.

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

- 4.11 To help a Councillor 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, having considered the reasonableness of the request and the ‘need to know’.

***Minutes of the decision making bodies – Open for Inspection***

- 4.12 Minutes of meetings of the Council, Committees or Sub-Committees shall be open for inspection by any Councillor.

***Provisions relating to Personnel Matters***

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

***Sealing of Documents***

***Authority***

- 4.14 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 an Officer 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.

***Attestation***

- 4.15 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.

***Variation and Revocation of Procedure Rules***

- 4.16 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.

***Suspension of Procedure Rules***

***Motion Required***

- 4.17 Subject to paragraph 4.18 below, 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.

***Notice of Motion***

- 4.18 A motion to suspend Procedure Rules shall not be moved without notice (under paragraphs 1.18 to 1.34) unless there shall be present at least one-third of the members of the Council or the Committee or Sub-Committee respectively.

***Referral of Decisions***

- 4.19 When a decision is made by one of the six service Committees or by an officer with a specific delegated authority from the Committee (over and above delegations under this Constitution), the decision shall be published by electronic means and shall be available at the main offices

of the Council normally by 5.00 pm on the second full working day following the day on which the decision was made.

- 4.20 Subject to paragraphs 4.21 and 4.24 below a decision taken and to which paragraph 4.19 above refers will not be implemented, until the expiry of 5 clear working days after the decision was made and recorded.
- 4.21 Unless the decision is urgent, 9 or more Councillors may submit a referral request, detailing the reasons for the referral, in writing, to the Monitoring Officer. Where the request is validated by the Monitoring Officer, the decision cannot be implemented until the procedures below have been followed.
- 4.22 The grounds for a valid referral, in the opinion of the Monitoring Officer, are as follows:
- (a) Decision is outside the Budget and Policy Framework
  - (b) Inadequate consultation relating to the decision
  - (c) Relevant information not considered
  - (d) Insufficient consideration of legal or financial advice
  - (e) Viable alternatives not considered
  - (f) Justification for the decision open to challenge on the basis of the evidence considered
- 4.23 The Monitoring Officer may discuss the request with the lead member signatory, the Chair of the relevant service Committee and the Mayor with a view to achieving an outcome to resolve the issue without the need for referral to Council.
- 4.24 Where a valid referral is received the decision shall stand referred to the next ordinary Council meeting for review. A representative of the referral signatories and the Chair of the relevant service Committee shall have the opportunity to address the meeting on the subject of the decision that has been referred. Council may either:
- (a) Uphold the original decision with or without modifications, in which case the decision has immediate effect; or
  - (b) Reject the decision and determine the matter itself.
- 4.25 Any decision may only be the subject of a referral once.

***Interpretation of Procedure Rules***

- 4.26 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.

***Submission of Notices by Councillors – Electronic Means***

- 4.27 A Councillor of the Council may communicate, by electronic means, any notice under any of the Constitution's Procedural Rules to initiate any

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process or procedure provided it is clear that the notice has been originated by that Member.

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

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

***Petitions***

- 4.29 Petitions regarding matters affecting the area or the functions of the Council or relating to consultation exercises or pursuant to specific legislation may be accepted at the start of an Ordinary Council meeting or a Committee. Petitions will not be considered at the Annual Meeting of Council or at Extraordinary Meetings of Council unless the Extraordinary Council Meeting is convened to consider the subject matter of the petition.
- 4.30 Petitions must be 'signed' (in person or by name if electronic) by at least 5,000 petitioners and contain the name and contact details of the 'petition organiser'.
- 4.31 Petitions must relate to the functions of the Council and the area of Cheshire East. Petitions will not be accepted that are considered by the Monitoring Officer to be:
- inappropriate, frivolous, derogatory, offensive, vexatious or otherwise improper;
  - related to a Council employment or staffing matter;
  - potentially defamatory; or
  - substantially the same as any question submitted to a meeting of Council during the preceding 6 months.
- 4.32 Petitions will be referred to the relevant Committee with or without debate.
- 4.33 Further information on submitting a petition can be found on the Council's website

## APPENDIX

### ***Public Speaking and Questions***

- 1 There will be public questions at full Council for a total period of up to 30 minutes and the ability to ask questions regarding items of business at Committee meetings.
- 2 A total period of 15 minutes will be allocated for members of the public to ask questions at meetings of Committees and sub-committees. This does not apply to meetings of the Council's Planning and Licensing Committees and sub-committees, which have separate arrangements in place for public involvement. The arrangements for planning meetings are set out in the [Protocol on Public Speaking Rights at Strategic Planning Board and Planning Committees](#).
- 3 At meetings of Council and Committees members of the public will be allowed up to 2 minutes each to speak, subject to the Mayor or Chair having discretion to vary this requirement where he/she considers it appropriate and the Mayor/Chair will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.
- 4 At Council members of the public may ask questions of the appropriate Chair of the committee or sub-committee which has responsibility for the matter in question.
- 5 Where a member of the public wishes to ask a question of the Chair of a committee or sub-committee, at least 3 clear working days' notice must be given in writing to the Head of Democratic Services and Governance, in order that an informed answer may be given.
- 6 Questions must relate to the business of the Council/Committee and the area of Cheshire East. No questions will be allowed which, in the opinion of the Monitoring Officer are:
  - inappropriate, frivolous, derogatory, offensive, vexatious or otherwise improper;
  - related to a Council employment or staffing matter;
  - potentially defamatory; or
  - substantially the same as any question submitted to a meeting of Council during the preceding 6 months.
- 7 The Councillor 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. Questions will be asked and answered without discussion.

- 8 In addition to the general provisions for public speaking set out in this Appendix, the following specific provisions apply to meetings of the [Public Rights of Way Committee](#) in relation to individual applications on the agenda:
- 8.1 For each application on the agenda, a total of 6 minutes is allocated for public speaking, with 3 minutes being allocated for objectors and 3 minutes being allocated for supporters. If there is more than one person wishing to speak as an objector or supporter, the 3 minutes shall be divided equally among them or they may appoint one of their number to speak for all.
  - 8.2 No member of the public shall speak on a matter before the Chair has introduced the report. Members of the public may not participate in the debate or ask questions of officers or Councillors.
  - 8.3 At the Chair's discretion, members of the Committee may, through the Chair, ask questions of a speaker for clarification but should not enter into a discussion with them.
  - 8.4 Any member of the public wishing to address the Committee must give notice of their intention, in writing, to the Head of Democratic Services and Governance by 12 noon 3 clear working days before the meeting.
  - 8.5 These provisions may be varied at the discretion of the Chair.

## **Chapter 3 – Part 2**

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

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- 1 This section sets out the functions, roles and responsibilities of the Committees of the Council. In summary, these are:

#### **Scope**

- 1.1 These rules cover all meetings of the Council and its Committees, Sub-Committees, Advisory Panels, (together called meetings) and decisions made by Officers.
  - 1.2 These rules also cover Councillors' 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 2018. [Details of these rights are on our website](#) or can be obtained from the Council Offices, Westfields, Middlewich Road, Sandbach, CW11 1HZ.
- 2 These rules do not affect any more specific rights to information contained elsewhere in this Constitution or in any Act.

#### **Public Access to Meetings**

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

#### **Notice of Meetings**

- 4 The Council will give at least 5 clear working days' notice of any meeting by posting details of the meeting at Westfields, Middlewich Road, Sandbach, CW11 1HZ (the designated office) and on its website. The notice will specify the business proposed to be transacted at the meeting.
- 5 Councillors entitled to attend a meeting, will receive a summons giving five clear working days' notice to attend and specifying the business proposed to be transacted at the meeting. Except in the case of business required by law to be transacted at the Annual Meeting, or other business brought before the meeting as a matter of urgency in accordance with the Constitution, no business shall be transacted at a meeting other than that specified in the summons.

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

- 6 The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least 5 clear working days before the meeting, except that where a meeting is convened at shorter notice, the copies of the agenda and reports shall be open to inspection from the time the meeting is convened.



- 7 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.
- 8 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.

### **Public Access to Copies**

- 9 The Council will supply copies of:
  - 9.1 any agenda and reports which are open to public inspection
  - 9.2 any further statements or particulars necessary to indicate the nature of the items in the agenda, and
  - 9.3 if the Proper Officer thinks fit, copies of any other documents supplied to Councillors in connection with an item to any person on payment of a charge for postage, copying and any other costs.
- 10 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.

### **Public Access to Minutes etc. after the Meeting**

- 11 The Council will make available for inspection copies of the following for six years after a meeting:
  - 12.1 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 paragraphs 9 and 10)
  - 12.2 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
  - 12.3 the agenda for the meeting, and
  - 12.4 reports relating to items when the meeting was open to the public.

### **Public Access to Background Papers**

#### *List of Background Papers*

- 12 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:
  - 13.1 disclose any facts or matters on which the report or an important part of the report is based; and

13.2 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 paragraphs 20 to 25), nor does this include the advice of a political advisor, or any draft report or document.

13 Background papers will be published on the Website.

### **Public Inspection**

14 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.

15 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.

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

16 The Proper Officer will exclude access by the public to reports which in his/her opinion contain confidential and exempt information (as defined below).

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

18 Where exclusion for exempt information 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.

### **Confidential Information – Requirement to Exclude Public Access**

19 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.

20 Confidential information means:

22.1 information given to the Council by a Government Department on terms which forbid its public disclosure, or

22.2 information the disclosure of which to the public is prohibited by or under another Act or by Court.

### **Exempt Information – Discretion to Exclude Public Access to Meetings**

21 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:

21.1 the meeting resolves so to exclude the public, and that resolution identifies the proceedings or part of the proceedings to which it applies

- 21.2 that resolution states, by reference to the descriptions in Schedule 12A to the Local Government Act 1972 (paragraph 24 below), the description of the exempt information giving rise to the exclusion of the public, and
- 21.3 that resolution states, by reference to reasons given in a relevant report or otherwise, in all the circumstances of the case, that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 22 In these circumstances, public access to reports, background papers and minutes may also be excluded.
- 23 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.
- 24 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 2006; (b) the Friendly Societies Act 1974; (c) the Friendly Societies Act 1992; (d) the Co-operative and Community Benefit Societies Act 2014; (e) the Building Societies Act 1986; or (f) the Charities Act 2011.
4. Information relating to any consultations or negotiations, or contemplated consultations or	Information is exempt if and so long, as in all the circumstances of the case, the public

Category	Condition
negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or officer-holders under the authority.  “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	interest in maintaining the exemption outweighs the public interest in disclosing the information
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
6. Information which reveals that the authority proposes –  (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or  (b) to make an order or direction under any enactment	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
<b>EXCEPT THAT</b>  Information falling within any of paragraphs 1 to 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.	
7A. Information which is subject to any obligation of confidentiality.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
7B. Information which relates in any way to matters concerning national security.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
7C. Information presented to a Panel or Sub-committee of the Audit and Governance	Information is exempt if and so long, as in all the circumstances of the case, the public

Category	Condition
Committee, set up to consider any matter regarding a failure to comply with a Code of Conduct.	interest in maintaining the exemption outweighs the public interest in disclosing the information
(Section 7C was created to allow complaints submitted under the Standards Committee (England) Regulations 2008 to be discussed in private. Although these Regulations have been repealed the subsequent changes to the Access to Information provisions remain in the constitution)	

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

- 25 When a meeting of an Initial Assessment Panel is called this will be held in private. If a meeting of the Local Resolution Panel or a Hearing Sub-Committee of the Audit and Governance Committee is called it will normally meet in public unless exempt or confidential information would be disclosed.

### **The Forward Plan of Significant Decisions**

#### *Period of Forward Plan*

- 26 Forward plans will be prepared to cover a minimum period of one calendar month (longer where this is possible) beginning with the first day of any month. They will contain outstanding matters from the previous forward plan.

#### *Content of Forward Plan*

- 27 The Forward Plan will contain matters which the Committee Chairs have reason to believe will be significant decisions to be taken by a Committee or Sub-Committee during the period covered by the plan. It will describe the following particulars in so far as the information is available or might reasonably be obtained:
- 27.1 the matter in respect of which a decision is to be made
  - 27.2 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
  - 27.3 the date on which, or the period within which, the decision will be taken
  - 27.4 the identity of the principal groups whom the decision taker proposes to consult before taking the decision
  - 27.5 the means by which any such consultation is proposed to be undertaken
  - 27.6 the steps any person might take who wishes to make representations to 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

27.7 a list of the documents submitted to the decision taker for consideration in relation to the matter, and

27.8 where the decision is to be taken in private the reasons for this.

28 Exempt information and confidential information and the advice of political advisers will not be included in a forward plan but the Forward Plan should contain particulars of the matter.

29 Public access to records of individual decision. As soon as reasonably practicable after any decision has been made 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. Significant decisions made by Officers will also be open to inspection. This does not require the disclosure of exempt or confidential information, or advice from a political adviser or assistant.

### **Councillor Access to Exempt or Confidential Documents**

30 Members of a committee or decision-making body of the Council are automatically provided with, and entitled to receive, copies of confidential or exempt reports of that body.

31 In addition, the following categories of Councillor may receive copies of confidential or exempt reports with the agreement of the Monitoring Officer, where a need to know can be demonstrated:

31.1 Group Leaders

31.2 Local Ward Members for the Ward affected, in accordance with the [Ward Member Protocol](#)

31.3 Scrutiny committee Chair and Vice-Chair if relevant

31.4 Councillors visiting the meeting in question (with the agreement of the Monitoring Officer) who would receive the papers upon arrival

### **Audio Recording of Meetings and Publication**

32 All decision-making meetings of the Council and Committees shall be audio recorded except where the public and press have by resolution been excluded from the meeting. Informal non-decision-making bodies such as working groups are excluded from this requirement. The audio recordings of meetings shall be published on the Council's website.

### **Reporting of Meetings by the Public and Press**

33 Any member of the public or press attending a public meeting of the Council may now record the proceedings and report them to others. 'Reporting' means filming, photographing, making an audio recording or some other such method of recording proceedings and then reporting or providing a commentary on those proceedings, orally or in writing. A

person attending the meeting may use any appropriate communication method, including the Internet, to publish or share the recorded material. This would include the use of social media.

- 34 Any person wishing to record a public meeting is not required to give the local authority prior notice although they are encouraged to do so in order that reasonable facilities can be provided.
- 35 No one is entitled to record or report the proceedings of a meeting if the meeting has moved into Part 2 to consider confidential or exempt business. In such circumstances, the public and press would, as now, be required to leave the meeting and to deactivate and/or remove any recording or communications equipment.
- 36 Any person recording or reporting a meeting may not use flash photography or intrusive lighting, or move around the room, or ask any of the participants at the meeting to repeat something they have said. They may not cause excessive noise when installing or moving equipment. They may not give an oral commentary during the meeting. All of these activities would serve to disrupt proceedings and anyone acting in a disruptive manner may be excluded from the meeting.
- 37 Any person recording or reporting a meeting may not film any children or vulnerable adults present at the meeting, or any member of the public who objects to being filmed.
- 38 Anyone wishing to record or report on meetings should be warned at the outset that the law of defamation will apply, as well as the law relating to public order offences. They should also be reminded that freedom of speech should be exercised with personal and social responsibility, showing respect and tolerance towards the views of others. The Chair or person presiding at the meeting would be expected to give this advice with the support of officers.



## **Chapter 3 – Part 3**

### **Budget and Policy Framework Procedure Rules**

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- 1 The Council is responsible for the adoption of its Budget and Policy Framework.
- 2 The Corporate Policy Committee and the Finance Sub-Committee have responsibility for proposing to Council a budget and policies that will form part of the Budget and Policy Framework.
- 3 Committees and Sub-Committees have responsibility for making decisions within that Budget and Policy Framework. Departures will need to be agreed by Council unless they are within the virement rules set out below including appropriate agreement where functions overlap.

#### **Process for Developing the Framework and Budget**

- 4 The process by which the Budget and Policy Framework shall be developed is:
  - 4.1 The Corporate Policy Committee will consider proposals regarding the review or adoption of any plan or strategy forming part of the Policy Framework and make recommendations to full Council.
  - 4.2 Following consultation with the administration the Chief Finance Officer will prepare a draft budget. The Finance Sub-Committee will propose the parameters within which variations to the Medium Term Financial Strategy (MTFS) can be made. Parameters will ensure compliance with the requirement to have a balanced budget taking in to account the likely plans and strategies set out in the Policy Framework.
  - 4.3 The Corporate Policy Committee will make proposals to Council to vary the budget within the MTFS according to the parameters set by the Finance Sub-Committee.
  - 4.4 The Finance Sub-Committee will decide upon the length of consultation for the MTFS (usually this will not be less than four weeks).
  - 4.5 The Service Committees shall be asked to give their views as part of that consultation.
  - 4.6 At the end of the consultation period, the Corporate Policy Committee will draw up firm proposals having regard to the responses received from the consultation.
  - 4.7 The Corporate Policy Committee will submit those firm proposals to the Council together with a report that will set out the comments made by consultees and, in particular the Corporate Policy Committee's response to views expressed in any consultation process.



- 4.8 Once Corporate Policy Committee has approved the firm proposals they will be referred to the full Council for decision.
- 4.9 In reaching a decision, the Council may adopt the Corporate Policy Committee's proposals, or propose amendments to them.
- 4.10 If it accepts the recommendations without amendment, the Council may make a decision, which has immediate effect.
- 4.11 Proposed amendments to the Budget must be submitted to the Chief Finance Officer at least 3 clear working days before the Council meeting and must enable the Budget to balance.
- 4.12 The Council may approve a decision which does not accord with the recommendation of the Corporate Policy Committee.
- 4.13 The decision shall then be published and implemented immediately.

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

- 5 Where a Committee wishes to make a decision which is contrary to the Policy Framework, or contrary to or not wholly in accordance with the Budget approved by full Council, then that decision may only be taken by the Council, unless it is urgent or falls within virement or supplementary estimate rules.
- 6 Advice shall be taken first from the Monitoring Officer and/or the Chief Finance Officer as to whether the decision would be contrary to the Policy Framework, or contrary to or not wholly in accordance with the Budget. If the advice of either of those Officers is that the decision would not be in line with the existing Budget and/or Policy Framework, then the decision must be referred to the Council for decision, unless the decision is urgent, in which case the provisions below shall apply.

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

- 7 In exceptional circumstances and if the decision is a matter of urgency a decision may be taken by a Committee or Officer if:
  - 7.1 it is not practical to convene a quorate meeting of the full Council, and
  - 7.2 the Chair and Vice Chair of the Corporate Policy Committee agrees that the decision is urgent.
- 8 In the absence of the Chair or Vice Chair of the Corporate Policy Committee the consent of the Chair or Vice-Chair of the Finance Sub-Committee, or, in the absence of any or all of them, the Mayor, will be sufficient.
- 9 Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency. The reasons why it was not practical to convene a quorate meeting of full Council and the consent of the Chair and Vice Chair of the Corporate Policy Committee (or

others) to the decision being taken as a matter of urgency must be noted on the record of the decision.

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

- 10 Changes (including modifications, revisions, variations, withdrawal or revocation) to Policy Framework plans or strategies must ordinarily be approved by the Council. However, the Council may, at the time when the plan or strategy is approved, authorise a Committee, Sub-Committee or an Officer, to make changes, including changes that will:
  - 10.1 result in the closure or discontinuing of a service, in whole or in part to meet a budgetary constraint, or
  - 10.2 ensure compliance with the law, ministerial direction or Government guidance, or
  - 10.3 determine matters where the existing policy document is silent on the matter under consideration.

### **The Policy Framework**

- 11 The Council's Policy Framework comprises:
  - 11.1 The Corporate Plan
  - 11.2 Crime and Disorder Reduction Strategy
  - 11.3 Local Transport Plan
  - 11.4 Local Development Plan and Development Plan Framework documents
  - 11.5 Licensing Authority Policy Statement
  - 11.6 Gambling Statement of Principles
  - 11.7 Equality and Diversity Strategy
  - 11.8 Environment Strategy 2020-24
  - 11.9 Annual Pay Policy Statement
- 12 The process by which the documents forming part of the Local Plan and Development Plan documents shall be developed and approved is set out in legislation.
- 13 Where a new plan or strategy is required to be produced as part of the Policy Framework, either by Council of its own volition, or following a recommendation to Council by a Committee, then the Committee or the Corporate Policy Committee shall develop the new plan or strategy.

### **Financial Limits**

- 14 This section of the Budget and Policy Framework Rules is a table setting out the financial limits that apply in various parts of this Constitution. The

purpose of this table is to assist readers in identifying relevant financial limits and their location in the Constitution.

Page	Reference	Area	Financial Limit
	Chapter 2, Part 4	Corporate Policy Committee	To make recommendations to Council in relation to decisions affecting the remuneration of any new post whose remuneration is or is proposed to be or would become £100,000 p.a. or more.
	Chapter 2, Part 4	Corporate Policy Committee	To make decisions in relation to proposed severance packages with a value of £95,000 or more as appropriate (excluding accrued holiday pay and pay in lieu of notice)
	Chapter 2, Part 6	Delegations to Chief Executive / Head of Paid Service	To make decisions affecting the remuneration of any existing post that is or could become £100,000 p.a. or more, in consultation with the Leader and Chair of the Corporate Policy Committee, provided the post falls within the framework contained in the Council's Pay Policy Statement
	Chapter 2 Part 6	Delegations to the Monitoring Officer	To authorise the settlement of actual or potential uninsured claims, claims, litigation or Ombudsman cases across all functions of the Council <ul style="list-style-type: none"> <li>• up to £100,000; or</li> <li>• above £100,000 and below £500,000 in consultation with the Finance Sub-Committee Chair and the Executive Director (Corporate Services)</li> </ul> (subject to being reported to the relevant Committee after settlement).
	Chapter 3, Part 4	Urgent Decisions	For the purposes of this urgency provision, no financial limit shall be placed on the decision-making powers of the Chief Executive
	Chapter 3, Part 4, Section 4	Asset Disposal / Asset write Offs	The Chief Finance Officer may authorise: <ul style="list-style-type: none"> <li>• the write off of losses; or</li> <li>• disposals, of obsolete or surplus equipment, materials, vehicles or stores</li> </ul> up to a value of £25,000. Where the sum exceeds £25,000 but is less than or equal to £100,000 this shall be carried out in consultation with the Finance Sub-Committee Chair. Write offs over £100,000 will be the responsibility of the Finance Sub-Committee or Corporate Policy Committee.
	Chapter 3, Part 4, Section 4	Acquisition and disposal of land and property	Over £2 million is the responsibility of the Finance Sub-Committee; and below £2m is a member of the Corporate Leadership Team in

Page	Reference	Area	Financial Limit
			consultation with the Chief Finance Officer and the Executive Director Place.
	Chapter 3, Part 4, Section 4	Salaries and Wages	The Chief Executive or Executive Director (Corporate Services) may approve severance up to £95,000, excluding accrued holiday pay and pay in lieu of notice. Corporate Policy Committee will determine cases above this threshold or a waiver will be sought from full Council and central Government
	Chapter 3, Part 4, Section 5	Ordering and Paying for Work, Goods and Services	Where a requisition for the purchase of goods or services exceeds £25,000 in value, Contract Procedure Rules Part 5 Section 3 applies
	Chapter 3, Part 4, Annex	Request for Quotation	An invitation to providers to submit quotations for Contracts to provide goods, services or works valued between £25,000 and the relevant Public Procurement Threshold
	Chapter 3, Part 5, Section 2	Electronic Tendering	All tendering above the relevant Public Procurement Threshold (and for Contracts which are below those thresholds but higher than £25,000 in value) must be undertaken via an electronic tendering method and shall use the e-tendering Portal accessible through the CPU.
	Chapter 3, Part 5, Section 2	Contracts Register	The Contracts Register shall be controlled by the CPU and the Commissioning Officer must ensure that all Contracts above £10,000 in value are recorded.
	Chapter 3, Part 5, Section 3	Competition Requirements	Up to £10,000 – 3 quotes are advisable but not mandatory (local firms being preferable where appropriate)
	Chapter 3, Part 5, Section 3	Competition Requirements	Between £10,000 and £25,000 – A minimum of three quotations shall be sought, together with advice from the CPU or Legal Services on the appropriate form of Contract
	Chapter 3, Part 5, Section 3	Competition Requirements	Between £25,000 and the applicable Public Procurement Threshold – A minimum of three quotations shall be sought via the E-tendering Portal, and/or Find a Contract Service together with advice from the CPU or Legal Services on the appropriate form of Contract
	Chapter 3, Part 5, Section 5	Opening Bids	Bids above £1,000,000 will be verified by Legal Services
	Chapter 3, Part 5, Section 5	Opening Bids	Bids from the Public Procurement Threshold up to £1,000,000 will be verified by the Procurement Manager or a Category Manager

Page	Reference	Area	Financial Limit
			that has not been involved in the tender in question
	Chapter 3, Part 5, Section 5	Opening Bids	Bids between £25,000 and the Public Procurement Threshold will be verified by a Procurement Officer that has not been involved in the procurement process in question
	Chapter 3, Part 5, Section 5	Opening Bids	Bids between £10,000 and £25,000 will be opened in accordance with any guidance issued by CPU from time to time
	Chapter 3, Part 5, Section 6	Signed Contracts	Contracts (with a value not exceeding £1,000,000) shall be signed on behalf of the Council by a duly authorised Officer in accordance with the local Scheme of Delegation
	Chapter 3, Part 5, Section 6	Contract Sealing	A Contract must be executed under seal by Legal Services where it exceeds £1,000,000 in value
	Chapter 4, Part 1	Gifts and Hospitality	You must within 28 days of receipt, notify the Monitoring Officer in writing of any single gift, benefit or hospitality with a value of £50 or more that you have been offered or accepted as a Councillor from any person or body other than the Authority and a cumulative total from the same source of £100 in 12 months
	Chapter 4, Part 1	Disclosable Pecuniary Interests and Personal Interests	For the purposes of this Code, a relevant person is any person or body in whom such persons have a beneficial interest and a class of securities exceeding the nominal value of £25,000 or one hundredth of the total issued share capital of that body
	Chapter 4, Part 1	Dispensations: Securities	The total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body
	Chapter 4, Part 2	Gifts and Hospitality	Small insignificant gifts of a value of less than £50, such as pens, diaries, calendars, mouse mats or mugs, may be accepted and modest hospitality

### **Virement (the transfer of funds between budgets)**

- 15 The Council has set virement limits within which decision-makers can exercise discretion in approving or otherwise financial transfers, [in consultation with the Chief Finance Officer that are](#) within the Budget. The limits are set out in the table below.

- 16 Decision-makers are able to vire across budget heads between Committees, provided there is compliance with the financial limits in the table below and the Finance Procedure Rules and agreement. It is not permitted to vire funds from any ring-fenced budget.
- 17 Any dispute or disagreement between Committees regarding proposed virement shall be resolved by the Corporate Policy Committee.
- 18 Virement between budget heads (excluding reserves / contingencies)

Virement Amount	Approval Level
Up to and including £100,000	<u>Relevant</u> Head <u>s</u> of Service
In excess of £100,000 up to and including £500,000	Chief Finance Officer in consultation with the Relevant Member(s) of CLT
In excess of £500,00 up to and including: <ul style="list-style-type: none"> <li>£1,000,000 revenue; or</li> <li>£5,000,000 capital</li> </ul>	Relevant Member(s) of CLT and Chief Finance Officer in consultation with Chair of the relevant Committee and the Chair of Finance Sub-Committee
Over <ul style="list-style-type: none"> <li>£1,000,000 revenue; or</li> <li>£5,000,000 capital</li> </ul> (where virement is within budget and policy framework)	<u>Committee</u> <u>And</u> Finance Sub-Committee

### Virement from Reserves or Contingencies

Council may approve that specific earmarked reserves for contingencies are allocated the allocation of earmarked reserves or contingencies within the Budget Control Total of a Committee. The Committee may vire such funds only in consultation with the Chief Financial Officer.

<u>Virement Supplementary Estimate</u> Amount	From <u>Earmarked</u> Reserves or Contingencies
Up to and including £250,000	Chief Finance Officer
In excess of £250,000 up to and including £500,000	Chief Finance Officer in consultation with the Relevant Member of CLT
In excess of £500,000 up to and including £1,000,000	<u>Committee</u> <u>And</u> Finance Sub-Committee
Over £1,000,000	Council with recommendation from Finance Sub-Committee

## Supplementary Estimates

- 19 Where services wish to undertake an activity not originally identified in the budget or incur additional revenue expenditure on an existing activity where this is fully funded (for example through additional specific grant allocations or developer contributions), approval must be sought for a supplementary estimate in accordance with the tables below. The Chief Finance Officer must be consulted in all cases.

### Supplementary Estimates Externally funded other than from Additional Grants

Supplementary Estimate Amount	Approval Level
Up to and including £250,000	Relevant Member of CLT
In excess of £250,000 up to and including £500,000	Relevant Member of CLT in consultation with the Chair of the relevant Committee, Chair of Finance Sub-Committee and Chief Finance Officer
In excess of £500,000 up to and including £1,000,000	Committee <del>And Finance Sub-Committee</del>
Over £1,000,000	Council with recommendation from <del>Finance Sub-Committee</del>

### Funded from Additional Grants

Directors may make applications for grants, where the application does not create a financial or any without other commitment, in consultation with the Chief Finance Officer. However, if the application is for a grant in excess of £1m, or if any match funding will be required, then CLT must be consulted in advance.

—Successful grant applications will require a supplementary -estimate to incur spending, in line with the approval limits set out in the table below.

If grant application or receipt commits expenditure outside of the Control Totals then a Virement or Other Supplementary Estimate will also be required.

Amount of grant to be received	Approval Level
Up to and including £100,000	Officers
Between £100,000 and £500,000	Relevant Member of CLT in consultation with Chair of the relevant Committee and Chair of Finance Sub-Committee
£500k and up to £1m	Committee
£1m and above	Council

- 20 Grants that require spending within restricted timescales may require the use of urgency powers to approve spending in line with the conditions of the grant.
- 21 Any dispute or disagreement between Committees regarding scope of authority, budgets or other matters shall be resolved by the Corporate Policy Committee.



## Chapter 3 – Part 4

### Finance Procedure Rules (FPRs)

#### 1. Introduction

- 1.1. The Finance and Contract Procedure Rules provide the framework for managing the Council's financial affairs. They apply to every Councillor and Officer and anyone acting on its behalf, including School Governors operating under local delegation arrangements. All decision makers need to ensure that they are not only empowered under the Constitution to make a decision, but that they are also authorised under these Rules to incur the financial consequences of every decision that they make.
- 1.2. The Rules identify the financial responsibilities of the full Council, Committees, and Officers. A written record shall be kept of all decisions taken under these Rules that are taken using delegated powers.
- 1.3. The Chief Finance Officer is responsible for maintaining a continuous review of the Finance and Contract Procedure Rules and submitting any additions or changes necessary to the full Council for approval. The Chief Finance Officer is also responsible for reporting, where appropriate, breaches of the Finance and Contract Procedure Rules to Audit and Governance Committee.
- 1.4. The Corporate Leadership Team is responsible for ensuring that all staff are aware of the existence and content of the Council's Finance and Contract Procedure Rules and other internal regulatory documents and that they comply with them, as required by the Council's Code of Conduct for Employees and this Constitution. Failure to comply with the Code of Conduct may result in disciplinary action.
- 1.5. The Chief Finance Officer is responsible for issuing advice and guidance to underpin the Finance and Contract Procedure Rules that Councillors, Officers and others acting on behalf of the Council are required to follow.
- 1.6. Councillors have a fiduciary duty to local taxpayers to spend money wisely and to balance the interests of those who will pay against the interests of those who will benefit from the expenditure.
- 1.7. The Rules are not intended to cover every eventuality, but the spirit of the Rules must always be followed. Where there is any uncertainty in matters of interpretation, advice should be sought from the Director of Finance & Customer Services before decisions or actions are taken.

## **2. Financial Management**

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

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

### **Committees**

- 2.2 Committees are responsible for discharging the Council's functions within the Budget and Policy Framework provided by Council. The Budget will be aligned with Committee and Head of Service responsibilities as far as possible.

### **Audit and Governance Committee**

- 2.3 The Audit and Governance Committee has a right of access to all the information necessary to effectively discharge its responsibilities and may consult directly with internal and external auditors.
- 2.4 The Committee is responsible for a range of matters, including:
- 2.4.1 overseeing the Council's role and responsibilities in respect of Corporate Governance and Audit
  - 2.4.2 supporting the Council's audit function, both internal and external
  - 2.4.3 approving any Council Statement of Accounts as may be required by the relevant Account and Audit Regulations
  - 2.4.4 reviewing and approving the Annual Governance Statement
  - 2.4.5 ensuring the Council's Risk Management arrangements are operating effectively
  - 2.4.6 ensuring the Council has in place appropriate policies and mechanisms to safeguard resources
  - 2.4.7 promoting and maintaining high standards of probity and ethical behaviour.

### **The Chief Finance Officer (Section 151 Officer)**

- 2.5 The Chief Finance Officer is the Council's 'responsible financial officer' under the Accounts and Audit Regulations. He or she is responsible for the proper administration of the Council's affairs as specified in, and undertaking the duties required by Section 151 of the Local Government Act 1972, Section 114 of the Local Government Finance Act 1988, the Local Government Act 2003 and all other relevant legislation.
- 2.6 The Chief Finance Officer is responsible generally, for discharging, on behalf of Cheshire East Council, the responsibilities set out in the

CIPFA Statement on the Role of the Chief Financial Officer in Local Government, including:

- 2.6.1 in conjunction with the other Corporate Leadership Team, the proper administration of the Council's financial affairs
  - 2.6.2 setting and monitoring compliance with financial management codes and standards
  - 2.6.3 advising on the corporate financial position and on the key financial controls necessary to secure sound financial management
  - 2.6.4 providing financial information
  - 2.6.5 preparing the revenue budget and capital programme
  - 2.6.6 treasury management including borrowing and investment.
  - 2.6.7 reporting on the robustness of estimates and adequacy of reserve within the medium term financial strategy
- 2.7 Section 114 of the Local Government Finance Act 1988 includes a requirement for the Chief Finance Officer to report to the full Council and the external auditor if the Council or one of its decision-makers:
- 2.7.1 has made, or is about to make, a decision which involves incurring unlawful expenditure
  - 2.7.2 has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficiency to the Council
  - 2.7.3 is about to make an unlawful entry in the Council's accounts.
- 2.8 Section 114 of the 1988 Act also requires:
- 2.8.1 the Chief Finance Officer to nominate a properly qualified Member of staff to deputise should he or she be unable to perform the duties under section 114 personally. The designated deputy for this purpose is the Head of Financial Management.
  - 2.8.2 the Authority to provide the Chief Finance Officer with sufficient staff, accommodation and other resources – including legal advice where this is necessary – to carry out the duties under section 114.

### **Money Laundering Reporting Officer**

- 2.9 The Chief Finance Officer is appointed as the Council's Money Laundering Reporting Officer and will maintain and advise on Anti-Money Laundering procedures.
- 2.10 The Chief Finance Officer is responsible for notifying the Serious Organised Crime Agency 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. The Chair of the Finance Sub-Committee will be kept informed of any such notifications and of any issues arising from them.

### **Corporate Leadership Team**

- 2.11 Corporate Leadership Team members are responsible for financial management within their directorates and spending within the limits of the budgetary framework set by Council. They shall manage the development of budget policy options with a detailed assessment of financial implications within the budget process and resource framework agreed by the Council.

### **Schemes of Financial Delegation**

- 2.12 Corporate Leadership Team members will establish, operate and keep under review Local Schemes of Financial Delegation, in consultation with the Chief Finance Officer, to ensure that:
- 2.12.1 the day to day financial management of services within their directorate is carried out in a secure, efficient and effective manner, and in accordance with the Finance Procedure Rules and associated relevant guidance.
  - 2.12.2 expenditure is contained within the service's overall approved budget and that individual budget heads are not overspent, by monitoring the budget and taking appropriate and timely corrective action where significant variances are forecast and if necessary, seeking specific in year approval for the transfer of resources between budgets
  - 2.12.3 regular reports in an approved format are made to Committees on projected expenditure against budget and performance against service outcome targets set out in the business plan
  - 2.12.4 prior approval is sought at the appropriate level for new proposals that create financial commitments in future years, change existing policies, initiate new policies or materially extend or reduce the Council's services
  - 2.12.5 resources are only used for the purposes for which they were intended
  - 2.12.6 compliance with the scheme of virement set out above
  - 2.12.7 risks are appropriately assessed, reviewed and managed
  - 2.12.8 all members of staff are fully trained, aware of and comply with the requirements of Financial Procedure Rules, including the Contract Procedure Rules
  - 2.12.9 all allegations of suspected fraud, corruption and financial irregularity are promptly reported to the Chief Finance Officer

and Monitoring Officer and that any local investigations are undertaken thoroughly, consistently and impartially.

- 2.13 The financial limits specified in the Scheme of Financial Delegation will be used to control access to financial systems and on-line transaction approvals.

### **Managing Expenditure**

- 2.14 Budget holders are expected to manage within the budgets provided by full Council. Committee and Sub-Committees are responsible for monitoring financial control and making decisions as required by these rules.
- 2.15 Virement rules allow the transfer of funds between budgets.
- 2.16 Supplementary estimates may be requested ~~to~~<sup>from</sup> increase budgets.

### **Treatment of Year End Balances**

- 2.17 The Finance Sub-Committee is responsible for agreeing procedures for carrying forward under and overspendings on budget headings.
- 2.18 Overspends or underspends in relation to the approved revenue budget may occur for a variety of reasons. With regard to General Fund budgets, there is no 'as of right' carry forward of underspends from one financial year to another except where this is provided for by a binding partnership agreement or other legal agreement with a third party. Decisions on carry forward of overspending or underspending will be made in the context of the financial position of the council as a whole and not any one particular service area.
- 2.19 Any revenue underspending at the year-end may be carried forward, subject to the agreement of the Chief Finance Officer in consultation with the Chair of the Finance Sub-Committee. All carry forward proposals must be supported by an appropriate Business Case demonstrating that the underspend was planned and that the resources carried forward will be earmarked for a specific and appropriate purpose. The Corporate Leadership Team should include provisional indications of likely carry forward requests in their reports on the three-quarter review of performance. Before approval is sought for a carry forward, the Corporate Leadership Team should ensure that there are no unfunded overspends within their directorate. It is extremely unlikely that proposed carry forwards for a service will be approved if there are unfunded overspends elsewhere within the directorate.
- 2.20 Capital block provisions are allocations within which the value of approved schemes must be contained. Any uncommitted sum at the year-end may be carried forward, subject to agreement of the Chief Finance Officer. Any uncommitted sum which is not justified 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, Records and Returns

- 2.21 The Chief Finance Officer is responsible for control and assurance and therefore determines appropriate accounting policies and procedures; exercising oversight of financial and accounting records and systems; and preparing and publishing reports containing statements on the overall finances of the Council, including the annual statement of accounts.
- 2.22 Financial statements must present fairly the financial position of the Council and its expenditure and income.
- 2.23 All accounts and accounting records will be compiled by the Chief Finance Officer or under his/her direction. The form and content of records maintained in other directorates will be approved by the Chief Finance Officer along with reconciliation procedures.

### The Annual Statement of Accounts

- 2.24 The Chief Finance Officer is responsible for ensuring that the annual statement of accounts is prepared in accordance with the *Code of Practice on Local Council Accounting in the United Kingdom* (CIPFA/LASAAC) and signing them in accordance with the Accounts and Audit Regulations 2015. Oversight of the accounts is a responsibility of the Audit and Governance Committee.

## 3. Financial Planning

- 3.1 Full Council is responsible for agreeing the Council's Budget and Policy Framework. In terms of financial planning, the key elements are:

- 3.1.1 The **Medium Term Financial Strategy** sets out:

- what the Council wants to achieve in the short and medium term
- how services will change in the light of priorities, performance, resources, workforce planning needs and consideration of risks
- investment required to deliver change
- how much services will cost in overall terms and to service users
- how much Council Tax will be levied.

- 3.1.2 The **Budget** is the financial expression of the Council's Corporate Plans. It sets out the allocation of resources to Committees, services and projects, the level of contingency funding, the Council Tax base and Council Tax rate, borrowing limits and capital financing requirements

- 3.1.3 The **Capital Strategy** – Capital expenditure involves acquiring or enhancing fixed assets with a long-term value to the Council, such as land, buildings, and major items of plant, equipment or vehicles. Capital assets shape the way services are delivered in the long term and create financial commitments for the future in the form of financing costs and revenue running costs
- 3.1.4 The **Treasury Management Strategy** –sets out the arrangements for the management of the Council's borrowing, lending, cash flows and investments.
- 3.1.5 The **Corporate Plan** sets out the Council's medium-term vision, values and aspirations.
- 3.1.6 The **Investment Strategy** – which sets out the arrangements and financial limits of the Councils non-Capital and non-Treasury investments
- 3.1.7 The **Reserves Strategy** – which sets out the Council's approach to the maintenance and use of the Council's useable reserves.
- 3.1.8 **Specific Service Plans and Strategies** which have a financial implication.

### **Strategic Planning Framework**

- 3.2 Each year the Council produces a Medium Term Financial Strategy, including an approved Budget, Capital Strategy, Treasury Management Strategy, Investment Strategy and Reserves Strategy detailing the financial and service scenario over a three or four year planning horizon (the **Medium Term Financial Strategy** (MTFS)) and the policy and expenditure changes required to respond to this scenario.
- 3.3 The Chief Finance Officer will advise the Council on the financial environment, financial policies (including the appropriate levels of reserves and contingencies, prudential borrowing and treasury management) and the policy and expenditure options to assist in the determination of its Budget. The Chief Finance Officer then has authority to implement decisions within those strategies on borrowing, reserves and investment without any financial limit.
- 3.4 The Finance Sub-Committee, advised by the Chief Finance Officer, Corporate Leadership Team and Heads of Service, will develop a budget package including financing options, policy and expenditure options and a capital programme. The final Budget policies and Council Tax will be determined by Council.

### **Budgeting**

- 3.5 The general format of the budget will be determined by the Chief Finance Officer. The draft budget will include allocation to Committees, different services and projects, proposed taxation levels and contingency funds.



- 3.6 The Chief Finance Officer is responsible for reporting to full Council on the robustness of estimates contained within the budget and the adequacy of reserves allowed for in the budget proposals. The Chief Finance Officer shall determine the level of financial reserves that are prudent for the authority within the Reserves Strategy.
- 3.7 The Council shall not approve amendments to either revenue or capital budgets without first having considered the advice of the Chief Finance Officer on the financial implications arising.

### **Monitoring and Control**

- 3.8 The Chief Finance Officer is responsible for providing appropriate financial information to enable budgets to be monitored effectively. He or she must monitor and control expenditure against budget allocations at a corporate level and report to the Committees on the overall position on a regular basis.
- 3.9 It is the responsibility of Corporate Leadership Team to control income and expenditure within their area and to monitor performance, taking account of financial information and guidance provided by the Chief Finance Officer. They must report on variances within their own areas. They must also take any action necessary to avoid exceeding their budget allocation and alert the Chief Finance Officer to any potential overspending or under-achievement of income budgets in a timely manner.
- 3.10 The Chief Finance Officer, with the support of the Corporate Leadership Team, is responsible for establishing an appropriate framework of budgetary management and control which:
- 3.10.1 Ensures that:
- budget management is exercised within annual cash limits unless the full Council agrees otherwise
  - timely information on receipts and payments is made available, which is sufficiently detailed to enable officers to fulfil their budgetary responsibilities
  - expenditure is committed only against an approved budget head
  - all officers responsible for committing expenditure comply with relevant guidance and Finance and Contract Procedure Rules
  - each cost centre has a single named manager, determined by the relevant Head of Service. As a general principle, budget responsibility should be aligned as closely as possible to the decision-making processes that commits expenditure



- significant variances from approved budgets are investigated and reported by budget managers regularly.
- 3.10.2 Reports to Committees and full Council, with the relevant Director or Head of Service, where they are unable to balance expenditure and resources within existing approved budgets under their control
- 3.10.3 Reports on the Council's projected income and expenditure compared with the budget on a regular basis.
- 3.10.4 Ensures that Schemes of Financial Delegation are maintained for all functions within their area of responsibility
- 3.10.5 Ensures that Best Value and best consideration is obtained.
- 3.10.6 A Business Case must be prepared for all revenue proposals with a significant financial impact, risk profile or policy change. The template, in a form agreed by the ~~Director of Finance & Customer Services~~[Chief Finance Officer](#), must include an assessment of the Service consequences, risk and impact on users, and include any differential impact on particular groups or localities.

### **Capital Approvals**

- 3.11 Capital approvals are the total cost of each provision or scheme rather than the anticipated expenditure in each year.
- 3.12 A Business Case must be prepared for all capital proposals before approval is sought for inclusion in the Capital Programme. The Business Case will be in a format to support decision making, and must identify whole life costs, for revenue and capital. The amount of detail will be proportionate to the value and level of risk. Where there is a greater risk further detail in the Business Case may also be required.

### **Capital Monitoring and Amendments to the Capital Programme**

- 3.13 Any 'in year' approval sought to vary the financial values or implications of a capital scheme, must be supported by an update to the Business Case.
- 3.14 Once the Capital Programme has been approved, project owners must ensure that the scheme is appropriately managed to achieve appropriate Time, Quality and Cost measures in accordance with the business case. This could be supported by production of a more detailed Business Case outlining how the Project or Programme will achieve the associated benefits.
- 3.15 Project owners must provide regular reporting (at least quarterly) of progress of their schemes. Where project performance or outcomes are at risk of significantly varying from the business case the project owner is responsible for taking appropriate mitigating action including the need

to seek appropriate approvals as required. All reporting and monitoring activity should be evidenced and recorded in a way that can be accessed to support auditing of project activity. Guidance should be sought from the Chief Financial Officer if required.

- 3.16 Major recurring programmes of capital expenditure will require a detailed report to be submitted to the relevant Service Committee covering all the schemes within each programme of works and will include total projected cost, expenditure profile and the full financial implications, both capital and revenue. This will include, but not be limited to, the programmes for Schools & Corporate Landlord Planned Maintenance, ICT Investment and the Local Transport Plan.
- 3.17 The Capital Programme will distinguish between committed expenditure from schemes already approved, recurring programmes and new proposals, both medium and longer term.
- 3.18 Where budget provision is included for feasibility work and option development in the capital programme and subsequently the scheme does not progress the expenditure incurred will be treated as abortive costs and charged to revenue.
- 3.19 Wherever possible, expenditure in respect of Highways improvements funded by developers and Rechargeable works should be included in the Capital Programme. Where this is not possible Heads of Service may approve capital expenditure in respect of:
  - 3.19.1 highway improvements fully funded by developers under Section 278 of the Highways Act 1980, provided that a formal agreement has been completed with the developer
  - 3.19.2 other rechargeable reinstatement work
  - 3.19.3 urgent work to repair, replace or reinstate vehicles, buildings or equipment, where the work is to be fully funded from insurance monies.
- 3.20 In addition, Heads of Service may authorise essential design work required in advance of the start of the financial year on capital schemes which are in the programme approved by Council in February.
- 3.21 Council will approve the re-profiling of spend on approved capital schemes across financial years and carry forward of slippage/accelerated spend into future financial years as part of the budget process in February.

### **Capital Receipts**

- 3.22 The Chief Finance Officer must be informed of all proposed capital receipts including sales of land and buildings so that the effect on financial and property management can be assessed.
- 3.23 On the advice of the Chief Finance Officer, the Council will determine how capital receipts will be applied when setting the budget.

## **Leasing and Rental Agreements**

- 3.24 Leasing or renting agreements must not be entered into unless the service has established that they do not constitute a charge against the Council's prudential borrowing limits. Advice must be obtained from the Chief Finance Officer on general leasing arrangements and approval must be obtained for lease agreements.
- 3.25 Leases relating to land or property also require the approval of the Chief Finance Officer. Only the Monitoring Officer or his/her authorised deputies, or persons specifically authorised by the Service Scheme of Financial Delegation, may sign such agreements.

## **Reporting**

- 3.26 Officers are responsible for preparing regular reports on overall financial and non-financial performance and progress against service plan targets. The Corporate Leadership Team is responsible for setting appropriate timelines and the format of such reporting. This includes the onward reporting to Committees and Council as necessary to support informed decision making and governance. 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.
- 3.27 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 Committee Chair on the progress and forecast of all capital expenditure and income against the approved programme.
- 3.28 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 and progress against key activities. Officers are expected to achieve value for money in the delivery of services and the reports should demonstrate how this has been achieved together with an analysis of how key policy and expenditure proposals have been implemented.
- 3.29 The key reporting stages are:
  - 3.29.1 Approval of service plans, including resource requirements and indicators of performance
  - 3.29.2 Approval of Business Cases to vary the Medium Term Financial Strategy
  - 3.29.3 Quarterly reviews of performance, including revenue and capital expenditure and income
  - 3.29.4 Final outturn reports for both revenue and capital expenditure and income, including post-implementation reviews, on major capital schemes completed during the

year.

- 3.29.5 Summary quarterly reviews and outturn position statements of both capital and revenue expenditure and income will also be reported to Council through its relevant subordinate bodies.
- 3.30 In addition, the reports will be specifically required to give details in respect of the following:
  - 3.30.1 Potential overspends and proposed remedial action, including any impact on balances and future year's budgets which may need to be factored in to future financial scenario planning
  - 3.30.2 Amendments to approved budgets (virements, supplementary capital estimates etc.) where Councillor approval is required.

#### **4. Risk Management and Control of Resources**

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

- 4.1 It is essential that robust, integrated systems are developed and maintained for identifying and evaluating all significant operational risks to the Council. This should include the proactive participation of all those associated with planning and delivering services.

##### **Risk Management and Insurance**

- 4.2 The Director of Governance & Compliance is responsible for advising Council on an appropriate risk management policy statement and strategy, including risk appetite/tolerance levels, and for reviewing the effectiveness of risk management including appropriate levels of insurance.
- 4.3 The Director of Governance & Compliance is responsible for preparing the Council's risk management policy statement and for promoting it throughout the Council.
- 4.4 The Audit and Governance Committee will provide Councillor oversight and review the arrangements periodically ensuring the Council's risks are managed effectively and that strategic decisions are informed by and influence the Corporate Risk Register.

##### **Insurance**

- 4.5 The Director of Governance & Compliance will maintain and administer the Council's insurances. The Director of Governance & Compliance is responsible for authorising the settlement or repudiation of insurance claims and associated costs acting on advice from the Council's solicitors, insurers, and claims handlers.

- 4.6 The Corporate Leadership Team and Heads of Service are responsible for informing the Director of Governance & Compliance immediately of:
  - 4.6.1 any insurance claims received
  - 4.6.2 any events which may result in an insurance claim against the Council
  - 4.6.3 the terms of any indemnity which the Council is required to give prior to entering into any contracts etc.
  - 4.6.4 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.
- 4.7 No new insurances may be taken out without prior consultation with the Director of Governance & Compliance.
- 4.8 The Corporate Leadership Team must ensure that there is co-operation with the Insurance Team in providing the correct documentation and that the correct retention of documents is observed.
- 4.9 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**

- 4.10 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.
- 4.11 The Corporate Leadership Team is responsible for ensuring the [Risk Management Framework](#) is implemented and that the full risk management cycle operates within their Services.
- 4.12 The full cycle consists of:
  - 4.12.1 identification of risks, both negative and positive, in relation to the objectives of the Council.
  - 4.12.2 evaluation of risks scored for likelihood and impact, both gross (before any controls) and net (with existing controls)
  - 4.12.3 treatment of the risk either by: avoidance, mitigation, transfer or to consciously accept the risk.
  - 4.12.4 actions and risks monitored and reviewed on a regular basis.
  - 4.12.5 the Council's Risk Register will be maintained and co-ordinated by the Head of Audit and Risk.

- 4.13 There are two levels to the Risk Register:
- 4.13.1 **Strategic** – those risks that impact on the organisation's overall objectives either because of their frequency of occurrence or the significance of the impact.
  - 4.13.2 **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.
- 4.14 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.
- 4.15 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.
- 4.16 Heads of Service will take account of, and address, corporate risks where appropriate and inform the Head of Audit and Risk of any service risks that should be considered significant enough to raise to the corporate level.
- 4.17 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.
- 4.18 The Strategic Risk Register will be reported to the Corporate Leadership Team and to the Audit and Governance Committee in accordance with the budget reporting cycle.

### **Business Continuity**

- 4.19 The Civil Contingencies Act 2004 places a statutory requirement for Local Authorities to maintain plans for the continuation of services in the event of an emergency, so far as is reasonably practicable. Services are expected to have arrangements in place to ensure the effective identification, evaluation and management of business critical services. Further guidance is available on the intranet and from the Head of Audit and Risk.

### **Internal Controls**

- 4.20 The Chief Finance Officer is responsible for advising on effective systems of internal control. These arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice. They should ensure that public funds are properly safeguarded and used economically, efficiently, and in accordance with the statutory and other authorities that govern their use.
- 4.21 It is the responsibility of Corporate Leadership Team to establish sound



arrangements for planning, appraising, authorising and controlling their operations in order to achieve best value, that is continuous improvement, economy, efficiency and effectiveness, and for achieving their financial performance targets.

- 4.22 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.

## **Audit Requirements**

### **Internal Audit**

- 4.23 The Accounts and Audit Regulations 2015 require the Council to have a sound system of internal control which facilitates the effective exercise of its functions; the achievement of its aims and objectives; ensures that the financial and operational management of the authority is effective; and includes effective arrangements for risk management.
- 4.24 To contribute to the production of the Annual Governance Statement, the Head of Audit and Risk, is responsible for planning and delivering a programme of independent review of the Council's activities, the scope of the programme being based on the Council's objectives and an assessment of the risk which may affect the achievement of these objectives.
- 4.25 The Head of Audit and Risk will present an annual report to the Audit and Governance Committee, summarising the audit plans for the coming year and a commentary on audit activity which is completed or in progress, with a mid-year report setting out progress against the annual audit plan. In addition, any matters of material importance in relation to audit matters are also reported to the Audit and Governance Committee.
- 4.26 Audit staff have, in accordance with the Accounts and Audit Regulations, (with strict accountability for confidentiality and safeguarding records and information), full, free and unrestricted access to any and all of the Council's premises, personnel, assets, records and third party fund transactions pertinent to carrying out any engagement, including those of the Council's alternative service delivery vehicles. These rights of access should be documented in the management agreement.
- 4.27 With regards to organisations participating in partnering arrangements, Internal Audit staff shall have such access to the premises, personnel assets and records of the partner as is necessary for the purposes of the partnering arrangement, as detailed in section 6 below. 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**

- 4.28 The Local Audit and Accountability Act 2014 established new arrangements for the audit and accountability of relevant authorities. Under these new arrangements the Council has opted for its external auditors to be appointed by the Public Sector Audit Appointments Limited (PSAA), an independent company established by the LGA for this purpose.
- 4.29 The Council may, from time to time, be subject to audit, inspection or investigation by external bodies such as HM Revenue and Customs, who have statutory rights of access.

### **Preventing Fraud and Corruption**

- 4.30 The Executive Director (Corporate Services) is responsible for the development and maintenance of an anti-fraud and anti-corruption policy.
- 4.31 The Council has an approved Anti-Fraud and Corruption Policy which places responsibility for preventing fraudulent activity with all Members, Managers and individual members of staff. Any matters which involve, or are thought to involve, any fraud or other significant irregularity involving Council assets or those of a third party fund, must be notified immediately to the Head of Audit and Risk, in conjunction with other officers detailed in the Council's Anti-Fraud and Corruption Strategy.
- 4.32 In line with the Anti-Fraud and Corruption Strategy the Monitoring Officer will, in consultation with the appropriate Corporate Leadership Team member and Head of Audit and Risk, decide whether any matter under investigation should be recommended for referral to the Police or the appropriate enforcement agency. The Council's External Auditor also has powers to independently investigate fraud and corruption.

### **Assets**

- 4.33 In the context of these Rules, Assets include buildings, land and infrastructure; furniture; equipment; plant; stores and "intellectual property" such as computer software, data and information of all kinds.
- 4.34 Corporate Leadership Team, Directors and Heads of Service are responsible for the care, control and proper and economical use of all assets used in connection with the operation and delivery of their Services. Proper records should be maintained for these assets, together with appropriate arrangements for their management and security. Information Assets should be recognised in line with the Council's guidance and recorded in the Information Asset Register.
- 4.35 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.

- 4.36 Heads of Service are responsible for ensuring that all computer software used is properly licensed.
- 4.37 The Head of Estates is responsible for maintaining and regular reporting of an Asset Management Strategy.

## **Property**

- 4.38 The Council's Asset Management Strategy sets out the vision, core values and objectives that form the context for the preparation of the Corporate Asset Management Plan and Service Asset Management Plans.
- 4.39 The Council has adopted a Corporate Landlord approach to the ownership and management of its property assets. This means that the ownership of property assets and the responsibility for their management and maintenance is transferred from service directorates to the Corporate Landlord, which is a centralised corporate function.
- 4.40 In this way the Corporate Landlord approach:
  - 4.40.1 enables the Council to utilise its assets to deliver better, more efficient services to our communities.
  - 4.40.2 unlocks the value of assets, seeks efficiencies through joint arrangements with our public sector partners and maximises private sector investment.
  - 4.40.3 ensures the provision of a consistent, corporate and strategic approach to the management of the Council's property portfolio, consolidating resources, eliminating duplication, improving efficiency, procurement and the establishment of corporate property standards
  - 4.40.4 supports the delivery of the Council's Corporate Plan.
- 4.41 The Corporate Landlord's responsibility extends to the acquisition, development and disposal of land and property. This means that the Corporate Landlord is responsible for asset review, feasibility and options appraisal across all services.
- 4.42 The Chief Finance Officer and the Executive Director Place must be consulted on all proposed acquisitions and disposals of land and property.
- 4.43 Separate rules apply to specific processes, such as the use of capital receipts from property sales to pay for new schemes, and guidance should be sought from the Chief Finance Officer and the Executive Director Place where this arises.
- 4.44 Acquisition and disposal of land and property and other assets over £2 million is the responsibility of the Finance Sub-Committee; and below £2m is a member of the Corporate Leadership Team in consultation

with the Chief Finance Officer and the Executive Director Place.

### **Inventories**

- 4.45 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.
- 4.46 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**

- 4.47 Stock is defined as consumable items constantly required and held by a Service in order to fulfil its functions. Heads of Service are responsible for the control of stocks. They must ensure that stocks are appropriately secured and recorded, do not exceed reasonable requirements and that all significant stock is accounted for in the year end accounts. Stocks should be checked at least once a year, more frequently in the case of expensive items.

### **Cash**

- 4.48 Cash held on any Council premises should be held securely and should not exceed any sums for which the Council is insured. If retention of cash on site is unavoidable in exceptional circumstances, the Head of Service is responsible for making appropriate security arrangements. All cash should be banked as quickly as possible.

### **Asset Disposal/Write-off**

- 4.49 The Chief Finance Officer may authorise the write off of losses up to £25,000, or disposals, of obsolete or surplus equipment, materials, vehicles or stores up to a disposal value of £25,000. Where the value exceeds £25,000, but is less than or equal to £100,000 this should be done in consultation with the Finance Sub-Committee Chair. Write offs over £100,000 will be the responsibility of the Finance Sub-Committee or Corporate Policy Committee.
- 4.50 Any write off which arises as a result of theft or fraud must be notified to the Head of Audit and Risk immediately.

### **Treasury Management**

- 4.51 The Council has adopted CIPFA's Code of Practice for Treasury Management in Local Authorities.
- 4.52 The full Council is responsible for approving the Treasury Management policy. The Chief Finance Officer has delegated responsibility for

implementing and monitoring the approved policy and practice (without financial limit).

- 4.53 All money in the hands of the Council is controlled by the Chief Finance Officer.
- 4.54 The Chief Finance Officer is responsible for reporting to the Finance Sub-Committee or Corporate Policy Committee periodically 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.

### **Investments and Borrowings**

- 4.55 It is the responsibility of the Chief Finance Officer to:
  - 4.55.1 ensure that all investments of money are made in the name of the Council or in the name of approved nominees.
  - 4.55.2 ensure that all securities that are the property of the Council or its nominees and the title deeds of all property in the Council's ownership are held in safe custody
  - 4.55.3 effect all borrowings in the name of the Council.
  - 4.55.4 act as the Council's registrar of stocks, bonds and mortgages and to maintain records of all borrowing of money by the Council.

### **Trust Funds and Funds Held for Third Parties**

- 4.56 It is the responsibility of the Chief Finance Officer to:
  - 4.56.1 arrange for all trust funds to be held, wherever possible, in the name of the Council (e.g. 'Cheshire East Borough Council on behalf of.....'). All officers acting as trustees by virtue of their official position shall deposit securities, etc. relating to the trust with the Chief Finance Officer unless any deed otherwise provides.
  - 4.56.2 arrange, where funds are held on behalf of third parties, for their secure administration, approved by the Chief Finance Officer, and to maintain written records of all transactions.
  - 4.56.3 ensure that trust funds are operated within any relevant legislation and the specific requirements for each trust.

### **Staffing**

#### **Salaries and Wages**

- 4.57 The Corporate Leadership Team and Heads of Service are responsible, in consultation with the Head of Human Resources, for providing

accurate and appropriate information and instructions to the Transactional Service Centre to enable the calculation and prompt payment of salaries, expenses and pensions, including details of appointments, promotions, re-gradings, resignations, dismissals, retirements and absences from duty. Human Resources will advise the Transactional Service Centre of relevant changes in respect of employee pensions. The Transactional Service Centre manager will make arrangements for payment to the appropriate bodies, of all statutory, including taxation, and other payroll deductions.

- 4.58 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 Transactional Service Centre in accordance with the specified timetable. This includes on-line input entered locally. The names and specimen signatures of authorised officers must be secured by the Corporate Leadership Team and Heads of Service and included in the service Scheme of Financial Delegation notified to the Chief Finance Officer.
- 4.59 The Head of Human Resources will implement national and local pay agreements as soon as possible after their notification from the appropriate body. Arrangements for funding such awards will be determined each year as part of the budgetary process.

### **Early Retirement/Severance**

- 4.60 Where Heads of Service wish to bring forward proposals under the Council's policies on severance and early retirement, they must be accompanied by a full cost and affordability assessment, in a form agreed by the Chief Executive, the Chief Finance Officer and the Head of Human Resources. The Chair of the Corporate Policy Committee shall be consulted for proposals relating to SM1 and above.
- 4.61 The Chief Executive or Executive Director (Corporate Services) in consultation with the Chair of the Corporate Policy Committee must approve all requests up to £95,000 (excluding pay in lieu of notice and accrued holiday pay). All such requests in excess of £95,000 must be approved by the Corporate Policy Committee or a waiver sought from full Council and central Government.
- 4.62 Heads of Service will generally be required to meet the costs of severance and early retirement from within their approved budget, subject to phasing over an agreed period.

### **Travelling and Subsistence**

- 4.63 Heads of Service are responsible for instructing the Head of Human Resources and for providing appropriate and accurate information to enable the prompt and accurate payment of travelling, subsistence and other expenses to authorised employees in accordance with the terms of employment agreed by the Council.

- 4.64 Heads of Service are responsible for ensuring that Council employees who use their cars for official business are properly insured to indemnify the Council against any loss and for ensuring that payments are only made in respect of journeys which are necessary and actually undertaken. Heads of Service should ensure that the most environmentally friendly and economically available means of transport is used, including pool cars, hire cars and car sharing.
- 4.65 All claims for reimbursement must be made using appropriate official claim forms, always using electronic processing where available.
- 4.66 Further guidance is available via the Centranet.

### **Third Party Funds**

- 4.67 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.
- 4.68 Officers maintaining Third Party Funds are responsible for informing the Head of Audit and Risk of their nature and purpose.
- 4.69 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.
- 4.70 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 Head of Audit and Risk 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.
- 4.71 The Corporate Leadership Team is responsible for ensuring that any Third Party Funds controlled by Council staff are:
  - 4.71.1 formally declared to the Head of Audit and Risk as part of a register kept by the Service/Service;
  - 4.71.2 maintained separately and correctly in accordance with these Finance Procedure Rules; and
  - 4.71.3 subject to the same standards of stewardship and probity as Council funds.
- 4.72 The Returning Officer will be responsible for maintaining complete and accurate records and for reconciliation with regard to elections accounts.

### **Retention of Records**

- 4.73 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.

- 4.74 The majority of financial records must be kept for 6 years from the end of the tax year to which they relate. Some records, however, may need to be kept for longer periods e.g. if required to defend future insurance claims. It is possible others can be destroyed within shorter periods. Guidance on the appropriate retention period is given in the Council's Retention Policy and its Information Asset Register.
- 4.75 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, GDPR, Data Protection Act; Freedom of Information requirements; and the business needs of the Service.

## **5. Financial Systems and Procedures**

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

- 5.1 Sound systems and procedures are essential to an effective framework of accountability and control.

### **Income and Expenditure**

- 5.2 The Council will approve the terms under which banking services, including overdraft facilities, are provided.

### **Banking Arrangements**

- 5.3 All bank accounts must be titled impersonally in the name of Cheshire East Borough Council.
- 5.4 Subject to any directions given by the Council, all arrangements with the Council's bankers must be made solely through the Chief Finance Officer. No bank accounts may be opened or arrangements made with any other bank except by agreement with the Chief Finance Officer.
- 5.5 Bank transfers must be authorised by the Chief Finance Officer, or those officers authorised to sign through the agreed Scheme of Financial Delegation or in accordance with the Treasury Management Practice Statements.
- 5.6 Cheques drawn must bear the mechanically impressed signature of the Chief Finance Officer or be signed by the Chief Finance Officer or other officer authorised to sign through the agreed Scheme of Financial Delegation.

### **Income**

### **Generating Income**



- 5.7 The Chief Finance Officer is responsible for developing and maintaining standards, procedures, systems and reports to facilitate the effective and efficient identification, collection, receipting, banking and recovery of income due to the Council in accordance with current relevant UK legislation.
- 5.8 The Corporate Leadership Team is responsible for ensuring that the appropriate legal authority for all income generating activities has been identified and for maintaining an Income and Charging Strategy in a format specified by the Chief Finance Officer.

### **Charging for Income**

- 5.9 Heads of Service 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.
- 5.10 Charges must be reviewed annually by the Corporate Leadership Team in the light of all relevant information, to the service area, including consideration of appropriate inflation factors.

### **Collection of Income**

- 5.11 The Council operates a Sundry Debt Collection policy to secure invoiced sundry debt income for the provision of services. All debt owing to the Council must be collected promptly, effectively, efficiently and economically, while ensuring fair treatment of those that owe money, including consideration of any financial difficulties.
- 5.12 Council officers must comply with guidelines issued by the Chief Finance Officer for the safe and efficient collection and recording of all money due to the Council.
- 5.13 The Corporate Leadership Team is responsible for ensuring that accounts for income due to the Council, including grant claims, reimbursements and third party contributions, are raised immediately and accurately in a form approved by the Chief Finance Officer. These must include VAT where appropriate.
- 5.14 The cost of collection should be taken into account when raising accounts. The Corporate Leadership Team must ensure that the method of collection is the most cost effective relative to the value of the transaction.
- 5.15 Payment shall be collected before the service or goods are provided unless explicitly agreed or stated otherwise in the fees and charges register.
- 5.16 The Corporate Leadership Team is responsible for ensuring that all income received is receipted, where required, recorded correctly against the appropriate budgets, and in the case of cash and cheques, banked with the minimum of delay. The frequency of banking should follow guidelines provided by the Chief Finance Officer and should avoid incurring disproportionate banking charges on relatively low value



transactions, taking into account local security arrangements.

- 5.17 The Corporate Leadership Team is responsible for monitoring income collection and ensuring appropriate recovery action is taken. A summary of the position on the level of outstanding debt and collection issues should be included in quarterly financial updates and the final outturn report. Full provision for income still outstanding six months after the due date should be made in Service accounts. This should not however preclude pursuit of the debt.
- 5.18 The Chief Finance Officer will monitor compliance with paragraphs 15 and 16 and may, in circumstances where avoidable adverse cash flow has resulted, determine an appropriate interest charge against Service budgets.
- 5.19 Credit notes must be authorised by appropriate officers nominated in the local Scheme of Financial Delegation.
- 5.20 Any receipts, tickets or other documents used as receipts should be in a format agreed by the Chief Finance Officer. All controlled stationery issued to a Head of Service must be recorded in a register, which is held by a single officer within each Service.

### Bad Debts

- 5.21 The Council has a Corporate Debt Policy with the guiding principle that customers have a responsibility to pay amounts that have been properly assessed as being due. The Council is committed to using the most appropriate and effective recovery methods available to it. In certain circumstances and for justifiable reasons it will be necessary to classify some debts as irrecoverable and to recommend that they be written off, however this does not preclude pursuit of the debt.
- 5.22 Directors will critically review outstanding debts on a regular basis, in conjunction with the Chief Finance Officer, and take prompt action to write off debts no longer deemed to be recoverable. Directors will recommend to the Chief Finance Officer all debts to be written off.

Approval level	Amount
Chief Finance Officer	Up to and including £5,000
Chief Finance Officer in consultation with the Monitoring Officer	Over £5,000

- 5.23 The Corporate Leadership Team is 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.
- 5.24 A record must be maintained for all debts written off. The appropriate accounting adjustments must be made following approval to write-off a debt.

## Ordering and Paying for Work, Goods and Services

### General Principles

- 5.25 The Corporate Leadership Team and Heads of Service are responsible for providing all appropriate information and instructions to Transactional Services to allow for prompt and accurate payment for goods and services provided and for the analysis of expenditure.
- 5.26 Except for purchases by Visa purchase card, all purchases must be supported by an official requisition and purchase order unless previously agreed with the Procurement Manager. All purchases must have regard to these Finance Procedure Rules.
- 5.27 All requisition and purchase orders must be authorised in accordance with the approved budget and the limits below to ensure that funds are available to pay for the purchase.

Tier	Level	Procurement £	Accounts Receivable invoices £	Credit Note £
0	Chief Executive	1bn	1bn	1bn
1	Deputy Chief Executive/Executive Director/Chief Finance Officer	20m	20m	20m
2	Director	10m	10m	10m
3	Head of Service	2.5m	2.5m	2.5m
4	Service Manager	500,000	500,000	500,000
5	Budget Manager	100,000	100,000	100,000
6	Budget Forecaster	25,000	50,000	25,000
7	Cost Centre	5,000	-	1,000
8	Team Leader	-	-	-
9	Supervisor	-	-	-

- 5.28 Where a requisition for the purchase of goods or services exceeds £10,000 in value, the Contract Procedure Rules apply.
- 5.29 All official purchase orders must include, as a minimum, the order number, the price agreed with the supplier, description of the goods or services to be provided, the delivery address, the address where invoices must be received and a link to the standard terms and conditions for the goods and services to be provided.
- 5.30 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.
- 5.31 Heads of Service must ensure robust processes to continually maintain computer records and accesses, and Schemes of Financial Delegation so that electronic workflows associated with core financial systems are

not compromised.

- 5.32 All purchasing activity must be carried out in accordance with the Council's Procurement Strategy and Contract Procedure Rules and advice issued about efficient and effective use of the Council's core financial and e-procurement systems and processes. Such processes will include the deployment of VISA purchase cards.
- 5.33 Approval of the Procurement Manager must be sought in advance of entering into any supply agreement with a commercial creditor who has not been set up on the Council's core financial system.
- 5.34 Heads of Service must consult the Chief Finance Officer on appropriate arrangements for purchases of goods and services which cannot be accommodated within standard ordering and payment processes.

### **Payment of Invoices**

- 5.35 All invoices must be sent directly by the creditor to the address stated on the official purchase order to enable prompt payment.
- 5.36 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.
- 5.37 Invoices received without a valid purchase order number will be returned to the creditor as unauthorised for payment.
- 5.38 The Council's standard payment terms are 30 days from receipt of a correct invoice by BACS (Bankers Automated Clearing System). Alternative terms may not be negotiated or agreed with suppliers without the explicit approval of the Procurement Manager. Heads of Service are responsible for notifying suppliers of these terms and for ensuring that they are observed by all those involved in the purchasing and payment processing.
- 5.39 Payment will only be made for goods and services which have been formally receipted in accordance with receipting procedures set out by the Chief Finance Officer.
- 5.40 All purchasing activity must be carried out in accordance with the Council's Procurement Strategy and Contract Procedure Rules and any advice or guidance that may be issued from time to time by the Procurement Manager regarding the efficient and effective use of the Council's core financial and e-procurement systems and processes. Invoices received for payment must comply with the Council's best practice processes.

### **Non-invoice Payments**

- 5.41 Where Heads of Service wish to initiate a payment to a third party without a supporting invoice, an official request for payment must be

submitted in a form approved by the Procurement Manager.

- 5.42 Any such requests must be authorised by an officer designated with an appropriate approval limit in the relevant service Scheme of Financial Delegation. They are responsible for ensuring that all payment details provided are accurate and that supporting records and documentation are available to substantiate the payment, including an official VAT receipt to allow for the reclaim of any VAT element.
- 5.43 Appropriately authorised requests for payment will be processed and paid by BACS.
- 5.44 Non-invoice payments should be requested on an exceptional basis only. Where payments of this type need to be made on regular basis Heads of Service must consider, in conjunction with the Procurement Manager, other alternative options which may be more appropriate. For the full list of exceptional payment types check the guidance available via the Centranet [Tasks and Tools > Buying Products and Services > Procurement > Payment Methods](#).
- 5.45 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**

- 5.46 Purchase Cards are an effective method of payment for goods and services of low value and for one off purchases. Heads of Service are responsible for the appropriate deployment and management of VISA purchase cards within their service in accordance with the financial scheme of delegation.
- 5.47 Further guidance is available via the Centranet.

### **Imprest Accounts**

- 5.48 Wherever possible, purchase cards will be used for low value transactions and where there are no mandated procurement contracts in place. However, in the limited circumstances when purchase cards cannot be used, the Chief Finance Officer may provide bank imprest (petty cash) accounts to meet minor expenditure on behalf of the Council.
- 5.49 Heads of Service are responsible for ensuring that where local arrangements are in place:
- 5.49.1 Local Schemes of Financial Delegation set out clearly the responsibilities and approval limits of individual officers in respect of these arrangements; and that these are reviewed and updated regularly
- 5.49.2 They are operated in accordance with guidance issued and that appropriate management supervision and compliance

monitoring is undertaken

- 5.49.3 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
- 5.49.4 Arrangements are being operated for legitimate Council business only.
- 5.50 Local arrangements may not be used in any circumstances to circumvent either the Council's Corporate Procurement Strategy and Contract Procedure Rules or agreed approval and authorisation procedures, nor must they be used for any payments in respect of salaries and wages, travelling or other employment expenses, or payments for work carried out under the Construction Industry Tax Deduction Scheme.

### **Payment to Members**

- 5.51 The Executive Director (Corporate Services) is responsible for paying all allowances to Members.
- 5.52 The Executive Director (Corporate Services) will make payments to any Councillors entitled to claim allowances on receipt of the proper form, completed and certified in accordance with the approved scheme for allowances.

### **Taxation**

- 5.53 It is the responsibility of the Chief Finance Officer, in conjunction with Transactional Services to:
  - 5.53.1 complete all Inland Revenue returns regarding PAYE
  - 5.53.2 complete a monthly return of VAT inputs and outputs to HM Revenue and Customs
  - 5.53.3 provide details to HM Revenue and Customs regarding the construction industry tax deduction scheme
  - 5.53.4 maintain up-to-date guidance for Council employees on taxation issues.
- 5.54 It is the responsibility of Corporate Leadership Team to:
  - 5.54.1 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
  - 5.54.2 ensure that, where construction and maintenance works are undertaken, the contractor fulfils the necessary construction industry tax deduction requirements
  - 5.54.3 ensure that all persons employed by the Council are added to the Council's payroll and tax deducted from any payments,

except where the individuals are bona fide self-employed or are employed by a recognised staff agency

- 5.54.4 follow the guidance on taxation issued by the Chief Finance Officer.

### **Trading Accounts and Business Units**

- 5.55 As a general rule, separate trading accounts are required when services are provided to either internal or external clients, on a basis other than a straightforward recharge of full cost. It is the responsibility of the Chief Finance Officer to advise on the establishment and operation of trading accounts and business units.

- 5.56 It is the responsibility of Heads of Service to:

5.56.1 consult with the Chief Finance Officer and Monitoring Officer where a business unit wishes to enter into a contract with a third party where the contract expiry date exceeds the remaining life of the main contract with the Council. In general, such contracts should not be entered into unless they can be terminated within the main contract period without penalty

5.56.2 observe all statutory requirements in relation to business units, including the maintenance of a separate revenue account to which all relevant income is credited, and all relevant expenditure, including overhead costs, is charged, and to produce an annual report in support of the final accounts

5.56.3 ensure that the same accounting principles are applied in relation to trading accounts as for other services or business units

5.56.4 ensure that each business unit prepares an annual business plan.

### **Alternative Service Delivery Vehicles**

- 5.57 The Council has moved to a commissioning model and the creation of a series of Alternative Service Delivery Vehicles (ASDVs) forms an essential part of this strategy.

- 5.58 A framework has been developed to enable the Council to set up a series of new delivery vehicles in a way which enables the risks to be managed thoroughly and effectively. The aim of the framework is to ensure that all vehicles are given the best chance of succeeding, whilst safeguarding the interests of local tax payers. The framework document is available on the Cheshire East website.

- 5.59 The wholly owned companies currently operate within the Financial Procedure Rules of Cheshire East Council and it is within the responsibility of the companies to determine if this approach is to be



continued.

## **6. External Arrangements**

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

- 6.1 The Council provides a distinctive leadership role for the community and brings together the contributions of the various stakeholders.

### **Partnerships and Jointly Funded Projects**

- 6.2 The Council is involved in a wide range of different 'Partnership' arrangements involving joint/external funding. The main reasons for this are:
- 6.2.1 the ability to provide new and better ways of delivering services.
  - 6.2.2 the ability to access new resources
  - 6.2.3 the desire to find new ways to share risk
  - 6.2.4 the ability to forge new relationships.
- 6.3 The Corporate Policy Committee 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.
- 6.4 Any partnership arrangement which involves the creation of, or participation in, separate legal entities such as joint ventures, trusts or limited companies requires the prior agreement of the Chief Finance Officer and the Monitoring Officer. Officers should also consider the need for a business case and compliance with the Project Gateway Process. Corporate Policy Committee approval will also be required where any agreement requires the Council to act as guarantor for a third party or accountable body. The creation of any new ASDVs will be in accordance with the ASDV Framework.

### **Definitions**

- 6.5 A 'partnership' can be as straightforward as a contractual arrangement. Alternatively partnerships can be entered into under the Partnerships Act 1890 or the Limited Liability Partnerships Act 2000 where the arrangement is formed with a view to profit. Any partnership under the Acts is heavily regulated as to the liabilities of partners. The majority of the 'partnerships' entered into by the Council are 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.



- 6.6 The Rules set out in this section deal with the approach to Partnerships. Further guidance can be provided by the Chief Finance Officer and the Monitoring Officer.

### **Public/Public Partnerships**

- 6.7 Public/public collaborations may not need to go through any specific process. However, it may be that the Public Contracts Regulations 2015 do apply and a call for partners should be advertised in accordance with the Contract Procedure Rules. Further advice should be sought from the CPU or Legal Services.
- 6.8 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**

- 6.9 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**

- 6.10 Where the Council leads on behalf of the Partnership or consortium and is responsible for the wider management of the Partnership and may take on liabilities that it is intended will be shared.

### **Accountable Body**

- 6.11 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 party's 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**

- 6.12 Defined as involvement with a private sector organisation or commercial enterprise, excluding those where a formal contract has been agreed when the Contract Procedure Rules will apply. Those contracts known as 'Partnering Contracts' and those funded by Private Finance Initiatives (PFIs) are not covered by this rule and fall under the Contract Procedure Rules.

### **Key Controls**

- 6.13 The key controls to be considered before the funding of partnerships or other joint projects is agreed consist of:
- 6.13.1 ensuring that the key conditions of funding and any statutory

requirements are complied with and that the responsibilities of the accountable body are clearly understood.

- 6.13.2 ensuring 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.
- 6.13.3 ensuring 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.
- 6.14 These arrangements should be documented in the form of a Business Case in the format prescribed by the Director of Finance & Customer Services and be subject to the same Project Gateway process as all other Council proposals.

### **Responsibilities of Officers**

- 6.15 Heads of Service are responsible for ensuring that all funding notified by external bodies is received and properly recorded in the Council's accounts and that appropriate standards of probity, stewardship and best value are secured. This will include ensuring that all appropriate claims and returns are promptly and accurately submitted.
- 6.16 The Corporate Leadership Team is 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 Councillor approval. This should identify any potential future partnerships and a risk assessment of the potential impact on services and budgets that may arise.

### **Heads of Service**

- 6.17 Before entering into any Partnership agreement involving joint funding, Heads of Service must consult the Monitoring Officer and the Chief Finance Officer, who will advise on the appropriate form of agreement or contract taking into account the nature and scale of the proposed arrangement and the extent of the legal and financial commitment involved. As a measure of good practice and as a minimum requirement, Heads of Service need to consider and apply all the following points, which are not exhaustive, to the agreement:
  - 6.17.1 The overall purpose and objectives of the arrangement, including appropriate performance standards and output measures
  - 6.17.2 The constitutional and representational arrangements including procedures for decision making and the extent to which powers and financial authority are to be delegated to individual officers
  - 6.17.3 The period of the agreement, exit strategies, notice and

termination arrangements including redundancy costs and other potential liabilities on termination

- 6.17.4 Roles and responsibilities of the various parties including arrangements for banking, taxation and VAT matters, employment contracts, insurances and ownership of assets
- 6.17.5 Auditing and reporting requirements and the applicability of these Finance Procedure Rules, other Council Regulations and Codes of Conduct
- 6.17.6 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
- 6.17.7 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
- 6.17.8 A clear exit strategy, for example, in terms of any residual ongoing costs
- 6.17.9 Default procedures to be applied where the terms of the agreement are broken
- 6.17.10 Arrangements for Internal Audit staff to have sufficient access to partner's premises, assets and records as is necessary for the purposes of the partnership:
  - As a measure of best practice, all partnership agreements should be subject to a complete review at least every four years.
  - Add to partnership section of contracts register held by the CPU.

## **Approval Routes**

- 6.18 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 3 of these Rules.
- 6.19 Following the officer consultation process and prior to entering into any agreement, approval, based on the Council's gross contribution over the life of the partnership\* should be sought by the relevant Head of Service

*\* For the purpose of this paragraph the assumption is that a lifespan of no more than 4 years should be the norm, consistent with the Council's financial planning cycle.*

- 6.20 The approval of partnership proposals will be subject to the same financial limits as other contractual arrangements.

### **Additional Funding Allocations or Policy Variations**

- 6.21 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 above. Where the additional funding constitutes a variation from the policy originally agreed by the Committee, then further approval from the Committee is required.
- 6.22 If the contribution is to come from Council sources it will constitute a virement and Section 3 applies. Where the additional funding comes from an external source then approval for a fully funded supplementary estimate is required and Section 3 applies.

### **Bidding for Grant Funding**

- 6.23 Directors are authorised, as set out in the Officer Scheme of Delegations, to submit applications for grant funding that align with Council priorities and initiatives, ~~without commitment, in consultation with the relevant Chair, where there will be no net increase in Council expenditure.~~ In the event that an application is successful, the decision making process for approval of the application, including acceptance of any conditions, will follow that set out in part 3 paragraph 19~~section 2~~ of these Financial Procedure Rules.

### **Reporting Requirements**

- 6.24 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 Committee, 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.
- 6.25 Notwithstanding any statutory reporting requirement, the Head of Service will be required to provide, regular reports on progress and outcomes, financial and non-financial, for each significant partnership to the relevant Committee. Partnership projects should comply with the same regular reporting processes as other Council projects.

## Support to Other Organisations

- 6.26 The Corporate Policy Committee will on a periodic basis, agree a policy setting down the approach to be taken to the allocation of grants, donations and other contributions to outside bodies.
- 6.27 Grants, donations and contributions will be paid by the Council in accordance with the policies determined under paragraph 6.26 above, subject to there being adequate provision in service budgets and the appropriate approvals being sought.

Approval level	Amount
Officers	Up to and including £50,000 (where grant is within approved grant policy and fully funded)
Relevant Corporate Leadership Team member in consultation with the Chair of the relevant Committee and Chair of Finance Sub-Committee	Between £50,000 and £100,000 (where grant is within approved grant policy and fully funded)
Committee	All Grants of £100,000 or more.  All grants which do not fall within existing approved grant policy require Corporate Policy Committee approval.

- 6.28 The **Grant Funding Protocol** sets out further guidance on grant funding, consideration of state aid implications, the process for allocation and any conditions that should apply to any grant funding.
- 6.29 The rules in this section and the Grant Funding Protocol shall not apply to grant funding arrangements relating to Capital Funding for School Places applied for by the Council on behalf of Academies, Foundation, Voluntary Aided and Free schools as these arrangements are delegated in the Constitution to the Director of Children's Services in accordance with the Council's educational functions under the Education Acts.

## Chapter 3 – Part 5

### Contract Procedure Rules

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#### 1. General Rules

##### Why is this important?

These Contract Procedure Rules are intended to promote good purchasing practice, public accountability and deter corruption. Officers responsible for purchasing must comply with them. They lay down **minimum requirements** and a more thorough procedure may be appropriate for a particular contract. (For example, if a Rule would normally require that Quotes be obtained, it might be appropriate in particular circumstances to seek additional Quotations in writing or Tender submissions). Following the rules promotes probity, integrity and impartiality and is the best defence against allegations of fraud or corruption. Failure to follow the rules could result in disciplinary action.

##### Brexit impact

Many of the laws and practices within this Constitution, such as the UK public procurement regime, derive from EU laws, and are therefore impacted by Brexit.

As of 31 January 2020, the UK is no longer an EU Member State and its relationship with the EU is governed by the Withdrawal Agreement, which came into effect on 1 February 2020 and provided for a transition period until 31 December 2020.

The UK continues to be bound by the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016. Whilst they are based on EU Law the rules are unlikely to change significantly in the short term and most likely only to accommodate World Trade Organisation or other Trade Rules.

**If at any time these rules differ from the law in force then the law must be followed as it will override any conflicting provision in these rules.**

**This Constitution and these Contract Procedure Rules will be kept under review during the implementation period and updated accordingly. For further guidance, please contact the Monitoring Officer.**

Key considerations for Officers engaged in purchasing works, goods and services include:

- Follow the rules if you purchase goods or services or order building work;
- Take legal, financial and procurement advice;
- Declare any personal financial interest in a contract. Corruption is a criminal offence;

- Check whether there is an existing Corporate Contract, Government Procurement Service framework, e.g. North West purchasing consortium, framework, procurement partnership or other purchasing arrangement you can make use of **before** undergoing a competitive process;
- Consider the social, economic and environmental wellbeing of the area and how this can be strengthened by delivering your needs locally (social value);
- Normally allow at least four weeks for submission of bids;
- Keep bids confidential;
- Complete a written contract or purchase order before the supply or works begin;
- Identify a contract manager with responsibility for ensuring the contract delivers as intended;
- Keep written records of dealings with suppliers;
- Report as required periodically on performance of the supplier; and
- Assess each contract afterwards to see how well it met the purchasing need and Best Value requirements.

Words in **bold** are defined in the Glossary.

## Thresholds

Throughout these rules there are references to Public Procurement Thresholds and these are set out in the table below:

	<b>Supply, Services<sup>1</sup> and Design Contracts</b>	<b>Works &amp; Concession Contracts<sup>2</sup></b>	<b>Social and Other Specific Services<sup>3</sup></b>
Other public sector Contracting authorities	£189,330 (€214,000)	£4,733,252 (€5,350,000)	£663,540 (€750,000)

<sup>1</sup> With the exception of the following services which have different thresholds or are exempt:

- Social and other specific services (subject to the light touch regime) Article 74
- Subsidised services contracts specified under Article 13
- Research and development services under Article 14 (specified CPV codes are exempt).

<sup>2</sup> Except for subsidised works contracts specified under Article 13.

<sup>3</sup> As per Article 74. Services are listed in Annex XIV.



## 2. Contract Procedure Rules which apply to ALL Contracts

### Basic Principles

#### Introduction

- 2.1 Officers responsible for the procurement or commissioning of any goods, services, works or Concessions must comply with these Rules.
- 2.2 These Rules should be read in conjunction with the relevant parts of the Council's Constitution and guidance issued by the Procurement Manager (and published on Centranet), ~~following consultation and endorsement from the Commissioning and Procurement Board~~
- 2.3 All references to Contract(s) in the Rules below also include, Framework Agreements, Dynamic Purchasing Systems and Concessions unless otherwise instructed.
- 2.4 All Contracts, procurement documentation, and procurement processes shall be consistent with the Council's Procurement Guides (available on Centranet), Procurement Strategy, Procurement legislation and these Rules.

#### Scope

- 2.5 The Rules apply to all Contracts procured on the Council's behalf.
- 2.6 For the avoidance of doubt, these Rules shall NOT apply to any of the following:
  - 2.6.1 The sale, leasing or purchase of land or immovable property, or any interest in land, provided the Council does not specify or control how the land is to be developed;
  - 2.6.2 Any contract of employment;
  - 2.6.3 Loans and treasury management decisions;
  - 2.6.4 The issue, purchase or sale of securities or other financial instruments (refer to Finance Procedure Rules).
- 2.7 The competition and procedure elements of these rules need not apply to any of the following situations; however, advice must be sought from Legal Services as to whether the arrangement meets the criteria set out below and to the most appropriate form of agreement to put in place:
  - 2.7.1 Contracts awarded to a contracting authority (as defined in relevant legislation) on the basis of an exclusive right which they enjoy pursuant to a law, regulation or published administrative provision compatible with the Treaty on the Functioning of the European Union (TFEU)
  - 2.7.2 Public-public co-operation, where the arrangement establishes or implements a collaboration between the Council and one or more contracting authorities with the aim of ensuring that the

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

- 2.7.3 Any contracts between the Council and any company that is controlled by the Council in a similar way to which it controls its own departments / services. Such companies must perform more than 80% of their activities for, or on behalf of, the Council (or other legal persons controlled by the Council or other contracting authorities e.g. for jointly owned companies). Such companies should also have no private capital participation in them other than where required by legislation (in which case the control must be non-controlling and non-blocking).
- 2.7.4 Commissioning additional supplies, services or works outside of the scope of any existing contractual arrangements from a company controlled by the Council should be subject to a business case and demonstrate value for money and steps must be taken to ensure the arrangement fits within the criteria detailed above. In the interest of best practice and demonstrating value for money, the Commissioning and / or Procuring Officer may wish to subject such contracts to competition.

#### Legal Compliance

- 2.8 All procurement procedures and Contracts shall comply with these Rules and all legal requirements and no Officer, or Councillors shall seek to avoid them.
- 2.9 The only exception is where a valid waiver is granted under Section 7 of these Rules.
- 2.10 If there is any dispute regarding these Rules, it should be taken up with the Procurement Manager who will seek appropriate advice to resolve the matter with Legal Services.

#### Applicable Principles

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

#### Contracts where the Council acts as agent

- 2.12 Where the Council acts as the agent for any of its wholly or partly owned companies or another council or public body or other company or organisation (Principal), these Rules shall apply unless the Principal in question instructs otherwise. Where the Council's wholly or partly owned companies act as agent for the Council, then these Rules shall

apply.

Calculating the financial value of a procurement

- 2.13 In determining the estimated value of the procurement, for the purpose of applying the relevant provisions within these Rules, the following should be taken into account:
- 2.13.1 The total amount payable (net of VAT) for the lifetime of the Contract being procured including any proposed options or renewal periods
  - 2.13.2 The aggregation of requirements with similar characteristics, or for the same type of goods, services or works, regardless of the number of Contracts that may be entered into or number of lots that the procurement may be split between for the duration of the Contract(s), especially where such aggregation means the value exceeds the relevant Public Procurement Threshold for goods, services or works
  - 2.13.3 The aggregate of 48 months' supply
  - 2.13.4 In the case of joint purchasing arrangements, the value shall be the aggregate of both/all parties' requirements that are the subject of the procurement.
- 2.14 No Officer or Councillor may seek to subdivide procurements, requisitions or individual spend amounts in order to avoid the application of these Rules or Public Procurement Legislation.

**Sustainable Development**

- 2.15 The Council endeavours to consider how it can help achieve sustainable development through its work by ensuring that there are good working conditions for our suppliers' employees, the products and services procured are sustainable and that socio-economic issues, such as equality and poverty, are addressed.

Social Value

- 2.16 Before starting a procurement process, the Public Services (Social Value) Act 2012 requires the authority to consider:
- 2.16.1 How what is proposed to be procured might improve the economic, social and environmental well-being of the area; and
  - 2.16.2 How, in conducting the process of procurement, the authority might act with a view to securing that improvement.

The above matters should influence the commissioning strategy and how local businesses can be supported relevant to what is proposed to be commissioned or procured.

- 2.17 Social value considerations (including any consultation) should be proportionate to the scale and nature of the Contract
- 2.18 Officers must have regard to the Council's Social Value Policy available at [Cheshire East Council social value policy](#).

## **Officer and Councillor Responsibilities**

### Powers / Authority

- 2.19 All powers should be exercised through Officers and it should be noted that only Officers authorised in the relevant local scheme of delegation have the authority to commit the Council to any contractual obligations. No Councillor may instruct Officers to act in a way that is inconsistent with these Rules.

### Adequate Budget Provision

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

### Corporate Contracts

- 2.21 A Corporate Contract is a pre-existing Contract or Framework Agreement that has been set up for use by all Services (or specific Services) in the Council to address a common or specific need and that allows Commissioning Officers to quickly and efficiently source those requirements without undertaking repetitive tendering exercises and to comply with aggregation rules of Public Procurement Legislation.
- 2.22 Prior to any procurement activity, the Commissioning Officer shall ascertain whether any Corporate Contract exists in relation to their requirements. Where such a Corporate Contract exists, the Corporate Contract must be used unless better value for money can be clearly evidenced by another method.

### Performance Bond or Parent Company Guarantee

- 2.23 The Commissioning Officer, in discussion with the Procurement Officer, shall in respect of all Contracts consider the need for a performance bond or parent company guarantee after assessing the following factors:
  - 2.23.1 Potential risk to the Council in the absence of a bond or parent company guarantee
  - 2.23.2 Known technical difficulties associated with the project
  - 2.23.3 The financial status of the provider(s)
  - 2.23.4 Whether it is relevant and proportionate to the Contract
  - 2.23.5 The period of the contract, and
  - 2.23.6 Any costs associated with the provision of the bond.

### Conflicts of Interest

- 2.24 A conflict of interest includes a situation where a relevant individual's financial, economic or personal interests might be perceived to compromise their impartiality and independence. Conflicts also arise where there may have been involvement at an earlier stage or where someone has (or is perceived to have) already made up their mind on a course of action before a decision will be considered and made.
- 2.25 All Council Officers and Members (and third parties engaged on the Council's behalf) must take appropriate measures to effectively prevent, identify and seek to remedy conflicts of interests. Any conflict of interest must be declared in accordance with the Officer Code of Conduct, the Member Code of Conduct, and the Seven Principles of Public Life set out in those Codes.

### **Collaborative Arrangements**

#### Framework Agreements

- 2.26 Paragraphs 3.1 to 3.10 and paragraphs 4.1 to 4.4 will not apply where the requirements in question are to be procured by using a Framework Agreement which itself has been procured through compliance with these Rules or from a Central Purchasing Body or other Public Body.
- 2.27 Where a Framework Agreement is used, the Procurement Officer will undertake to check that the Framework Agreement is legally compliant and whether the Council is named in the OJEU/other notice for the Framework Agreement (either specifically or within a group of regional authorities) and therefore able to utilise that Framework Agreement.
- 2.28 The Procurement Officer must ensure that requirements are procured in accordance with the terms of the Framework Agreement (and where applicable Public Procurement Legislation).

#### Joint or Partnering Arrangements

- 2.29 Joint or partnering arrangements between the Council and other bodies shall be subject to the prior approval of the relevant Executive Director and in the case of arrangements with private entities also the Chief Executive.
- 2.30 Advice from Legal Services must be sought as to the most appropriate form of agreement to put in place, especially where either party is undertaking work and / or tendering activity for the other and entering into contracts on behalf of the other e.g. a Collaboration or 'Partnership Agreement', etc.) depending on the nature of the arrangements.
- 2.31 Under any such agreement, where the Council is responsible for procuring anything, these Rules shall apply, regardless of who shall enter into the resultant contract.
- 2.32 Under any such agreement, where another party is responsible for procuring any requirements, their contract procedure rules, or

equivalent, shall apply, regardless of who shall enter into the resultant contract unless agreed otherwise. Where the other party has no such contract procedure rules, the procedure applied by the other body shall comply with the principles and safeguards contained in these Rules.

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

## **E-Procurement**

### Electronic Tendering

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

## **Records**

### Contracts Register

- 2.35 As part of the Government's Transparency Agenda the Council is required to compile a contracts register to capture details of all live Contracts entered into by the Council ("Contracts Register"). The Contracts Register shall be controlled by the CPU and the Commissioning Officer must ensure that all Contracts above £5,000 in value are recorded. Copies of the contracts will be kept on the contract management system. ~~provided to Legal Services for retention.~~

## **Expenditure approval process**

### Pre-Contract requirements

- 2.36 All Officers requiring to commit expenditure in order to acquire goods, services or works on behalf of the Council must:
- 2.36.1 Obtain the prior approval of the relevant decision maker who has authority to give such approval under the constitution. This approval is subject to having sufficient budgetary provision and being included in the Council's capital programme or revenue budget.
  - 2.36.2 Complete a business case and risk log for all expenditure over £250k as set out in the commissioning framework which is approved by the Commissioning and Procurement Board.
  - 2.36.3 Ensure that supplies of a similar type are procured together



where it is practicable and cost effective to do so

- 2.36.4 consider the Social Value implications
- 2.36.5 make sure that the appropriate authority is in place to start the process and spend the money in accordance with the appropriate local scheme of delegation
- 2.36.6 make sure that there is enough money in the budget to cover the total whole life financial commitment being made (including any consultants or other external charges or fees)
- 2.36.7 make sure that the Forward Plan and publicity requirements have been followed where appropriate.
- 2.36.8 Give regard to Best Value and the Public Sector Equality Duty and ensure that consultations with the public have been carried out as required.

### Community Right to Challenge

- 2.37 The Localism Act 2011 provides that under the 'community right to challenge', the Council is to consider an expression of interest (EOI) submitted by a 'relevant body' in relation to providing or assisting in providing a service provided by or on behalf of the Council.
- 2.38 When the Council accepts an EOI it must run a procurement exercise and award any Contract following these Rules.

## **3. Contracts below the Public Procurement Threshold**

### **Competition Requirements**

#### **Advertising and Procedure**

- 3.1 Where the estimated cost of any requirements to be ordered on behalf of the Council is less than the applicable Public Procurement Threshold then proposals shall be invited as outlined below:
  - 3.1.1 Up to £10,000 – 3 quotes are advisable but not mandatory (local firms being preferable where appropriate)
  - 3.1.2 Between £10,000 and £25,000 – A minimum of three quotations shall be sought, together with advice from the CPU or Legal Services on the appropriate form of Contract
  - 3.1.3 Between £25,000 and the applicable Public Procurement Threshold – A minimum of three quotations shall be sought via the E-tendering Portal, and/or Find a Contract Service together with advice from the CPU or Legal Services on the appropriate form of Contract
- 3.2 Where compliance with 3.1.3 above is not possible due to less than 3 providers responding, authority to proceed with a procurement process must be obtained from the Procurement Manager.



- 3.3 The requirement in 3.1.3 to use the E-tendering Portal to advertise may be waived where there is an urgent need to do so. However, the Procurement Manager's written approval must be given to any such waiver.
- 3.4 Officers are permitted to sign up for subscriptions for membership of industry associations without the need for competition provided they consider that the subscription offers value for money and there is available budget provision.

### **Award Criteria**

- 3.5 Below Public Procurement Threshold Contracts will generally be awarded on the basis of MEAT (Most Economically Advantageous Tender) defined on the basis of price or cost using a cost effectiveness approach, and may include the best price – quality ratio, however, awards on the basis of lowest price shall be acceptable where appropriate.
- 3.6 The Award Criteria and their relative importance must be set out in the competition Request for Quotation documents.

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

- 3.7 In certain circumstances it may be possible to provide for a BAFO stage in the procurement process and should only be used in consultation with Legal Services. Where the Procurement Officer and Commissioning Officer consider that a BAFO stage would be beneficial and could be exercised fairly in a procurement process, they should explain the reasons for the use of the BAFO process to the Procurement Manager and seek approval to proceed from the Procurement Manager (who shall consult Legal Services).
- 3.8 Where a BAFO stage is used, it must be conducted by the CPU through the E-tendering Portal, and should set a deadline for submission of BAFOs, to be returned via the E-tendering Portal.
- 3.9 Where a BAFO is submitted, any improvements in a Bidder's offer must be recorded in the applicable Evaluation Matrix with Bidder's submissions re-scored where appropriate. A record of both pre and post BAFO scoring must be maintained for audit purposes.

## **4. Contracts At or Above the Public Procurement Threshold**

### **Competition Requirements**

#### **Advertising and procedure**

- 4.1 Advertisement of Contracts over the Public Procurement Threshold shall be advertised additionally on the Government's Find a Contract Service.

## **Award Criteria**

- 4.2 Contracts will be awarded on the basis of MEAT (Most Economically Advantageous Tender) defined on the basis of price or cost using a cost effectiveness approach and may include the best price – quality ratio. Where possible full lifecycle costs should be considered as part of the financial evaluation.
- 4.3 The Award Criteria and weightings must be set out in the Invitation to Tender.

## **Forms of procurement**

- 4.4 The Public Procurement Legislation sets out the procedures which can be used to procure Contracts at or exceeding the Public Procurement Thresholds. These include:
  - 4.4.1 Open Procedure
  - 4.4.2 Restricted Procedure
  - 4.4.3 Competitive Procedure with Negotiation
  - 4.4.4 Competitive Dialogue
  - 4.4.5 Innovation Partnerships
  - 4.4.6 Call Off from a Framework Agreement
  - 4.4.7 E-auction
- 4.5 Other procedures are possible for Contracts for Light Touch Regime Services (as defined in Public Procurement Legislation) and for Concessions Contracts.
- 4.6 The Procurement Officer in consultation with the Commissioning Officer and Legal Services shall select the most appropriate procedure having regard to the requirements of the Public Procurement Legislation.
- 4.7 This process shall not remove or modify the responsibility of the relevant Executive Director to take such steps as may be reasonably necessary to safeguard the Council's best interests.
- 4.8 In order to determine a suitable procurement approach to a specific market, Officers, in liaison with CPU, may first choose to carry out non-committal soft market testing in order to inform the market of the Council's procurement plans and to understand the likely level of interest. Any such testing should not have the effect of distorting competition or result in a violation of the principles of non-discrimination or transparency.

## **5. Procedures for ALL Requests for Quotation and Invitations to Tender**

### **Application and Documentation**

#### Application

- 5.1 This Part 5 applies to all Contracts over £25,000 in value (including those at or above the relevant Public Procurement Threshold).
- 5.2 Procurement procedures for Contracts below £25,000 will follow any guidance issued by CPU and will be assessed on their risk.

#### Documentation

- 5.3 All Requests for Quotations (RFQs) and Invitations to Tender (ITTs) shall include the following:
  - 5.3.1 The Council must issue RFQs and ITTs and receive Bids via the E-tendering Portal. Bids submitted by any other means shall not be considered (unless there are exceptional circumstances)
  - 5.3.2 A requirement for Bidders to complete fully and sign or otherwise authorise the Form of Tender, which relates to canvassing and non-collusion before submission
  - 5.3.3 All electronic responses will be held within the E-tendering Portal in a restricted area that is only accessible by the appointed Verifying Officer after the specified fixed time and date
  - 5.3.4 All RFQs and ITTs must specify the goods, works or services that are required in sufficient detail to enable the submission of competitive Bids, together with the terms and conditions of the contract that will apply
  - 5.3.5 A description of the award procedure and a definition of the Award Criteria and weightings in objective terms. Where it is not possible to provide weightings for objective reasons, Award Criteria should be stated in descending order of importance
  - 5.3.6 Notification that Bids are submitted to the Council on the basis that they are compiled at the Bidder's risk and expense (except where prior agreement is given to reimburse those Bidders / providers engaged in a competitive dialogue or competitive procedure with negotiation)
  - 5.3.7 Notification that amendments must not be made to the contract documents by the Bidder (unless appropriate for the procurement procedure)
  - 5.3.8 Notification to the bidder that the Council is not bound to accept any or all tenders.

- 5.4 A record of Bids received in pursuance of these Rules shall be maintained by the CPU and retained in accordance with the Council's retention schedule.
- 5.5 An electronic contracts register will be maintained by the CPU and copies of ~~Contracts~~ contracts retained in the contract management system ~~are to be provided to Legal Services for retention~~.

### **Closing Date for Receipt of Bids**

- 5.6 Bids received after the fixed date and appointed time, shall NOT be opened or considered, unless there are exceptional circumstances as agreed by the Procurement Manager, who will consult with Legal Services where appropriate.
- 5.7 An exceptional circumstance could be a system problem (of which there must be demonstrable evidence) with the E-tendering Portal which has prevented potential Bidders from uploading their documents.

### **Method of Opening Bids**

- 5.8 In respect of Bids received electronically, ONLY a Verifying Officer as designated within the E-tendering Portal will have permission to open the Bids:
- 5.8.1 Bids above £1,000,000 will be verified by Legal Services
  - 5.8.2 Bids from the Public Procurement Threshold up to £1,000,000 will be verified by the Procurement Manager or a Category Manager that has not been involved in the tender in question
  - 5.8.3 Bids between £25,000 and the Public Procurement Threshold will be verified by a Procurement Officer that has not been involved in the procurement process in question
  - 5.8.4 Bids between £10,000 and £25,000 will be opened in accordance with any guidance issued by CPU from time to time.

### **Evaluation of Bids**

#### Evaluation and Award

- 5.9 Bids shall be evaluated and awarded on the basis of the value for money they offer to the Council.
- 5.10 For Bids over the Public Procurement Threshold this must be in line with:
- 5.10.1 MEAT (Most Economically Advantageous Tender) Principles. Award Criteria must be relevant to the Contract and apportioned between cost and quality in a ratio reflecting the risk and value of the contract

- 5.10.2 Bids shall be evaluated and awarded in accordance with Award Criteria and weightings determined, and documented in an Evaluation Matrix,
- 5.10.3 The relevant Public Procurement Legislation should be considered in determining what shall be included in the evaluation of cost.

#### Evaluation Panel

- 5.11 Evaluation Panels should be established prior to the issue of the RFQ/ITT, to ensure that they are engaged with the process and understand the evaluation criteria and weightings.
- 5.12 Evaluation Panels should include representation from the CPU, the commissioning department/key stakeholders, and should consist of a minimum of two Officers. However, should the risk be assessed as significant then the minimum number of people on the panel should be increased proportionately and in accordance with more detailed guidance from CPU. The Monitoring Officer and the Chief Finance Officer should be involved in any procurement exceeding £1M in value. Councillors shall not be involved in any Evaluation Panel.

#### Evaluation Matrix

- 5.13 The Evaluation Matrix will consist of defined evaluation criteria and weightings.
- 5.14 All Bids must be scored consistently against the Award Criteria set out in the Evaluation Matrix in the RFQ/ITT using the scoring model also set out in the RFQ/ITT.
- 5.15 All scores and notes made by the Evaluation Panel must be recorded in writing in the Evaluation Matrix and used for reference if further moderation is required.

#### Moderation

- 5.16 The Evaluation Panel will discuss their individual scores and must reach agreement on a consensus panel score and justifying comments.
- 5.17 Any consensus scores and applicable justifying comments must be recorded in the Evaluation Matrix for the procurement process.
- 5.18 All notes may be the subject of information requests or legal challenge against award of a Contract. It is crucial that accurate notes justifying awarded scores are maintained throughout by all personnel and relate solely to the relevant Award Criteria.

#### Clarification

- 5.19 Where post Bid clarification is required, it must be requested (and responses returned) via the E-tendering Portal. Importantly, post Bid clarification may only be sought in relation to an element of the Bidder's submission that has been provided, and which needs further

understanding – negotiation is not permitted. Post Bid clarification must be used in a non-discriminatory manner and so that Bidders are not being given an opportunity to improve their Bids.

- 5.20 Evaluation scores can only be amended where specific clarification has been requested relating to the Award Criteria. Any decision to rescore must be discussed with the Procurement Manager.
- 5.21 All clarification questions and returns must be noted and any amended scores which result from clarification are to be updated in the Evaluation Matrix.
- 5.22 For above Public Procurement Threshold procurements, post Bid negotiation will not be acceptable unless permitted within the procedure available within Public Procurement Legislation.
- 5.23 For Contracts below the Public Procurement Thresholds in value, a best and final offer (BAFO) stage may be used.

### **Acceptance of Bids**

- 5.24 Bids may be accepted by the relevant Executive Director provided that all of the following apply:
  - 5.24.1 the Bid complies with the requirements, conditions and criteria set down in any [Finder Tender or OJEU](#) other notice and in the RFQ/ITT including any applicable selection criteria and Award Criteria
  - 5.24.2 the Bid proposed to be accepted is the most economically advantageous tender (or, where appropriate for Contracts below the Public Procurement Threshold, is the lowest priced Bid)
  - 5.24.3 where a Bid for a Contract above the Public Procurement Threshold appears abnormally low, the Bidder has been asked to explain the price or cost and the Council considers the explanation provided to satisfactorily account for the low price or cost, and
  - 5.24.4 Council or Committee approval has been given to spend the resources, if required.

### **Debrief – Intention and Award**

- 5.25 Once the award decision has been approved by the Officer with appropriate delegated authority, communication should be undertaken with all Bidders, providing details on the outcome of the procurement process.
- 5.26 For Bids above Public Procurement Thresholds, the provisions of the Public Procurement Legislation shall be followed regarding the content of notifications to Bidders and including any mandatory standstill periods outlined.

## **Errors in Tender**

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

## **6. Contracts and Post Procurement Requirements**

### **Conditions of Contract**

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

### **Signed Contracts**

- 6.2 Subject to paragraph 6.3 below, Contracts (with a value not exceeding £1,000,000) shall be signed on behalf of the Council by a duly authorised Officer in accordance with the local Scheme of Delegation.

### **Contract Sealing**

- 6.3 A Contract must be executed under seal by Legal Services where any of the following apply to the Contract:
- 6.3.1 It exceeds £1,000,000 in value
  - 6.3.2 Where the Contract is such that Legal Services consider that an extended limitation period of at least 12 years would be of value
  - 6.3.3 Where it is required by statute or an external funding body that it is executed under seal
  - 6.3.4 Where the price paid or received under the Contract is a nominal price and does not reflect the value of the goods, services or works



- 6.3.5 Where it is a construction-related or works Contract and it is required to be sealed in accordance with guidance issued by CPU.

### **Authorisation of Payments**

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

### **Modification to Contracts**

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

### **Payments before Completion of Formal Contract**

- 6.6 No payment shall be made by the Council to the provider without a formal purchase order or an appropriate Contract in place. Payments should normally be made following the receipt of the requirements / achievement of desired outcomes.
- 6.7 Staged payments are permitted. Any such payments should only be made upon receipt of the desired requirements for that stage / milestone. Should the desired requirements / outcomes not be achieved when the provider submits an invoice, a dispute should be raised to prevent payment until such time as the desired requirements / outcomes have been achieved.
- 6.8 Advance payments are generally not permitted and the only exceptions without further approvals being required, shall be for:
- 6.8.1 software licences
  - 6.8.2 hardware and / or software support and / or maintenance
  - 6.8.3 warranties
  - 6.8.4 deposits
  - 6.8.5 leases / hires.
- 6.9 If any other reason arises for an advance payment to be made, approval must be sought from the relevant Executive Director and the Monitoring Officer in advance.

### **Monitoring of Contracts**

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

including:

- 6.10.1 how savings might be achieved within the contract period
  - 6.10.2 compliance with the specification and contract
  - 6.10.3 performance
  - 6.10.4 any social value and best value requirements
  - 6.10.5 levels of insurance
  - 6.10.6 user satisfaction, and
  - 6.10.7 risk management.
- 6.11 Accurate records of Contract monitoring activity and meetings including any issues raised / dealt with must be kept by the Commissioning Officers responsible for monitoring the Contract.

### **Contract Extensions**

- 6.12 Commissioning Officers and Contract Managers must consider a provider's performance throughout the period of a Contract when considering a contract extension. Officers should question whether the quality of goods or services being provided to the Council would continue to offer best value should an extension be agreed. When reviewing performance for the purpose of Contract extension, Officers should seek the views of the provider as to whether they have any suggestions or proposals which might improve value or delivery of service which might benefit the Council. These Officers should be aware of the market, the providers within the market, and the level of competition within the market.
- 6.13 Commissioning Officers should consider alongside the award of any optional extension period provided for in the Contract, what other alternatives may be available to the Council, and should offer reasoning as to why such alternatives are not proposed.
- 6.14 These Officers must ensure that prior to seeking approval of any proposed Contract extension; consultation is undertaken with the Procurement Manager and a Contract Extension Form is completed and signed by the Executive Director.
- 6.15 Contracts may be extended beyond the stated core Contract period, where provision for such extension was included in the RFQ/ITT, and in respect of above Public Procurement Threshold Contracts, the relevant **OJEU** Notices:
- 6.15.1 it is not possible to extend a Contract, after it has expired. Any such requests will be viewed as new Contracts and the relevant provisions with these Rules must be followed.
  - 6.15.2 any requests to extend a Contract where there is no provision to extend for the period requested constitutes a

modification to the contract and the appropriate provisions at paragraph 6.56 must be followed.

## 7. Waiver and Breach

### Waiver

#### Waiver Process

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

£10,000 - £25,000 – the Procurement Manager

Above £25,000 – the Chief Finance Officer and the Monitoring Officer

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

7.2.1 Advice and guidance must be sought from the Procurement Manager prior to submission of the waiver form to the Chief Finance Officer and Monitoring Officer. If approval is granted, it is still required that an appropriate contract be entered into prior to any requirements being provided by the provider.

7.2.2 The waiver of these Rules and the reason(s) for waiver shall be clearly recorded and reported to ~~CLT, the Commissioning and Procurement Board.~~

7.2.3 All notices of waiver ~~reported to the Procurement Board~~ shall be published retrospectively for information on the next Audit and Governance Committee agenda.

- 7.3 Exemptions from the above requirements may be agreed for instances of:

7.3.1 extreme urgency, where there is an immediate risk to life, property or an individual's safety and wellbeing, and any inaction by the Council (related to risks to safety and wellbeing) would be a breach of our statutory duty and obligations.

7.3.2 Significant reputational risk or where such an exemption is required to ensure continuity or to safeguard the Councils interests.

7.3.3 Where there is genuinely only one approved supplier, such as for works of art, copy right material, or unique technology,

where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the procurement.

- 7.3.4 The selection of a supplier whose usage is a condition of a Grant funding approval.
- 7.3.5 The selection of a supplier on the instruction of a third party, providing the whole of the funding is met by the third party.
- 7.4 The agreement of the Procurement Manager must be sought prior to any action being taken except where the nature of the urgency and risk renders this impractical. Such instances must be reported at the earliest opportunity, retrospectively, to the Chief Finance Officer and Monitoring Officer and the relevant Executive Director following the incident.

### **Breach**

- 7.5 No Officer or Councillor may seek to actively avoid the application of these Rules.
- 7.6 Officers and Councillors must be aware that any non-adherence with these Rules may be a breach of the Officer Code of Conduct / Councillor Code of Conduct and could result in disciplinary action.
- 7.7 Service Directors are responsible for ensuring that their Commissioning Officers are made aware of the consequences of non-adherence and that they comply with these Rules.

### Reporting and Investigating Breaches

- 7.8 Any breach of, or non-adherence to, these Rules must, on discovery, be reported immediately to the Chief Finance Officer and the Monitoring Officer. The relevant Director or his/her designated representative shall complete the waiver process (detailed at paragraphs 7.1 to 7.3 above) outlining the reasons for the non-adherence and the steps taken to prevent a re-occurrence.
- 7.9 The relevant Director or his/her designated representative will be required to submit the form for sign off by the Chief Finance Officer and the Monitoring Officer.
- 7.10 Any such breaches will be reported to ~~the Commissioning and Procurement Board~~ CLT setting out the number of non-adherence instances in the previous period and broken down by service and exceptional instance, following which all such notices ~~reported to the Commissioning and Procurement Board~~ shall be published retrospectively for information on the next Audit and Governance Committee agenda.
- 7.11 The Chief Finance Officer and Monitoring Officer shall consider whether each reported breach or non-adherence presents a significant risk of harm to the Council's interests and if satisfied that such risk exists, shall

undertake any necessary investigation and report the findings to the relevant Director and the Chief Executive.

- 7.12 The Audit and Governance Committee shall be entitled to review these Procedure Rules and how they have been applied in practice and decide whether to recommend changes to Full Council for approval.

## **Chapter 3 – Part 6**

### **Employment Procedure Rules**

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#### **General**

- 1 Staff within the organisation are employed, appointed, designated or engaged on behalf of the whole Council and not by parts of the organisation or individuals.
- 2 The employment, appointment, designation or engagement of all staff will be in compliance with the law and any policies and practices of the Council.
- 3 Persons employed, appointed, designated or engaged by contractors under specific agreements or contracts are not staff of the Council, but are employees engaged by the contractor.
- 4 The Council will provide the necessary resources to support the appointed officer structure. Officers may be employees and other persons engaged on temporary contracts, consultancy arrangements or other appropriate terms.
- 5 Generally (except for certain senior staff appointments) the function of appointment and dismissal of and taking disciplinary action against a member of staff of the Council must be discharged on behalf of the authority by the Head of the Paid Service or by an officer nominated by him/her.

#### **Recruitment and Appointment of Staff**

- 6 Any candidate for any designation or appointment with the Council who knows that he/she is related to, or a close personal friend of, a Councillor or senior officer of the Council shall, when making an application, disclose, in writing, that relationship to the Head of HR. A person who deliberately fails to disclose such a relationship shall be disqualified from designation or appointment and, if designated or appointed, shall be liable to dismissal.
- 7 Every Councillor and employee shall disclose to the Head of HR any relationship known to him/her to exist between him/herself and any person he/she knows is a candidate for a designation or appointment by the Council.
- 8 Any candidate for designation or appointment who directly or indirectly seeks the support of a Councillor or officer of the Council in any designation or appointment shall be disqualified and, if designated or appointed, shall be liable to dismissal. A Councillor shall not solicit for any person in respect of any designation or appointment with the Council but may give a written testimonial of a candidate's ability, experience or character.

- 9 Persons shall be deemed to be related to a councillor or officer if they are a spouse, partner (i.e. member of a couple living together) parent, parent-in-law, grandparent, child, stepchild, adopted child, grandchild, child of partner, brother, sister, uncle, aunt, nephew or niece or the spouse or partner of any of the preceding persons.
- 10 In the case of a dispute under paragraph 9 above about the status of a relationship in relation to an appointment, the Head of HR will rule and such ruling will be applied.
- 11 The Head of HR will ensure that the provisions of these Rules are reflected, as appropriate, in application forms or in any accompanying detailed procedures for each post, following advertisement.

#### **Responsibility of the Appointments Committee and Corporate Policy Committee**

- 12 In addition to these rules, the responsibilities of the Appointments Committee, the Corporate Policy Committee and the Staffing Appeals Sub-Committee are set out in the Committee's Terms of Reference ~~under the "Responsibilities for Functions" Section in Chapter 2~~ of this Constitution.
- 13 Subject to the provisions of these Rules, the Staffing Appeals Sub-Committee is responsible for hearing and determining appeals as set out in the Corporate Policy Committee terms of reference ~~under and~~ the Council's employment-related policies. In determining ~~these employment~~ matters the Corporate Policy Committee will have regard to the appropriate provisions of this procedure. The Committee may agree to discharge some of these functions through a Sub-Committee (and the Investigation and Disciplinary Committee will be responsible for particularly discipline of the Statutory Officers).

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

- 14 The appointment of Head of the Paid Service is subject to specific requirements as set out below.
- 15 Where the Council proposes to appoint to the Head of the Paid Service, the Corporate Policy Appointments Committee will oversee the arrangements for filling the vacancy.
- 16 The Corporate Policy Appointments Committee shall:
  - 16.1 draw up a statement specifying the duties of the officer concerned and any qualifications or guidelines to be sought in the person to be appointed
  - 16.2 where it is not proposed to appoint from existing employees, make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it



- 16.3 make arrangements for a copy of the statement mentioned above to be sent to any person on request
- 16.4 where a post has been advertised as required above, the Committee will select from the applications a short list of qualified candidates and will then interview those included in the short list.
- 17 Following the interview of candidates, the Committee will come to a view as to the most suitable person to recommend for the position.
- 18 The Committee must advise the Head of HR of:
  - 18.1 the name of the person in question
  - 18.2 any other particulars which the Committee consider are relevant to the appointment.
- 19 The Committee will recommend that person for appointment to the next meeting of the full Council or at a specially convened meeting of the Council. If the Council approve the recommendation, then a formal offer of appointment can be made.
- 20 Where following the interviews the Committee is of the view that there is no suitable candidate, it will re-advertise the post.
- 21 Where the Council does not approve the recommendation of the Committee, it shall indicate how it wishes to proceed.

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

- 22 The offer of appointment for:
  - 22.1. a statutory chief officer within the meaning of section 2(6) of the 1989 Act
  - 22.2 a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act or
  - 22.3 a deputy chief officer within the meaning of section 2(8) of the 1989 Act

must not be made by the appointor until the appointor has notified the Head of HR of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment and such terms fall within the Council's approved Pay Policy Statement.

#### **Dismissal of Head of Paid Service, Monitoring Officer and Chief Finance Officer**

- 23 Dismissal of the Designated Statutory Officers of the Council (the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer) (the 'DSOs') will be dealt with in accordance with the Investigation and Disciplinary Committee Terms of Reference above in **Chapter 2 – Part 4 – Committees**, together with the detailed guidance provided in the IDC Handbook which is included on the list

of associated documents in **Chapter 7**. The requirements of the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) and the Model Disciplinary Procedure and Guidance as set out in the JNC Conditions of Service Handbook will be followed in this regard.

- 24 Notice of dismissal shall not be given before such dismissal has been approved by full Council.

### **Political Assistants**

- 25 Where the Council decides to appoint political assistants it must do so in accordance with the requirements of the Local Government and Housing Act 1989 which
- (a) prohibits the making of an appointment to any post allocated to a political group until the authority have allocated a post to each of the groups which qualify for one;
  - (b) prohibits the allocation of a post to a political group which does not qualify for one; and
  - (c) prohibits the allocation of more than one post to any one political group.
- 26 The posts shall be filled from time to time in accordance with the wishes of a political group to which the post has been allocated.
- 27 The terms on which any person is appointed to or holds any appointment must be such as to secure that the annual rate of remuneration for the post is less than the amount specified by legislation and that the appointment terminates at or before the end of the day in the appropriate year on which the authority holds the annual meeting.