

# Council Agenda

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**Date:** Thursday, 21st July, 2011  
**Time:** 6.00 pm  
**Venue:** The Assembly Room, Town Hall, Macclesfield, SK10 1DX

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

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

1. **Prayers**
2. **Apologies for Absence**
3. **Minutes of the Meeting Held on 18 May 2011** (Pages 1 - 26)

To approve the minutes as a correct record.

4. **Mayor's Announcements**

To receive such announcements as may be made by the Mayor.

5. **Declarations of Interest**

To provide an opportunity for Members to declare any personal and/or prejudicial interests in any item on the agenda.

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

In accordance with Council Procedure Rule 35 and Appendix 7 to the rules, a total period of 15 minutes is allocated for members of the public to speak at Council meetings.

Individual members of the public may speak for up to 5 minutes, but the Chairman will decide how the period of time allocated for public speaking will be apportioned, where there are a number of speakers.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given. It is not a requirement to give notice of the intention to make use of public speaking provision. However, as a matter of courtesy, a period of 24 hours notice is encouraged.

7. **Notices of Motions** (Pages 27 - 30)

To consider a Notice of Motion submitted by Councillors S Jones and R Fletcher and two Notices of Motion submitted by Councillors D Neilson and D Hough, attached.

8. **Political Representation on the Council's Committees** (Pages 31 - 38)

To approve the political group representation, as set out in Appendices 1 and 2 to the report and to agree that the methods, calculations and conventions used in arriving at them as outlined in the report be adopted.

9. **Appointment of Members to Committees** (Pages 39 - 40)

That the nominations made by the Group Leaders to the bodies listed in Appendix 2 of the previous agenda item, be agreed.

10. **Appointments to Cheshire Fire Authority and Joint Cheshire Pension Fund Committee** (Pages 41 - 44)

To review and appoint Councillors to the Cheshire Fire Authority and the Cheshire Pensions Panel.

11. **Recommendation from Constitution Committee - Appointment of Appeals Sub-Committee** (Pages 45 - 48)

To approve the recommendations of the Constitution Committee.

12. **Recommendation from Constitution Committee - Whistleblowing Policy** (Pages 49 - 60)

To approve the recommendations of the Constitution Committee.

13. **Recommendation from Constitution Committee - Executive Arrangements and Cabinet Procedure Rules** (Pages 61 - 72)

To approve the recommendations of the Constitution Committee.

14. **Recommendation from Constitution Committee - Proposed Amendments to the Council's Contract Procedure Rules** (Pages 73 - 104)

To approve the recommendations of the Constitution Committee.

15. **Recommendation from Constitution Committee - Overview and Scrutiny Committees Terms of Reference** (Pages 105 - 116)

To approve the recommendations of the Constitution Committee.

16. **Overview and Scrutiny Annual Report 2010/11** (Pages 117 - 142)

To receive the Overview and Scrutiny Annual Report 2010/11.

17. **Questions**

In accordance with Council Procedure Rule 11, opportunity is provided for Members of the Council to ask the Chairman, the appropriate Cabinet Member or the Chairman of a Committee any question about a matter which the Council, the Cabinet or the Committee has powers, duties or responsibilities.

Questions must be sent in writing to the Monitoring Officer at least 3 clear working days before the meeting.

18. **Exclusion of Press and Public**

The reports relating to the remaining items on the agenda have been withheld from public circulation and deposit pursuant to Section 100(B)(2) of the Local Government Act 1972 on the grounds that the matters may be determined with the press and public excluded.

The Committee may decide that the press and public be excluded from the meeting during consideration of the following items pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 4 of Part 1 of Schedule 12A to the Local Government Act 1972 and public interest would not be served in publishing the information.

## **PART 2 – MATTERS TO BE CONSIDERED WITHOUT THE PUBLIC AND PRESS PRESENT**

19. **Harmonisation of Terms and Conditions.** (Pages 143 - 166)

20. **Strategic Director (Children, Families and Adults) and Director of Finance and Business Services** (Pages 167 - 168)

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**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Council**  
held on Wednesday, 18th May, 2011 at Tatton Park - Knutsford

**PRESENT**

Councillor G Baxendale (Chairman)

Councillor R West (Vice-Chairman)

Councillors C Andrew, Rhoda Bailey, A Barratt, D Bebbington, G Boston, D Brickhill, D Brown, L Brown, P Butterill, B Burkhill, R Cartlidge, J Clowes, S Corcoran, H Davenport, S Davies, R Domleo, K Edwards, P Edwards, I Faseyi, P Findlow, W Fitzgerald, R Fletcher, H Gaddum, S Gardiner, M Grant, P Groves (pm only), J Hammond, M Hardy (pm only), A Harewood, P Hayes, D Hough, P Hoyland, O Hunter, J Jackson, L Jeuda, M Jones (pm only), S Jones, F Keegan, A Kolker, W Livesley, J Macrae, D Mahon, D Marren, A Martin, M Martin, P Mason, S McGrory (pm only), R Menlove, A Moran, B Moran, G Morris, B Murphy, D Neilson, D Newton, P Nurse, M Parsons, P Raynes, L Roberts, M Sherratt, B Silvester, M Simon, L Smetham, D Stockton, C Thorley, A Thwaite, G Walton, J Weatherill, P Whiteley, S Wilkinson and J Wray

**Apologies**

Councillors Rachel Bailey, G Barton, D Druce, L Gilbert, P Groves (morning only), M Hardy (morning only), M Jones (morning only), S McGrory (morning only), G Merry, H Murray and D Topping

**1 APOLOGIES FOR ABSENCE****2 DECLARATIONS OF INTEREST**

Councillors R West and G Walton declared a personal interest in the agenda items relating to appointment of Mayor and Deputy Mayor 2011/12 by virtue of being the persons nominated.

**3 ELECTION OF MAYOR 2011/12**

Council was requested to elect a Mayor for the Borough of Cheshire East for 2011/12, who would also act as chairman of the Council for that period.

It was proposed by Councillor W Fitzgerald, seconded by Councillor O Hunter, and

**RESOLVED**

That Councillor R West be elected Mayor of the Borough of Cheshire East for the year 2011/12 and Chairman of the Council for that period.

The Mayor completed his Declaration of Acceptance of Office and was then invested with the Chain of Office. The Mayor thanked the Council for electing him to this office and informed Members that his wife, Joanna West, was to be his Mayoress; she was then invested with the Chain of Office.

**4 APPOINTMENT OF DEPUTY MAYOR 2011/12**

Council was requested to appoint a Deputy Mayor of the Borough of Cheshire East, who would also act as Vice-Chairman of the Council for that period.

It was proposed by Councillor S Wilkinson, seconded by Councillor J Macrae, and

**RESOLVED**

That Councillor G Walton be appointed as Deputy Mayor of the Borough of Cheshire East for the year 2010/10 and Vice-Chairman of the Council for that period.

The Deputy Mayor thanked the Council for appointing him to this office and informed Members that his wife, Veronica Walton, would act as his Deputy Mayoress; she was then invested with the Chain of Office.

**5 VOTE OF THANKS TO THE RETIRING MAYOR**

Councillor R Domleo paid tribute to the retiring Mayor and Mayoress, Councillor G Baxendale and Mrs Baxendale, for the dedicated work they had undertaken during their term of office, the large number of engagements they had attended and the money they had raised for charity. The Mayor presented badges to Councillor and Mrs Baxendale. Councillor Baxendale gave a speech of thanks.

**6 MAYOR'S ANNOUNCEMENTS**

1. The Mayor announced that his Chaplain for the forthcoming Municipal Year would be the Rev Rob McLaren. He thanked Rev McLaren for attending the meeting and looked forward to his guidance during his term of office.
2. The Mayor announced that his main charity for the forthcoming year would be Age UK (Cheshire East).

**7 ADJOURNMENT FOR LUNCH AND RECONVENING OF MEETING**

At this point the meeting stood adjourned until 2.15pm.

**8 APOLOGIES FOR ABSENCE**

A number of Members who had not been present for the Mayor Making Ceremony were present for the reconvened meeting. The names are recorded earlier in the minutes.

**9 MINUTES OF THE MEETING HELD ON 21 APRIL 2011**

**RESOLVED**

That the minutes be approved as a correct record, subject to the minutes being amended to show that Councillor Baxendale concluded the meeting on 21 April by thanking all retiring Members and all those who might not be re-elected for their work with the Council.

**10 MAYOR'S ANNOUNCEMENTS**

1. The Mayor extended a very warm welcome to all of the new Members and requested that they stand, so that other Members could identify them and congratulate them in respect of their election to office.
2. The Mayor informed Members of the way in which he intended to fulfil his responsibilities as Chairman of Council meetings.

He was intent upon ensuring that meetings were well run and also that they afford a fair opportunity for all Members of the Council and members of the public to participate. He was confident that the officers of the Council would facilitate this in their preparations for meetings, but he would require Members of the Council to play their part.

There were items of Council business which, from time to time, generated concerns and strong feelings amongst Members and there was nothing unusual about this. Constructive challenge was always healthy and indeed was an essential part of the work of the Council.

Nevertheless, he would be resolute in ensuring that, despite the importance of the business dealt with and the natural strength of feeling of Members on certain subjects, that proceedings retain the dignity that Cheshire East Borough Council meetings deserved.

Whilst he would be fair in his approach, he wanted the meeting to understand that he was not prepared to tolerate undignified conduct on the part of Members of any party. He was determined to uphold the high standards of the Council.

Therefore, over the coming year he would be careful to ensure all of this and he would be prepared to use his powers as Chairman, and those contained in the Council's Constitution, to deal with any instances where the behaviour of Members did not meet appropriate standards.

He sought the support of the Council collectively, and of Members individually, in achieving these aims. The Council's Constitution required Members to treat others with respect and not to conduct themselves in a manner which could bring their office into disrepute. He intended to ensure that these requirements were upheld and would use the powers contained in the Constitution to achieve this.

3. The Mayor referred to the Celebrations in respect of the 750<sup>th</sup> anniversary of the grant of the Macclesfield Charter. This year would see some wonderful events, which marked an important part of the history of Macclesfield and its commercial development. The celebrations would speak for themselves, but he hoped that all taking part would enjoy them
4. The Mayor hoped that Members would understand that since this was his first formal business meeting, he would not be able to report to them upon previous civic activities as Mayor. However, they could be assured that he would give a good account of his engagements in the future.

#### **11 PUBLIC SPEAKING TIME/OPEN SESSION**

Mr B Evans used public speaking time to suggest that, whilst he appreciated that the new Mayor had not yet carried out any engagements, the agenda for Annual Council meetings should include an item relating to the previous Mayor's engagements.

Cllr P Edwards presented a petition to the Mayor, on behalf of its signatories, relating to School Transport proposals.

#### **12 ELECTION OF COUNCILLORS**

Details of the results of the Borough Council's elections which had taken place on 5 May 2011 were reported to Council.

#### **RESOLVED**

That the results of the Borough Council's elections on 5 May 2011 be noted.

#### **13 ELECTION OF LEADER OF THE COUNCIL**

Consideration was given to the election of Leader of the Council for the statutory four year term of office.

Two nominations were received as follows:-

Cllr W Fitzgerald

(proposed by Cllr R Menlove and seconded by Cllr G Morris)

Cllr D Brickhill

(proposed by Cllr B Murphy and seconded by Cllr A Moran)

A secret ballot was conducted. Before the secret ballot was taken, the Borough Solicitor explained the process, whereby each Member would be issued with a ballot paper, on which they should write clearly the name of the person he/she was voting for. The ballot papers were then issued to Members. The ballot papers were then collected, verified and counted.

The result of the secret ballot was as follows:-

Cllr Fitzgerald - 45 Votes

Cllr Brickhill – 20 Votes

Unmarked – 4

Uncertain - 2

### **RESOLVED**

That Cllr W Fitzgerald be appointed as Leader of the Council for a four year period.

Cllr Fitzgerald thanked the Council for electing him to this office.

## **14 APPOINTMENTS TO THE CABINET**

The Leader of the Council, Councillor Fitzgerald, presented to Council information about executive functions in the forthcoming year, including the names, addresses and electoral divisions of those Members appointed to the Cabinet, as attached.

### **RESOLVED:**

That the information on executive functions in the forthcoming year be noted.

## **15 POLITICAL REPRESENTATION ON THE COUNCIL'S COMMITTEES**

Consideration was given to a report inviting the Council to determine political representation on the Council's Committees.

Documentation demonstrating how the Council should determine the proportionality of Committees (Appendix 1) and showing the proportional distribution of seats (Appendix 2) together with an additional report, which addressed proposed changes to the Scrutiny Committees, were circulated at the meeting.

It was proposed by Councillor Fitzgerald and seconded by Councillor Domleo:-

1. That the new Scrutiny Committees be appointed with the powers as circulated, with appropriate changes to the Constitution.

2. That the proposals contained in paragraphs 2.1 and 2.2 of the reports be agreed.
3. That the political representation as set out in the circulated Appendices 1 and 2 and the methods, calculations and conventions used in arriving at them, as outlined in the report, be adopted.

A request for a named vote was submitted and duly supported. The motion was put to Council with the following results:-

**For**

Councillors :-

C Andrew, Rhoda Bailey, A Barratt, G Baxendale, D Bebbington, D Brown, L Brown, J Clowes, H Davenport, S Davies, R Domleo, P Findlow, W Fitzgerald, R Fletcher, H Gaddum, S Gardiner, P Groves, J Hammond, M Hardy, P Hayes, D Hough, P Hoyland, O Hunter, M Jones, S Jones, F Keegan, A Kolker, W Livesley, J Macrae, D Marren, A Martin, P Mason, R Menlove, B Moran, G Morris, D Neilson, P Raynes, B Silvester, M Simon, L Smetham, D Stockton, A Thwaite, G Walton, J Weatherill, R West, P Whiteley, S Wilkinson and J Wray

**Against**

Councillors:-

G Boston, D Brickhill, B Burkhill, P Butterill, R Cartlidge, S Corcoran, P Edwards, I Feseyi, M Grant, A Harewood, J Jackson, L Jeuda, D Mahon, P Martin, S Mcgrory, A Moran, B Murphy, D Newton, P Nurse, M Parsons, L Roberts, M Sherratt and C Thorley

The motion was carried with 48 in favour and 23 against.

**RESOLVED**

- 1 That the political group representation, as set out in Appendices 1 and 2 to the Report, and the methods, calculations and conventions used in arriving at them, as outlined in the Report, be adopted.
- 2 That a new Health and Wellbeing Overview and Scrutiny Committee and a new Adult Social Care Overview and Scrutiny Committee be appointed.
- 3 The consideration of the final terms of reference of the new Committees be referred to the new Committees and the terms of reference for all Overview and Scrutiny Committees be considered by the Scrutiny Chairman and the Constitution Committee in the June/July cycle of meetings
- 4 The Borough Solicitor submit a further report with recommendations to July Council when the political balance and Member appointments will need to be reviewed following the Crewe South election.

- 5 The number of seats on the Overview and Scrutiny Committees be reduced from 14 to 12.

## 16 **APPOINTMENT OF MEMBERS TO COMMITTEES**

Details of the political groups' nominations of Members to Committees were circulated at the meeting.

It was also proposed that the existing powers of the Appeals Committee be transferred to the Audit and Governance Committee and that appropriate constitutional changes be made.

In moving the recommendations, as circulated, Cllr Fitzgerald moved that Cllr P Raynes be appointed to the Peak District National Park.

Cllr P Edwards, the Independent Group Leader informed Council of a change to the Independent Group nominations, to substitute Cllr P Butterill for Cllr D Brickhill on the Environment Scrutiny Committee.

Cllr Thorley, informed Council of a change to the Labour Group nominations, to substitute Cllr C Thorley for Cllr K Edwards on the Staffing Committee.

It was proposed by Councillor Fitzgerald, seconded by Councillor Domleo and

### **RESOLVED**

- 1 That, subject to the above changes, and to these resolutions, the existing Committees, listed on the circulated Appendix 2 be approved with their existing powers, and that the Council agrees the memberships as shown.
- 2 That the existing powers of the Appeals Committee are transferred to the Audit and Governance Committee and the Borough Solicitor be authorised to make appropriate constitutional changes, as she deems appropriate.

## 17 **APPOINTMENT OF CHAIRMEN AND VICE-CHAIRMEN**

Consideration was given to the appointment of Chairmen and Vice-chairmen of the Council's decision making and other bodies.

The Political Group Leaders' nominations of Chairmen and Vice-chairmen of the Council's decision-making and other bodies was circulated at the meeting.

It was proposed by Councillor Fitzgerald, seconded by Councillor Domleo and

**RESOLVED**

That the Chairmen and Vice-chairmen of the Council's decision-making and other bodies, as listed in respect the previous agenda item, as circulated at the meeting (and as attached) be appointed.

**18 APPOINTMENTS TO ADOPTION PANEL, FOSTERING PANEL AND CHESHIRE ADMISSIONS FORUM**

Consideration was given to appointments to the Adoption Panel, Fostering Panel and Cheshire Admissions Forum.

It was proposed by Cllr Gaddum and seconded by Cllr Kolker and:-

**RESOLVED**

1. That Cllr G Morris be appointed to the Adoption Panel, to take effect as soon as requisite training has been undertaken and until then, Cllr A Kolker remain as the representative.
2. That Cllrs J Clowes and P Nurse be appointed to the Cheshire Admissions Forum.
3. That Cllr P Hoyland be appointed to the Fostering Panel and that Officer explore, in conjunction with the Constitution Committee, if necessary, arrangements to be made for a second Member to be nominated to the Fostering Panel.

**19 APPOINTMENTS TO CHESHIRE FIRE AUTHORITY AND CHESHIRE POLICE AUTHORITY**

Consideration was given to appointments to Cheshire Fire Authority and Cheshire Police Authority.

It was proposed by Councillor Fitzgerald, seconded by Councillor Domleo and

**RESOLVED**

- 1 That Cllrs M Simon, J Weatherill, W Livesley, D Topping, G Merry, C Thorley, R Fletcher and D Brickhill be nominated to serve on the Cheshire Fire Authority.
- 2 That Cllrs JP Findlow, H Murray, and P Nurse be nominated to serve on the Joint Committee of the Police Authority, with powers to select Police Authority members, on behalf of the Council.

20 **QUESTIONS**

The Following questions had been submitted in accordance with Procedure Rule 11:-

**Questions submitted by Cllr D Brickhill**

**Question 1**

How are the residents of Crewe South ward receiving proper ward councilor care in the interim period between the end of the previous Councillors' term of office and the appointment of new Councillors at the by election on June 16th?

**Cllr Fitzgerald, in response, stated :-**

Thank you for notice of your question Cllr Brickhill. Of course, we were all shocked and saddened by the sad news of the death of Councillor Betty Howell, who we will miss and indeed, this does create an issue in respect of representation of the constituents of Crewe South Ward. As a matter of law, the election for Crewe South on 5<sup>th</sup> May had to be countermanded and a new date of 16<sup>th</sup> June has been identified for the election to take place. Until that time, it is an unfortunate consequence of the circumstances we are in, that the constituents of that Ward will have no elected Borough Councillor to represent them and they will need to rely on the Cheshire East organisation to do so. Of course, all elected Members have a responsibility to assist constituents, irrespective of the ward they represent. In the brief period until the Crewe South election, Councillors representing neighbouring wards would be expected to assist Crewe South constituents.

**Question 2**

My second question to May 18 Council relates to my supplementary question 2 at the last council meeting.

Members will see from their minutes of the last meeting that the leader avoided answering my actual supplementary question 2 and instead replied with totally unrelated information. (see page 10) I therefore have to ask again: Weston Road, Crewe was not taken to Council because there was no adequate financial plan to justify this. Is that correct?"

**Cllr Fitzgerald, in response stated:-**

I refer Cllr Brickhill to my previous response on this matter and feel that it has been addressed satisfactorily.

**Supplementary Question**

Cllr Brickhill asked why he had not been provided with the plan, as requested, and Cllr Fitzgerald undertook to request that officers provide a justification for the purchase of the site.

**Question 3**

What additional and unbudgeted revenue cost has been added to this council's costs by the purchase of the Royal Mail sorting office site on Weston Road Crewe. Taking into account business rates, interest on the capital cost, security, clearance work I estimate that cost as over half a million pounds per year. What is the correct figure? Has any income been forthcoming from the site since its purchase in January three months ago? What steps if any are being taken urgently to mitigate the loss occasioned by the purchase of this site.

These costs will have to be funded by virement from other spending.  
Where is that money being taken from?  
What services will have to be reduced by this virement?"

**Cllr Fitzgerald, in response stated :-**

The site is now a corporate asset of the Council and sits within our overall asset management strategy, delivery arrangements and budgets. In line with our overall asset base the Council is seeking to maximise any revenue we can from making the site operational whilst we prepare the overall regeneration project and gain additional public and private sector investment. We have engaged agents to market a proportion of the site for short-term lease and the site is currently being actively marketed at a local, regional and national level. We are also marketing the advertising opportunities presented by the site's strategic location".

**Supplementary Question**

Cllr Brickhill stated that the cost of running this site was coming out of the Council's revenue account and asked to be assured that that money would not be deducted from the funds for the maintenance of roads.

**Cllr Fitzgerald, in response, stated** that this was not the case.

#### **Question 4**

My fourth question relates to the unsatisfactory answer given to my supplementary to question 3 shown on page 11 of the minutes. So I ask it again:-

Members will see that again I received a totally unsatisfactory response to my supplementary question 3 on page 11 of the minutes. Like every council in England, Cheshire East Council has accepted the Government's subsidy in return for not increasing the council tax. Council tax payers do have a right, following the reorganisation of the previous Councils that they should see the reduction in council tax promised by the bid by Chester and Macclesfield Councils. This but has yet not happened. The leader seems to think that the people of Cheshire East are grateful for no sign of this. Clearly the loss of seats suffered by the Tory party in the election shows that they are not grateful at all to this overspending administration. When we see the reduction in council tax we were promised in return for the thoroughly unnecessary trashing of the county council and the six district councils?

#### **Cllr Fitzgerald, in response stated :-**

Just to correct Cllr Brickhill, the bid did not promise that Council tax would be reduce, but would be harmonized down. I feel that I have already satisfactorily answered these questions. In my view, no further information is required to be provided.

#### **Supplementary Question**

Cllr Brickhill stated that he disagreed with the response, as he felt that there was an expectation that the Council tax would reduce with the amalgamation of the Councils and asked whether steps would be taken to reduce the number of staff where they were paid excessively.

**Cllr Fitzgerald, in response, stated** that he believed that the Council could not be criticized on its performance in respect of Council tax.

#### **Questions Submitted by Cllr B Murphy**

#### **Question 5**

Earlier this year, news media in Macclesfield were awash with scurrilous rumour, innuendo and insinuation in connection with the referral of a senior council Member of the Council to the Standards Board of England (SBE). At the time, on the grounds of confidentiality, the council would make no comment or divulge explanatory information. Subsequently, the media reported the Member had been exonerated. However, neither confirmation of the media reports nor any other relevant information has been disseminated. A search today (12<sup>th</sup> May) on the Council's website (using the key words Standard Board of England Inquiry Report) failed

reveal any relevant material. In these circumstances and in the light of the serious damage being done to the Council and the Member, will the Leader of the Council explain:

1. Did the matter relate to the acquisition of land or to an altercation between the Member and an Officer?
2. If it was land, was the proposed acquisition for the provision of affordable housing? Is so, has the proposal progressed and to what point? If not, why?
3. What precisely were the grounds for complain, what evidence was produced and by whom to substantiate the complaint?
4. Was the complaint to the SBE made by an officer or by the Council's Leader (or both) or by a member of the public?
5. If it was by an Officer, was the Council Leader or any other Group Leader or any other member consulted, and if any, who?
6. Was the leader complicit in any way in the making of the complaint?
7. Will the Leader of the Council now agree to the publication of the SBE's findings in full?
8. Does the Leader of the Council recognise the unintended consequences when an officer takes it upon him/herself to file a complaint on the grounds of ethics as distinct from criminal offence?

**Cllr Fitzgerald, in response stated:-**

I would refer the Member to Standards for England's website where a summary of the case is available outlining the terms of the complaint together with the findings of the Ethical Standards Officer. I would advise that a copy of the full report has been provided to Members of the Council's Standards Committee and was considered at their meeting on the 6<sup>th</sup> April 2011.

The Standards' Committee annual report presented to Council on 21<sup>st</sup> April 2011 contained the following paragraph:-

Members felt a number of lessons could be learnt and recommended that all Members should be reminded of the significance of Public Office, including the expectations of the public and that Code of Conduct training should be given to all Members following the forth coming election. The Ethical Standards Officer had commented that Senior Officers and Members had understandable concerns about the public perception of the relationship of the subject member with the developers. The Committee agreed that Officers had acted entirely appropriately in the circumstances and endorsed the comments of the Ethical Standards Officer and action was taken by Officers.

In line with Section 63 of the Local Government Act 2000 the report must not be disclosed outside of the Standards Committee.

### **Supplementary Question**

Cllr Murphy requested clarification in respect of what Section 63 of the Local Government Act 2000 said. He found it extraordinary that, in a time when greater transparency in government at all levels was talked about, that a full report had not been made on this subject, which had been the subject of so much adverse comment in the media. He requested that, whilst there was no reflection on the conduct of officers, it seemed clear that, given the sensitivities in the relationships between Chief Officers and leading Members of the Council that a Protocol should be written and built into the Constitution, in order to avoid this kind of misunderstanding and rumour in the future. He requested that the Leader of the Council consider this.

Cllr Fitzgerald undertook to provide clarification in respect of what Section 63 of the Act stated, but felt that he could not agree to the philosophy which had been expressed by Cllr Murphy, without prior notice and suggested that Cllr Murphy put his request in writing.

### **Question 6**

It has been reported that Officers undertook the purchase of the former sorting office site in Crewe under delegated powers. Will the Leader of the Council supply the following information: -

1. What was the Business case for the acquisition?
2. When did the officers know of the availability of the site and what was the deadline for submission of a tender/bid?
3. When was the Business Case presented to the Cabinet?
4. Did the business case include the costs for "making good" the site after acquisition? If so what were those costs and were they to be funded as "capital" or from revenue? And what was the projected total cost?
5. From which part of the Council Budget(s) are these costs to be financed?
6. Why was an emergency council meeting not called to endorse such a serious and exceptional expenditure?
7. What was the political reason for using taxpayer money to purchase land at a time of austerity and when there is an abundance of unused "employment" land waiting for development in Macclesfield and elsewhere and when revenue and capital budgets for front line services are stretched to the limit?

### **Cllr Fitzgerald, in response stated:-**

1. The Royal Mail site in Crewe was acquired by Cheshire East Council as a strategic investment linked to the long-term regeneration of Crewe under our 'All Change for Crewe' strategic

framework. We undertook a full independent valuation of the site prior to acquisition to inform our decision.

2. The site was first marketed for disposal by the Royal Mail's agents on 11<sup>th</sup> October 2010. The Council was aware in July that the Royal Mail were due to vacate the site but at that point the Royal Mail had not declared their proposed route of disposal or their timetable.

On the 11th October, the vendor instructed their agent to secure all offers by 12<sup>th</sup> November with a timetable that requires exchange of contracts by 31<sup>st</sup> December 2010, and completion of sale by 31<sup>st</sup> January 2011.

3. Cabinet unanimously supported the proposal to acquire the site on 25<sup>th</sup> October at an informal Cabinet meeting.
- 4/5 The project is included in our corporate capital programme with a total capital cost of £2.75 million. The site is now a corporate asset of the Council and sits within our overall asset management strategy and delivery arrangements. In line with our overall asset base the Council is seeking to maximise any revenue we can from making the site operational whilst we prepare the overall regeneration project and gain additional public and private sector investment.
6. The scale of the decision both financially and in risk terms was not deemed significant within the context of the operations of the Council. The decision was to seek to acquire a strategic landholding in one of our major spatial priorities at an appropriate market value.

I refer to my earlier answer, this was a strategic acquisition linked to the economic growth of one of our major towns. The site is retained in the short-term as an asset as part of our property portfolio.

### **Supplementary question**

Cllr Murphy asked what the business case had been for the acquisition and requested an explanation as to what Cllr Fitzgerald meant by a "strategic investment".

**Cllr Fitzgerald, in response**, suggested that Cllr Murphy read the Crewe Vision thoroughly, in order to look at what the Council was planning for this area of Cheshire East. He considered that it would be a missed opportunity if the Council did not acquire the site. It would open a whole new regeneration of that area, with a new entrance to the station. Virgin Rail were keen to take this forward and he considered it to be a tangible exercise.

**Question 7**

At the last Council meeting, in answer to a question about market rents in Crewe, the Portfolio Holder for Environment justified the exorbitant 25% increase in stall holder rents on the grounds that, he said, “we do not receive business rates from markets and that council taxpayers should not be required to subsidise them.” He also stated: “Markets therefore need to be individually sustainable in terms of operational expenditure and future investment needs”. He further informed the council that the 2010/11 expenditure on Crewe’s market was £256,900 and income was £256,900, a trading profit of 4.5% for the Council. In view of the foregoing, will the Portfolio holder now explain:

1. Given the trading profit of 4.75%, where is the subsidy?
2. What are the comparable expenditure/income figures for Macclesfield markets?
3. Is the Portfolio Holder aware that the compulsory acquisition of the original “fixed” market place in Macclesfield was undertaken to make way for a Town Hall extension and therefore the additional costs arising from creation of a moveable market rightly belonged and still belong to the Council?
4. Does the Portfolio Holder not recognise that rates and rent are an excessively high proportion of small retail operations and therefore his demand for compensatory rents is inappropriate and unjust?
5. Given the monopoly position of the local authority, does the Portfolio Holder recognise raising market rents to bring them in line with other towns is an anti-competition measure, not only contrary to PPS 6 guidance on town centre but also contrary to Conservative claims to be a business-friendly party?
6. Is the Portfolio Holder not aware of the steady decline in Macclesfield ‘s Town Centre trade over the past three years and that commercial rents have declined by 25%?
7. How does he justify the nonsensical proposition that a 25% increase in rent will make an individual trader’s business “sustainable in terms of operational expenditure and investment needs”?
8. In view of the foregoing, does the Portfolio Holder really believe a 25% rent hike will help regenerate Macclesfield centre, surround as it is by highly competitive retail centres?

**Cllr Menlove, in response stated:-**

As we are now closing the accounts for 2010-11, officers have been able to provide the actual financial outturn for our markets.

This may be summarised as follows:

	£000
Operating expenditure	742
Management & support services	230
Depreciation charges	280
<b>TOTAL EXPENDITURE</b>	<b>1,252</b>
Income	(942)
<b>NET EXPENDITURE</b>	<b>310</b>

The Council is awaiting late payment of £109,000 from stallholders. Clearly, we are seeking to improve financial performance by increasing stall rents. The proposed rent increases are expected to raise about £200,000 in a full year.

No matter what their history and the concerns we all share about our markets, we must move to put this non statutory service provision on sustainable financial footing going forward. We believe this is appropriate given their commercial setting and in the longer term interests of all parties, including Council Tax Payers.

We continue to consult and review the proposed rents, particularly with our local service delivery agenda in mind. There are legacy issues that complicate matters for Cheshire East and these need to be addressed going forward. We are also aware that the pace of change is an important factor in our deliberations. You can be assured that all factors will be considered before rent increases are actually implemented.

Cllr Murphy thanked Cllr Menlove for his explicit explanation.

### **Question 8**

Given the chequered and stalled progress of the redevelopment of Macclesfield town centre, partly because of Wilson Bowden's various corporate difficulties, quite separate from the economic recession,

1. Why did the Cabinet not put the project out to open tender
2. Why should the public and Macclesfield's councillors now have confidence in Wilson Bowden's capability to deliver the project?
3. Why has Wilson Bowden been allowed to change the development brief recently passed through public consultation?
4. Is Wilson Bowden still able to finance the development through its own resources or is it now dependent on external financial support?
5. Why was it necessary to enter into a new contract with Wilson Bowden and what are the key differences between the original contract and the current one, particularly with regard to the financial terms?
6. What provision has been made in the contract for termination of the contract in the event of Wilson Bowden failing to make satisfactory progress?

**Cllr Macrae, in response stated:-**

1. In December 2009, the Cabinet reviewed the position of the inherited Development Agreement with Wilson Bowden from the former Macclesfield Borough Council. A full review of the options was undertaken and we took comprehensive legal advice to inform our decision. We concluded it was in the best interest of the Macclesfield and Cheshire East Council to progress a review of the Development Agreement, and the Terms of Variation were approved in May 2011.
2. We have strong commitment from Wilson Bowden at a board level to deliver a high quality scheme for Macclesfield. Over the past 18 months All Macclesfield councillors have been engaged in the agenda set out for the re-generation of the town and have been fully supportive of our approach.
3. I am unclear on the third point raised in the question, as no new development brief has been subject to consultation recently.
4. The information requested on point further is subject to commercial confidentiality – an update briefing is being arranged for all newly elected Macclesfield members and would be happy to discuss such issues raised on this point.
5. The Council is not entering into a new contract with Wilson Bowden. The proposed Terms of Variation were presented to cabinet in May 2011, as a part 2 agenda item, I am happy to discuss this at the member briefing and I hope that Cllr Murphy can attend.
6. I can confirm that any revisions to the development agreement include clear sequential milestones which must be met by Wilson Bowden.

**Supplementary Question**

Cllr Murphy thanked Cllr Macrae for his response. Her referred to item 4 of the question and stated that when Wilson Bowden had first submitted the bid they had assured the Council that they had their own financial resources and asked whether this was still the situation.

**Cllr Macrae, in response:** stated that there was a degree of commercial confidentiality involved, but he would be happy to discuss this matter at the Member briefing.

**Questions Submitted by Cllr P Edwards**

**Question 9**

1a. Who is on the School Transport Core Group?

**Cllr Gaddum in response stated:-**

The Transport Core Group is an Officer group made up of the following:

- Head of Strategy, Planning and Performance, Children and Families
- Policy and Strategy Manager, Children and Families
- The Transport Manager
- Transport Coordinators North and South
- Transport Customer Quality Manager
- Transport Operations Managers North and South
- Specialist Transport Assessment Officer”.

1b. What are its terms of reference in relation to the school transport costs?

**Cllr Gaddum in response stated:-**

The group was set up as business support to implement and manage the school transport consultation process, to advise on school transport issues, e.g. to Members, to ensure the discharge of statutory duties, to assess consequential effects of transport policy changes eg impact on school rolls. This group reports to the Children and Families’ Senior Manager Team (SMT) and ultimately the Director of Childrens Services.

1c. When was it formed and how often does it report and to whom?

**Cllr Gaddum in response stated:-**

Prior to the set up of the Transport Core Group, work was carried out by Children and Families Senior Management team. The first formal meeting of the group was 4 March 2011 and it has met fortnightly since. It reports, via the Chair, to the Director and the Portfolio Holder for Children’s Services.

**Supplementary Question**

Cllr Edwards queried why, when there had been no Member involvement and such a large sum of money was involved, this matter had not been referred to the Children and Families Scrutiny Committee.

**Cllr Gaddum, in response, stated:-**

That the issue had been to the Scrutiny Committee already and would be coming back again when the responses were ready.

2a. Who decided on how the consultation would take place?

**Cllr Gaddum, in response, stated:-**

The Transport Core Group, accountable to SMT.

2b. Who was responsible for ensuring that the consultation actually reached those affected?

**Cllr Gaddum in response stated:-**

As above, but ultimately the Director of Children's Services.

2c. What is the process for those that have not been able to take part in the consultation due to not receiving notification before the closing date?

**Cllr Gaddum, in response stated:-**

The consultation has been publicised through schools/colleges, local press, public drop-in sessions, emails to stakeholders and the Council's website and the Council has received a significant response to the consultation. The Schools Forum and Children and Families Scrutiny have also been informed of the consultation. We are not aware of any groups that have not been able to take part in the consultation.

**Supplementary Question**

Cllr Edwards stated that a number of schools had not been involved in the consultation and that this had not been followed up. He questioned why the Council had not made sure that the information was given to the public.

**Cllr Gaddum in response, stated** that it was standard practice to send the information to schools so that they could pass it on to parents. In addition, an extra public event had taken place in the Middlewich area.

3a. If this was a consultation why are there no options only pre-determined decisions, i.e. Sep 2011 fare goes up £299 to £385 per annum, Sep 2012 service disappears altogether?

**Cllr Gaddum, in response stated:-**

The decisions are not predetermined. The Council has a statutory duty to provide certain school transport and so the only areas that can lawfully be charged are areas of discretionary policy. It is standard practice in consultations such as this for public bodies to consult on proposals, rather than a list of options. Members will make decisions on the next steps based on the reported impact of these proposals.

3b. What determines if a fare is subsidised and at what level does a subsidy become a subsidy?

**Cllr Gaddum, in response stated:-**

If parents/carers paid on a full cost recovery basis, the average cost of providing transport would be as follows:

- £1,097 = Denominational transport place
- £925 = Post-16 transport place
- £5,536 = Average cost of all SEN provision
- This represents a significant increase on what is currently and proposed to be charged. Anything less than this would be deemed to be subsidised by the Council”.

**Supplementary Question**

Cllr Edwards stated that effectively these people were being taxed and questioned how this could be justified, when people living in the area would pay less.

**Cllr Gaddum, in response stated:-**

The cost was in fact £1097 to the Council and the Council was subsidising already.

- 4a. If as a result of some pupils meeting the free provision criteria and buses are provided to school half empty, where is the saving on transport costs, when the other half could be filled by those contributing to the cost of the service?

**Cllr Gaddum, in response, stated:-**

If the proposals were implemented, then all transport would be re-planned to minimise the amount of transport that is required and to make the consequent savings. Contracts specify vehicles of appropriate size, so if for example 48 children became 24 children, the contract would state the required vehicle size and an appropriate cost reduction would result.

- 4b. Where a scheduled service is available for pupils to get to school, but the service does not have sufficient seats to get all the pupils to school on time, how will the council through its policy obligation to ensure pupils can get to school on time, does it intend to overcome this problem?

**Cllr Gaddum, in response, stated:-**

It's the parents' statutory duty to ensure their children attend school. There is no current policy that states it is the duty of the Council to get pupils to school on time. The Council's duty under Section 508B of the Education Act 1996 is to provide free transport for 'eligible children' (as defined in Schedule 35B of the Act) as the Council considers necessary for the purposes of facilitating the child's attendance at school in a timely fashion.

Under the same Section of the Act, the Council has discretion to make transport arrangements for children whose parents wish them to attend a school which accords to their particular religion or belief. If the proposals were implemented, the Council would continue to meet its duty to provide transport for eligible pupils.

- 5a When post 16 education is made compulsory how does the council intend to provide the provision in Middlewich, and if it does not what provision will it make to enable access to post 16 education as students are obliged to travel, will this be free as under the criteria you are disenfranchising a whole town with current intended policies?

**Cllr Gaddum, in response, stated:-**

From 2013 the raising Participation in Education, Employment or Training begins to be implemented. There is no requirement for provision of transport post 16 currently. If the government saw fit to make it compulsory in the same way that pre-16 transport is, then the council would seek appropriate funding from central government to meet that commitment.

#### **Supplementary Question**

Cllr Edwards questioned that, if school transport was to be made more effective, why a 48 seater bus travelled between Macclesfield and Congleton with only two pupils on it.

**Cllr Gaddum in response** stated that she would require further details in order to respond to this question.

#### **Question 10**

Recycling :-

- a. What is the cost of the silver bins?
- b. Who's decision was it to implement the bins?
- c. What is the costs of the leafleting, roadshows and promotion of the service?

**Cllr Menlove, in response, stated:-**

The decision to implement the new recycling and waste collection service; including replacing bags and boxes with Silver bins, was made by the Cabinet. Silver bins for the premier dry recycling service are being procured for the Congleton and Macclesfield areas only because householders in Crewe and Nantwich already have these bins. Silver bins are being procured and delivered to householders at cost of about £2m; £363k being found from existing grant funding. The total cost of communications to support implementation of the new service over

the next few months, including all material production and delivery, is estimated to be less than £1 per household.

**Supplementary Question**

Cllr Edwards queried why this had been a Cabinet decision rather than a Council decision, when it related to a cost of about £2m.

Cllr Menlove undertook to provide a written response to the supplementary question.

**Question Submitted by Councillor S McGrory**

**Question 11**

With reference to the School Transport Consultation:-

1. The information available at the consultation gives dates of next steps and timelines as follows,
  - May 20th - consultation closes
  - May 31st - Scrutiny Committee
  - June 6th - Cabinet Decision on proposals taking consultation responses into account
  - By end of June - School Transport Policies revised
  - End of June - School Booklets published
  - September 2011 - First changes made, if agreed
  - September 2012 - All changes implemented

How can the Portfolio Holder ensure that all the Council, including new Members, have all the relevant information and documents available in order to make an informed decision about removing all transport provision to both Faith Schools and to 6th Form Education?

When will the report be made available for all elected Members to consider?

What part of the consultation will be discussed at the May 31st Scrutiny Committee?

Is the final Decision to be made by the Cabinet?

**Cllr Gaddum, in response, stated:-**

The purpose of the school transport consultation is to establish what impact the proposals would have on stakeholders, if approved. Following the close of the consultation period, this impact will be assessed and an analysis presented to Elected Members to enable them to make informed decisions on the way forward.

In the light of the amount of information received and the complexity of the analysis required to inform Members in the decision-making process, it was decided to take a decision at the July Cabinet meeting. At this stage it is anticipated that the 31<sup>st</sup> May Scrutiny Committee will consider the consultation process, initial findings and key issues arising from the consultation.

The final decision on the proposal and any next steps are likely to be made by the Cabinet on 4 July 2011 and papers will be available to the public a week beforehand on the Council's website.

### **Supplementary Question**

Cllr McGrory asked why, bearing in mind that the Portfolio Holder had said that the Cabinet decision would be in July, were the public not told. He also stated that information "put out" recently referred to June.

### **Cllr Gaddum, in response, stated :-**

That the report was scheduled for the July meeting, however, she wanted to ensure that the Scrutiny Committee had full input.

2. The report dated March 10th "Home to School Transport Review" to the Portfolio Holder and considered by her at a meeting on March 10th, states under 'Risk Management' (page 12 para 9.2) that "Increased costs could also result in higher numbers of 'school run' journeys which would undermine the Council's environmental objectives".

In a letter from the Chief Executive on this consultation to a very concerned parent (who wishes to remain anonymous but her letter is your reference EW/CS/nb2472), in response to the environmental impact issue, the Chief Executive states that "A full equality impact assessment will be completed on the proposed changes, including the environmental impact, Members will make decisions in the light of this information."

Can the Portfolio Holder please confirm when environmental impact became part of the equality impact assessment?

How and when will this environmental impact be undertaken, and how this report will be made available for scrutiny by members, other than the Cabinet, before any decision is made?

### **Cllr Gaddum, in response, stated:-**

The Council's Single Equality and Inclusion Scheme for 2010-13 includes an equality impact assessment template. One of the areas of the assessment is around other potential impacts and states the following:

This is where officers will include a summary of information relating to environmental impact raised during the consultation period and any subsequent analysis carried out around congestion etc.

It is not possible to carry out an environmental impact before the conclusion of the consultation as the impact will be based on what stakeholders tell us as part of the consultation. For example, if all responses state that parents will use their own cars to transport their children, then this could have a negative impact on the environment, whereas if parent's respond to say that they would chose their nearest school, this could have a positive effect on the environment.

### **Supplementary Question**

Cllr McGrory referred to a resident who had been very confused when environmental issues became part of the Quality Impact Assessment and requested that this be made clear on the Council's website.

### **Cllr Gaddum in response stated: \_**

That she would look at this and, if appropriate, would arrange for it to be altered on the website

3. Can the Portfolio Holder advise what other options have been looked at to reduce overall transport costs?  
Why were these not part of the report of the March 10th meeting when the decision was made to hold a consultation on that meeting's preferred transport provision proposals.

### **Cllr Gaddum, in response, stated:-**

The decision to review home to school transport entitlements arises directly from the Council's Total Transport Transformation Programme. This programme encompasses all aspects of transport provision, including:

- staff travel,
- the production and implementation of the council's local transport plan,
- a review of the council's vehicle acquisition, financing and maintenance provision
- public transport support criteria
- the creation of a Cheshire East integrated transport unit

As part of normal business officers regularly review transport costs and activities to ensure that costs are kept under control. For example, recent tendering processes have yielded savings equivalent to £60,000 a year. In addition, regular re-planning exercises are undertaken to minimise the number of vehicles required to transport children to and from school. Every effort is made to integrate journeys so that the financial support the council gives to public transport is leveraged by the use of those contracts

for home to school transport purposes. In addition, the council reviews the level of parental allowances offered to parents who agree to transport their own children to school where otherwise it would result in additional council expense.

However, the level of savings required exceed the efficiency savings we are able to deliver. The only areas of activity that we can withdraw are those that are discretionary in nature – that is, where the council has freedom to decide whether to financially support or not. All other areas of school transport are statutory in that the council has no discretion whether to offer transport or not – the law states that as long as a child resides beyond a certain distance from their nearest suitable school, then transport must be provided. In the case of post-16 transport and denominational transport, the council has full discretion to decide whether to fund this transport or not.

In terms of other policy areas examined, the only other discretionary area is for children who attend primary school, and are aged between 8 and 11 years old. The law states that children are entitled to transport only if they live beyond 3 miles from school if they are aged 8 or older. The council currently offers transport if they live beyond 2 miles. Having looked at the costs and benefits of proposing a withdrawal of transport support for the small number of children affected, it was decided that the costs outweighed the benefits and that the proposal would not go forward into the consultation process”. This is happening all over the country and Cheshire West and Chester Council have already stated their concerns.

## **21 STARTING TIME OF COUNCIL MEETINGS 2011/2012**

Consideration was given to the starting time of Council meetings for 2011/12, as recommended by the Constitution Committee.

It was proposed by Councillor Fitzgerald, seconded by Councillor Domleo and

### **RESOLVED**

That Council meetings, in the future, follow the existing pattern, with meetings to commence at 2pm during the winter months and at 6pm during the summer months.

## **22 REAFFIRMATION OF COUNCIL'S CONSTITUTION**

Council was requested to reaffirm the provisions of the Council's Constitution.

It was proposed by Councillor Fitzgerald, seconded by Councillor Domleo and

**RESOLVED**

That the provisions of the Council's Constitution be reaffirmed.

The meeting commenced at 11.15 am and concluded at 4.35 pm

Councillor R West

CHAIRMAN

**NOTICE OF MOTION , SUBMITTED BY CLLRS S JONES AND R FLETCHER.**

This Council is concerned about the capacity of the Quality Care Commission (QCC) ,to carry out its functions effectively. The Council resolves to ask the Chief Executive to register our concerns, at Ministerial level and with the Chief Executive of QCC, with copies of correspondence to our local MPs.

This Council asks Cabinet to refer to the relevant Scrutiny Committees with a view to establishing an all-party Task/Finish group to investigate the position in Cheshire East regarding the interface between the QCC and our own safeguarding service to ensure that our vulnerable residents, particularly those in receipt of domiciliary care, are properly protected.

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**Notices of Motion Submitted by Cllrs D Neilson and D Hough**

**One**

In the written answer to Cllr. John Narraway's question to full Council, regarding the cost of redundancies and subsequent savings, it looks like the cost has been £23.8 m, with estimated savings of £2m per annum. This would appear to give a payback time of over 10 years, when Cabinet reports have suggested a payback period of 4 years.

**Motion :-**

That this Council ask the Corporate Scrutiny Committee to review the costs of redundancies and pay back time and report back to Council on their findings.

**Two**

That the Council suspends all new redundancy requests, until a review is carried out, relating to the counter productive effect of employees getting jobs with other employers, while their services are still required and being allowed voluntary redundancy. Thus leaving extra redundancy cost to the Council, plus the extra costs involved of recruiting from outside the organisation.

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## CHESHIRE EAST COUNCIL

### Report to Council

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**Date of Meeting:** 21<sup>st</sup> July 2011

**Report of:** Borough Solicitor

**Title:** **Political Representation on the Council's Committees**

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#### **1.0 Purpose of Report**

- 1.1 To review the political representation on the Council's committees following the election in the Crewe South Ward.

#### **2.0 Decision Required**

- 2.1 That the political group representation, as set out in Appendices 1 and 2 to this report and the methods, calculations and conventions used in arriving at them as outlined in the report be adopted.

#### **3.0 Legal Implications**

- 3.1 The Local Government (Committees and Political Groups) Regulations 1990, made pursuant to the Local Government and Housing Act 1989, makes provisions in respect of the political group representation on a local authority's committees in relation to the overall political composition of the Council. The legislation applies to overview and scrutiny committees and the decision-making committees of the Council.
- 3.2 The legislation requires that, where proportionality applies, and seats are allocated to different political groups, the authority must abide by the following principles, so far as is reasonably practicable:
- 3.2.1 Not all of the seats can be allocated to the same political group. (i.e. there are no single group committees.)
  - 3.2.2 The majority of seats on a body are to be allocated to a political Group with a majority membership of the authority.
  - 3.2.3 The total number of seats on all ordinary committees allocated to each Political Group bears the same proportion to the proportion on the full Council. Following the election for the Crewe South Ward the total number of seats on all ordinary committees has been recalculated. Details are given at Appendix 1.

3.2.4 The number of seats on each ordinary committee allocated to each Political Group bears the same proportion to the proportion on full Council.

3.3 The proposals contained in this report meet the requirements of the legislation.

3.4 The 1990 Regulations require Political Group Leaders to notify the Proper Officer of the Group's nominations to the bodies in question.

#### **4.0 Risk Assessment**

4.1 Failure to comply with the Act and Regulations when appointing its committee memberships would leave the Council open to legal challenge.

#### **5.0 Local Government (Committee and Political Groups) Regulations 1990.**

5.1 Owing to the sad death of Councillor B Howell and the subsequent necessity to countermand the poll for the Crewe South Ward the proportionality calculation at the Annual Meeting of Council was made on a membership of 80, with 2 vacancies. A new Poll for Crewe South Ward took place on 16<sup>th</sup> June 2011. The 2 vacant seats were filled by Labour candidates and the proportionality calculations have been revised accordingly. On this basis Appendix 1 to this report sets out the proposed political representation on ordinary committees. The following is the basis of the approach adopted:

Conservatives	52	63.40
Labour	16	19.52
Independent/Others	10	12.20
Liberal Democrat	4	4.88
TOTAL	82	100%

5.2 After the local elections in May the Group Whips met to consider the allocation of seats prior to the Annual Meeting of Council to ensure that as far as reasonably practicable the number of seats on each ordinary committee allocated to each Political Group was, so far as reasonably practicable in the same proportion to the proportion on full Council. This was approved by Annual Council. Following the election for Crewe South Ward the allocation of seats has been reviewed and Appendix 2 gives a revised proportional distribution of seats across all committees. The definition of an ordinary committee does not include sub-committees or joint committees. They are therefore excluded from Appendix One, but shown at Appendix 2, except where these are ad-hoc bodies. The proportionality rules do not apply to the Cabinet or to the Standards Committee. These are also excluded from Appendix 1.

5.3 The proportionalities in Appendices 1 and 2 have been arrived at by the following methods and conventions:

- applying the relevant percentage to each body;
- rounding up from 0.5 and above and rounding down below 0.5

5.4 The Act provides that where this results in a Group having a total of more or fewer actual seats than its proportional entitlement, any surplus seats are re-allocated to ensure that the final actual allocation to each Group equals the proportional entitlement. Appendix 2 includes the calculations to show how the reallocation has been made.

## **6. Reasons for Recommendations**

6.1 To determine political representation on the Council's committees and to receive the Groups nominations to the different bodies referred to in the report.

### ***For further information:***

*Officer: Paul Jones Democratic Services Team Manager*

*Tel No: 01270 686458*

*Email: paul.jones4@cheshire.gov.uk*

***Background Documents: None***

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APPENDIX ONE – Update 1<sup>st</sup> July 2011

## CHESHIRE EAST COUNCIL - POLITICAL PROPORTIONALITIES

Committee	Con	Lab	Independent	Lib Dem	Total
Children and Families Scrutiny	8	2	1	1	12
Adult Social Care Scrutiny	7	3	1	1	12
Health and Wellbeing Scrutiny	8	2	1	1	12
Environment and Prosperity Scrutiny	8	2	1	1	12
Sustainable Communities Scrutiny	8	2	1	1	12
Corporate Scrutiny	8	2	1	1	12
Strategic Planning Board	9	2	2	1	14
Northern Planning Committee	10	3	2	0	15
Southern Planning Committee	10	3	2	0	15
Licensing Committee	10	3	2	0	15
Constitution	9	2	2	1	14
Audit and Governance Committee	6	2	1	1	10
Local Service Delivery (Crewe)	4	1	2	0	7
Local Service Delivery (Macclesfield)	4	2	1	0	7
Public Rights of Way	4	2	1	0	7
Staffing	4	2	1	0	7

Lay Members Appointments	4	2	1	0	7
Total Places (Actual)	<b>121</b>	<b>37</b>	<b>23</b>	<b>9</b>	<b>190</b>
Proportional Entitlement	<b>121</b> <b>(63.4%)</b>	<b>37</b> <b>(19.52%)</b>	<b>23</b> <b>(12.2%)</b>	<b>9</b> <b>(4.88%)</b>	<b>190</b> <b>100%</b>
Difference	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	

**NB:**

1. Cabinet and Standards Committee are outside the proportionality rules
2. The basis of these revised Political Proportionalities is based on the decisions made at Annual Council to ensure the total number of seats on all ordinary committees allocated to each Political Group bears the same proportion to the proportion on the full Council.

**3. APPENDIX TWO****CHESHIRE EAST COUNCIL-PROPORTIONAL DISTRIBUTION OF SEATS ON ALL BODIES (other than those to be appointed on an ad-hoc basis)**

<b>Committee</b>	<b>Con</b>	<b>Lab</b>	<b>Independent</b>	<b>Lib Dem</b>	<b>Total</b>
Children and Families Scrutiny	8 (7.6)	2 (2.34)	1 (1.46)	1 (0.58)	12
Adult Social Care Scrutiny	7 (7.6)	3 (2.34)	1 (1.46)	1 (0.58)	12
Health and Wellbeing Scrutiny	8 (7.6)	2 (2.34)	1 (1.46)	1 (0.58)	12
Environment and Prosperity Scrutiny	8 (7.6)	2 (2.34)	1 (1.46)	1 (0.58)	12
Sustainable Communities Scrutiny	8 (7.6)	2 (2.34)	1 (1.46)	1 (0.58)	12
Corporate Scrutiny	8 (7.6)	2 (2.34)	1 (1.46)	1 (0.58)	12
Strategic Planning Board	9 (8.8)	2 (2.73)	2 (1.7)	1 (0.68)	14
Northern Planning Committee	10 (9.6)	3 (2.93)	2 (1.83)	0 (0.73)*	15
Southern Planning Committee	10 (9.6)	3 (2.93)	2 (1.83)	0 (0.73)*	15
Licensing Committee	10 (9.6)	3 (2.93)	2 (1.83)	0 (0.73)*	15
Constitution	9 (8.8)	2 (2.73)	2 (1.7)	1 (0.68)	14
Audit and Governance Committee	6 (6.34)	2 (1.95)	1 (1.22)	1 (0.49)	10
Local Service Delivery (Crewe)	4 (4.4)	1 (1.36)	2 (0.85)	0 (0.34)	7
Local Service Delivery (Macclesfield)	4 (4.4)	2 (1.36)	1 (0.85)	0 (0.34)	7

Public Rights of Way	4 (4.4)	2 (1.36)	1 (0.85)	0 (0.34)	7
Staffing	4 (4.4)	2 (1.36)	1 (0.85)	0 (0.34)	7
Lay Members Appointments	4 (4.4)	2 (1.36)	1 (0.85)	0 (0.34)	7
Cheshire East/West/Wirral Scrutiny	4 (3.8)	1 (1.17)	1 (0.73)	0 (0.29)	6
Standards Committee +	5 (5.07)	1 (1.56)	1 (0.98)	1 (0.39)	8
School Governor Appointments Panel	5 (5.07)	2 (1.56)	1 (0.98)	0 (0.39)	8
Civic Sub Committee	5 (5.07)	2 (1.56)	1 (0.98)	0 (0.39)	8
Outside Organisations Sub Committee	3 (3.8)	1 (1.02)	1 (0.73)	1 (0.29)	6
Total Places (Actual)	143	44	28	11	226
Proportional Entitlement	<b>143</b> <b>(63.4%)</b>	<b>44</b> <b>(19.52%)</b>	<b>28</b> <b>(12.2%)</b>	<b>11</b> <b>(4.88%)</b>	<b>226</b> <b>100%</b>
Difference	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	

\* No seats available after rounding up for larger groups

+ Understated by 2 seats at Annual Council

**NB:**

**Not included in the above are:**

General Licensing Sub-Committees of 5, which are to be appointed on an ad-hoc basis

Licensing Sub-Committees of 3, which are to be appointed on an ad-hoc basis

## CHESHIRE EAST COUNCIL

### Report to Council

---

**Date of Meeting:** 21<sup>st</sup> July 2011

**Report of:** Borough Solicitor

**Title:** **Appointment of Members to Committees**

---

#### **1.0 Purpose of Report**

- 1.1 To review the memberships of the Council's decision-making bodies.

#### **2.0 Decision Required**

- 2.1 That the nominations made by the Group Leaders to the bodies listed in Appendix 2 of the previous agenda item, be agreed.

#### **3.0 Legal Implications**

- 3.1 The previous report on the agenda dealt with the requirements of the Local Government (Committees and Political Groups) Regulations 1990, in respect of the political group representation on the authority's committees.
- 3.2 The Annual Meeting of Council appointed the Council's decision-making and other bodies and their memberships.
- 3.3 The 1990 Regulations require political Group Leaders to notify the Proper Officer of the Group's nominations to the bodies in question. Following the Crewe South Election, Group Leaders have been asked to review their Group's nominations

#### **4.0 Risk Assessment**

- 4.1 Failure to comply with the Act and Regulations would leave the Council open to legal challenge.

#### **5.0 Appointments to Committees Under the Council's Political Structure for the Municipal Year 2011/12**

- 5.1 Council at its Annual meeting appointed its decision-making and other bodies, together with their memberships.
- 5.2 The 1990 Regulations require political Group Leaders to notify the Proper Officer of the Group's nominations or any changes to their nominations to the bodies in question. The Political Groups have therefore been invited to review their nominations and a schedule of the proposed memberships will be published as soon as possible before the meeting.

## **6.0 Reasons for Recommendations**

- 6.1 To review the memberships of the Council's decision-making and other bodies and their appointment.

### ***For further information:***

*Officer: Paul Jones Democratic Services Team Manager*

*Tel No: 01270 686458*

*Email: paul.jones4@cheshire.gov.uk*

***Background Documents: None***

## 0CHESHIRE EAST COUNCIL

### Report to Council

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Date of Meeting:	21 <sup>st</sup> July 2011
Report of:	Borough Solicitor
Subject/Title:	<b>Appointments to Cheshire Fire Authority and Joint Cheshire Pension Fund Committee</b>

---

#### **1.0 Report Summary**

- 1.1 The report invites Council to review appointments to Cheshire Fire Authority and the Cheshire Pension Fund Committee.

#### **2.0 Decision Requested**

- 2.1 Council is asked to review and appoint –
- (a) Eight Councillors to the Cheshire Fire Authority; and
  - (b) Four Councillors to the Cheshire Pension Fund Committee

#### **3.0 Reasons for Recommendation**

- 3.1 These bodies carry out important functions and appointments are needed to ensure that the Council meets its obligations.

#### **4.0 Background and Options**

##### **Cheshire Fire Authority.**

- 4.1 The Fire Authority was the Combined Fire Authority for Cheshire, Halton and Warrington in accordance with the Cheshire Fire Services (Combination Scheme) Order 1997. The constitution of the Cheshire Fire Authority required the appointment of 14 representatives.
- 4.2 As a consequence of local government restructuring in Cheshire the Authority was changed to the Combined Fire Authority of Cheshire West and Chester, Cheshire East, Halton and Warrington and its membership was increased to 23 places. The allocation of seats is:-

Halton - 3 Member  
Warrington - 4 Members  
Cheshire West and Chester - 8 Members  
Cheshire East - 8 Members.

- 4.3 The Clerk to the Fire Authority has confirmed that the appointments made by Cheshire East must reflect the political proportionality of the Council. On this basis the allocation of seats after the Crewe South Election is as follows:

	<b>Con</b>	<b>Lab</b>	<b>Independent</b>	<b>Lib Dem</b>
Cheshire Fire Authority 8 seats	5 (5.07)	2 (1.56)	1 (0.98)	0 (0.39)

- 4.4 At the Annual Meeting of Council Councillors J Weatherill, W Livesley, D Topping, G Merry, C Thorley, R Fletcher and D Brickhill were nominated to serve on the Cheshire Fire Authority.

### **Pension Fund Committee**

- 4.5 Cheshire East has 4 representatives on the Pension Fund Committee and these were appointed for an unspecified term of office during the shadow year.

The Pension Fund Committee's Terms of Reference are as follows:

- To exercise the administering authority's responsibility for the management of the Cheshire Pension Fund, including the management of the administration of the benefits and strategic management of Fund assets.
- To meet quarterly, or otherwise as necessary, to effectively monitor investment activities during the year.
- To have overall responsibility for investment policy and monitor overall performance.
- To oversee the appointment and termination of investment managers.
- To establish performance benchmarks and targets for investment managers.
- To review governance arrangements and the effective use of its advisors to ensure good decision-making.
- To oversee the Pensions Consultative Forum (PCF) arrangement and compliance with best practice.
- To receive regular reports from the PCF on Scheme administration to ensure that best practice standards are satisfied and met and to satisfy itself and justify to stakeholders that the Fund is being run on an effective basis.

- To approve and maintain a Statement of Investment Principles, Funding Strategy Statement, Communication Policy, Governance Compliance Statement and publish a Pension Fund Annual Report.

4.6 The Committee has the following membership:

Cheshire West and Chester Council Elected Members 4 (voting rights)  
Cheshire East Council Elected Members 4 (voting rights)  
Warrington Borough Council Elected Members 1 (voting rights)  
Halton Borough Council Elected Members 1 (voting rights)  
Employee representative Unison Representative 1 (No Voting Rights)

4.7 Council is asked to confirm the Council's appointments for a further four year term office. The Council's representatives are Councillors Fitzgerald, Keegan and Mason. The final representative was former Councillor Narraway.

## **5.0 Reasons for Recommendations**

5.1 To determine Councils representation on the two bodies

### ***For further information:***

*Officer: Paul Jones Democratic Services Team Manager*

*Tel No: 01270 686458*

*Email: paul.jones4@cheshire.gov.uk*

***Background Documents: None***

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## **CHESHIRE EAST COUNCIL**

### **Constitution Committee**

---

**Date of Meeting:** 14<sup>th</sup> July 2011  
**Report of:** Democratic and Registration Services Manager  
**Subject/Title:** Appointment of Appeals Sub-Committee

---

#### **1.0 Report Summary**

- 1.1 This report sets out proposals for the appointment of an Appeals Sub-Committee.

#### **2.0 Recommendations**

- 2.1 That Council be recommended that

(1) an Appeals Sub-Committee be appointed with full delegated powers to hear and determine the following:

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

(2) the Sub-Committee comprise 5 members (3 Con; 1 Lab; 1 Ind) to be nominated by the Political Groups;

(3) the Officers arrange suitable training for the members appointed to the Sub-Committee; and

(4) the Appeals Sub-Committee's meetings be held, wherever possible, on those dates already scheduled in the calendar of meetings for the former Appeals Committee.

#### **3.0 Reasons for Recommendations**

- 3.1 To provide a mechanism for determining appeals.

**4.0 Wards Affected**

4.1 N/A

**5.0 Local Ward Members**

5.1 N/A

**6.0 Policy Implications (including Carbon Reduction and Health)**

6.1 None identified.

**7.0 Financial Implications**

7.1 None identified.

**8.0 Legal Implications (Authorised by the Borough Solicitor)**

8.1 The Council has a legal duty to consider a range of appeals in relation to its services and contractual arrangements.

**9.0 Risk Management**

9.1 Failure to have proper arrangements in place to consider appeals puts the Council at risk of not fulfilling its statutory obligations.

**10.0 Background and Options**

10.1 The Council at its Annual Meeting on 18<sup>th</sup> May 2011 reviewed the Council's committee structure and in doing so decided not to appoint an Appeals Committee as a standalone body. The former Appeals Committee had been responsible for the following functions:

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

10.2 The Council transferred these functions to the Audit and Governance Committee.

10.3 The Officers have now given further consideration to these arrangements and in particular to whether the Audit and Governance Committee is the appropriate body

to consider appeals. The Audit and Governance Committee was established to raise the profile of internal control, risk management and financial reporting within the organisation. CIPFA best practice suggests that these functions are best delivered by a committee separated from other key functions of the Council and that such committees are likely to be more effective by focussing on their own defined areas of business rather than on a broader remit. The Committee is therefore advised that it would be appropriate for another decision-making body to perform the appeals role and is asked to review the arrangements with a view to making suitable recommendations to Council.

- 10.4 Meetings of the former Appeals Committee were scheduled on a monthly basis but over the last twelve months 7 meetings were held, dealing with a total of 9 appeals. The amount of time involved in preparing for and then hearing appeals, and the procedures involved, would make it inappropriate for the Committee itself to deal with appeals. In addition, the former Appeals Committee, which comprised 7 members, was considered to be too large.
- 10.5 It is therefore proposed that the Committee appoint an Appeals Sub-Committee of 5 Members on a politically-proportionate basis. Such an arrangement has already been agreed on an interim basis by the Audit and Governance Committee, which currently has responsibility for the appeals function, pending this Committee's consideration of the longer term arrangements.
- 10.6 In order to consider appeals, Members need to receive appropriate training and the Officers would need to arrange this for the Members concerned. Members of the Sub-Committee need not be members of the parent committee.
- 10.7 It is proposed that wherever possible, the Sub-Committee's meetings would be held on those dates already scheduled in the calendar of meetings for the former Appeals Committee.

#### **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

Name: Paul Mountford  
Designation: Democratic Services Officer  
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## **CHESHIRE EAST COUNCIL**

### **Constitution Committee**

---

**Date of meeting:** 14<sup>th</sup> July 2011  
**Report of:** Head of Policy & Performance  
**Title:** Whistleblowing Policy

---

#### **1.0 Report Summary**

- 1.1 This report advises the Committee on the content of the revised Whistleblowing Policy which was endorsed by the Audit and Governance Committee on 30 June 2011.

#### **2.0 Recommendation**

- 2.1 That the revised Whistleblowing Policy as set out in the Appendix be recommended to Council for adoption and inclusion in the Constitution.

#### **3.0 Reasons for Recommendation**

- 3.1 In November 2010 the Audit and Governance Committee received and endorsed a number of proposed changes to the Council's Whistleblowing Policy following a review of the document against the *Whistleblowing Arrangements Code of Practice Publicly Available Specification 1998:2008*. Consultation with the unions took place prior to the Policy being endorsed by the Audit and Governance Committee.
- 3.2 The Whistleblowing Policy forms part of the Constitution and therefore needs to be endorsed by the Constitution Committee prior to its referral to Full Council for final approval and adoption.

#### **4.0 Wards Affected**

- 4.1 All wards.

#### **5.0 Local Wards Affected**

- 5.1 Not applicable.

## **6.0 Policy Implications (including Climate Change and Health)**

6.1 Not applicable.

## **7.0 Financial Implications**

7.1 Unless employees have confidence in the Council's whistleblowing arrangements, they are likely to stay silent where there is a threat to the employer or the wider public interest. Such silence denies the organisation the opportunity to deal with a potentially serious problem before it causes real damage. The costs of such a missed opportunity can be great in terms of fines, compensation or higher insurance premiums.

## **8.0 Legal Implications**

8.1 The Public Interest Disclosure Act 1998 protects employees against detrimental treatment or dismissal as a result of any disclosure of normally confidential information in the interests of the public. The Act only covers protected disclosures under six categories, namely: crime, illegality, miscarriage of justice, damage to health and safety, damage to the environment, and 'cover-ups' about these issues.

8.2 To obtain protection, employees must first disclose the information to the employer or to a body prescribed by the Secretary of State for the purposes of receiving such information. A list of the prescribed bodies is available on the government's website, along with a useful Guide on the Act.

8.3 The Council will introduce this Whistleblowing Policy in line with the Act.

## **9.0 Risk Assessment**

9.1 Without clear arrangements which offer employees safe ways to raise a whistleblowing concern, it is difficult for an organisation to effectively manage the risks it faces.

## **10.0 Background and Options**

10.1 Employees are often the first to realise that there may be something seriously wrong within an organisation. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the organisation. They may also fear harassment or victimisation.

- 10.2 In order to mitigate this risk the Council introduced a whistleblowing policy that is intended to encourage and enable all to raise serious concerns within the organisation rather than overlooking a problem.
- 10.3 The Public Interest Disclosure Act (PIDA) provides that employers should not victimise any worker who blows the whistle in one of the ways set out in the legislation. Although there is no statutory requirement in the PIDA for organisations to have a whistleblowing policy the Government expects public bodies to have a policy in place and the whistleblowing schemes in local authorities in England are assessed regularly as part of their external audit and review.
- 10.4 Furthermore, it should also be noted that, under PIDA, the adequacy of an organisation's whistleblowing arrangements is one of the factors that tribunals and courts look at when they consider whether a wider public disclosure is protected under the legislation.
- 10.5 Finally, and importantly, regulators and the courts are increasingly looking at the adequacy of whistleblowing and other risk management arrangements to determine whether an offence has been committed by an organisation under regulatory or criminal laws, and is also a factor when determining the level of fine or penalty.
- 10.6 It is, therefore, necessary to regularly review the Council's Policy to ensure that it remains compliant with best practice. As such the Policy has been revised in accordance with the Publicly Available Specification (PAS) which sets out good practice for the introduction, revision, operation and review of effective whistleblowing arrangements. This is because the recommendations and guidance in the PAS are of particular relevance to public bodies. Members are referred to the Policy contained in the Appendix which was endorsed by the Audit and Governance Committee on 30<sup>th</sup> June 2011.
- 10.7 The Whistleblowing Policy includes a series of measures designed to encourage staff to raise concerns and the steps to be taken to investigate such concerns. The Committee is asked to endorse the Policy prior to final approval by Full Council.

## **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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## **CHESHIRE EAST COUNCIL WHISTLEBLOWING POLICY**

### **1. INTRODUCTION**

- 1.1 Employees are often the first to realise that there may be something seriously wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 1.2 Cheshire East Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we encourage employees, and others who work with us, with serious concerns about any aspect of the Council's work to come forward and voice those concerns. This policy makes it clear that this can be done without fear of victimisation, discrimination or disadvantage.
- 1.3 This whistleblowing policy is intended to encourage and enable employees to raise serious concerns **within** the Council rather than overlooking a problem or 'blowing the whistle' outside as premature or unnecessary publicity may damage the Council's reputation, impede proper investigations, or hurt individuals unnecessarily.
- 1.4 The policy applies to all employees, Members, contractors, suppliers and consultants and provides them with a secure basis for reporting suspicions of impropriety, in the knowledge that if requested the matter will be treated confidentially.
- 1.5 The procedures contained within this policy are in addition to the Council's complaints process and any other statutory reporting procedure that applies within individual departments.
- 1.6 This policy has been discussed with the relevant trade unions and has their support.

### **2. AIMS AND SCOPE OF THIS POLICY**

- 2.1 The Whistleblowing Arrangements Code of Practice Publicly Available Specification developed by the British Standards Institute and Public Concern at Work defines whistleblowing as;

The popular term used when someone who works for or in an organisation raises a concern about a possible fraud, crime, danger or other serious risk that could threaten customers, colleagues, shareholders, the public or the organisation's own reputation.

- 2.2 Whistleblowing can therefore be described in simple terms as a disclosure made by an employee who has concerns about a danger or illegality that has a public interest to it, usually because it threatens others.
- 2.3 A grievance or private complaint is, by contrast, a dispute about an employee's own employment position and has no public interest to it.
- 2.4 This Whistleblowing Policy has been developed in line with best practice as described in the code of practice and aims to:
- encourage you to feel confident in raising serious concerns and to question and act upon concerns about practice
  - provide avenues for you to raise those concerns and receive feedback on any action taken
  - provide reassurance that you will be protected from possible reprisals or victimisation if you have a reasonable belief that you have made any disclosure in good faith.
- 2.5 The whistle-blowing policy is intended to cover major concerns that fall outside the scope of other procedures. These include:
- conduct which is an offence or a breach of law
  - health and safety risks, including risks to the public as well as other employees
  - damage to the environment
  - the unauthorised use of public funds
  - possible fraud and corruption
  - sexual or physical abuse of clients, or
  - other unethical conduct
- 2.6 If your concerns relate to your own employment then they do not fall under the scope of this policy and should be raised via the Grievance Procedure or Dignity at Work Policy.
- 2.7 This policy does not cover members of the public and any report received will be dealt with under the corporate comments, compliments and complaints policy or as a tip off via the Anti Fraud and Corruption Strategy.
- 2.8 Staff in schools should report any concerns that they may have through their school's own whistleblowing policy.
- 3. SAFEGUARDS**
- 3.1 Cheshire East Council is committed to good practice and high standards and wants to be supportive of employees.

- 3.2 We recognise that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice.
- 3.3 As a result, we will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect you when you raise a concern in good faith.
- 3.4 If someone is found to have subjected a bona fide whistleblower to any form of victimisation or harassment this will be dealt with under the council's disciplinary procedure.
- 3.5 Please be aware however, that should you already be the subject of disciplinary or redundancy procedures, the procedures will not be halted as a result of the whistleblowing report.

#### **4. OPEN DISCLOSURES**

- 4.1 The best culture is one where employees have sufficient faith in the whistleblowing arrangements and culture of the council to allow them the confidence to make open disclosures. This is where those involved know what the issues are along with who raised them.
- 4.2 This is the aim for Cheshire East Council and it is hoped that any employee with a whistleblowing concern will feel able to raise their issues openly
- 4.3 This openness makes it easier to assess the report, gather additional information and carry out an investigation.
- 4.4 It also allows any hidden agendas to be identified, helps to prevent witch hunts and reduces the risk of mistrust and paranoia developing within the area being investigated.

#### **5. CONFIDENTIALITY**

- 5.1 It is, however, recognised that some employees may not feel that they can make such a report. Where this is the case the policy provides the whistleblower with the option of requesting that their name remains confidential.
- 5.2 Where confidentiality is requested we will do our best to ensure that your name is not revealed. This cannot, however, be guaranteed as there are certain circumstances where the name of the whistleblower may be made known. For example:
- The report is found to be clearly false or malicious, or
  - Disclosure is ordered by the courts.
  - A formal statement is required as part of a police investigation.

- 5.3 Whilst it is possible to keep the name of a whistleblower confidential, it is not possible to prevent others from trying, often successfully, to work out the source of a report. This can lead to speculation and an unpleasant atmosphere that could have been avoided by making an open disclosure.

## **6. ANONYMOUS ALLEGATIONS**

- 6.1 This policy encourages you to put your name to your allegation whenever possible and actively discourages anonymous reports.
- 6.2 Concerns expressed anonymously are much less powerful but will be considered at the discretion of the Council.
- 6.3 In exercising this discretion the factors to be taken into account would include:
- the seriousness of the issues raised
  - the credibility of the concern; and
  - the likelihood of confirming the allegation from attributable sources.
- 6.4 Anonymous reports also raise a specific problem with regard to the legal requirement that personal data should only be collected fairly.
- 6.5 In addition, people making anonymous reports are not covered by the safeguards put in place to protect named whistleblowers.

## **7. UNTRUE ALLEGATIONS**

- 7.1 If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you.
- 7.2 If, however, you make malicious or vexatious allegations, then disciplinary action may be taken against you.

## **8. HOW TO RAISE A CONCERN**

- 8.1 As a first step, you should normally raise concerns with your immediate manager or their superior. However, depending upon the seriousness and sensitivity of the issues involved and who is suspected of the malpractice, this may not be appropriate.
- 8.2 Where this is the case the following officers are identified as appropriate contacts within this policy;
- The Chief Executive
  - The Borough Solicitor who is also the Monitoring Officer
  - The Internal Audit Manager
- 8.3 There are two ways to formally make a whistleblowing disclosure;

- Verbally, either face to face or by telephone, or
  - In writing, either by sending a letter to one of the named contacts or by emailing [whistleblowing@cheshireeast.gov.uk](mailto:whistleblowing@cheshireeast.gov.uk).
- 8.4 It is preferable for concerns to be raised in writing and where this is the case the following details are requested;
- Your name and contact details
  - background information and history including details as to why you are concerned
  - whether the issue has already been reported to management and the outcome of this
  - whether you wish your name to remain confidential
  - whether you want feedback
  - the names and jobs of any other employees/Members who may support your concern.
- 8.5 Where reports are made verbally to one of the named officers they should attempt to ascertain the same information.
- 8.6 The earlier you express the concern the easier it is to take action.
- 8.7 Although you are not expected to prove beyond doubt the truth of an allegation, you will need to demonstrate to the person contacted that there are reasonable grounds for your concern.
- 8.8 Should you wish to obtain independent advice in relation to a potential whistleblowing report then Public Concern at Work operate a confidential helpline 02074046609. Further advice and guidance can also be found on their website [www.pcaw.co.uk](http://www.pcaw.co.uk).
- 8.9 You may wish to consider discussing your concern with a colleague first and you may find it easier to raise the matter if there are two (or more) of you who have had the same experience or concerns.
- 8.10 You may invite your trade union, professional association representative or a friend to be present during any meetings or interviews in connection with the concerns you have raised.

## **9. HOW THE COUNCIL WILL RESPOND**

- 9.1 The Council will respond to your concerns. Do not forget that testing out your concerns is not the same as either accepting or rejecting them.
- 9.2 As part of this process contact will be made with you to clarify your concerns and obtain any further information that you may have. You

will also be provided with details of who to contact should you require further support.

- 9.3 Where appropriate, the matters raised may:
- be investigated by management, internal audit, or through the disciplinary process
  - be referred to the police
  - be referred to the external auditor
  - form the subject of an independent inquiry.
- 9.4 In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle which the Council will have in mind is the public interest. Concerns or allegations which fall within the scope of specific procedures (for example, child protection or discrimination issues) will normally be referred for consideration under those procedures.
- 9.5 Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is conducted.
- 9.6 The amount of contact between the officers considering the issues and you will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the officer will seek further information from you.
- 9.7 Where any meeting is arranged, off-site if you so wish, you can be accompanied by a union or professional association representative or a friend.
- 9.8 The Council will take steps to minimise any difficulties which you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings the Council will arrange you to receive advice about the procedure.
- 9.9 The Council understands that you may wish to be assured that the matter has been properly addressed. Therefore, subject to legal constraints, if requested we will inform you of the outcome of any investigation.

## **10. THE RESPONSIBLE OFFICER**

- 10.1 The Council's Monitoring Officer has overall responsibility for the maintenance and operation of this policy. That officer will maintain a record of concerns raised and the outcome and will report as necessary to the Council.

- 10.2 If requested the Monitoring Officer will do everything that can lawfully be done to protect your identity but you should be aware that it may need to be disclosed to the police or courts as part of an investigation or subsequent prosecution.

## **11. HOW THE MATTER CAN BE TAKEN FURTHER**

- 11.1 This policy is intended to provide you with an avenue to raise concerns within the Council and it is hoped that you will utilise it. However, should you feel unable to raise your concerns internally, the following are possible alternative contact points:

- Public Concern at Work 020 7404 6609
- the external auditor
- UNISON whistleblower's hotline 0800 597 9750
- Audit Commission whistleblower's hotline 0845 052 2646
- the police.

- 11.2 It is stressed that this list is not exhaustive and you are free to contact any organisation that you feel will be able to deal properly with your concerns. This may include;

- your local Councillor
- your solicitor
- other relevant professional or regulatory bodies.

You are encouraged, however, to take further advice before reporting an issue to a body other than those specified above to ensure that you are making a protected disclosure.

- 11.3 You will be protected under the Public Interest Disclosure Act 1988 if you raise your concerns with any of the above, provided that;

- you make the disclosure in good faith
- you reasonably believe that the information disclosed, and any allegation contained in it, are substantially true
- you do not make the disclosure for personal gain.

- 11.4 If you do take the matter outside the Council, you should ensure that you do not disclose confidential information.

## **12. THE LAW**

- 12.1 This policy has been written to take into account the Public Interest Disclosure Act 1988, which protects workers making disclosures about certain matters of concern, where those disclosures are made within the act's provisions. The Act is incorporated into the Employment

Rights Act 1996, which already protects employees who take action over, or raise concerns about, health and safety at work.

### **13. EQUALITY**

- 13.1 Cheshire East Council will ensure that, when implementing the Whistleblowing Policy, no employee will be disadvantaged on the basis of their gender or transgender, marital status or civil partnership, racial group, religion or belief, sexual orientation, age, disability, pregnancy or maternity, social or economic status or caring responsibility. This means that the Policy may need to be adjusted to cater for the specific needs of an individual including the provision of information in alternative formats where necessary.

### **14. MONITORING**

- 14.1 Data relating to Whistleblowing cases will be collated and monitored regularly to ensure that the Policy is operating fairly, consistently and effectively. Issues that are identified from the data will be dealt with appropriately.

### **15. REVIEW**

- 15.1 The policy will be reviewed in the light of operating experience and/or changes in legislation.

## CHESHIRE EAST COUNCIL

### Constitution Committee

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<b>Date of Meeting:</b>	14 <sup>th</sup> July 2011
<b>Report of:</b>	Democratic Services and Registration Services Manager
<b>Subject/Title:</b>	Executive Arrangements and Cabinet Procedure Rules

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#### **1.0 Report Summary**

- 1.1 To recommend proposed changes to the Executive and Council Procedure Rules as part of the review of the Council's Constitution.

#### **2.0 Recommendation**

- 2.1 That the Committee consider the proposals set out in the report, together with any other matters raised by Members, and where it considers appropriate, make recommendations to Council.

#### **3.0 Wards Affected**

- 3.1 All Council Wards are affected by the Constitution, which has application across the Borough.

#### **4.0 Local Ward Members**

- 4.1 All local Ward Members are affected for the reasons set out in paragraph 3.0.

#### **5.0 Policy Implications**

- 5.1 The Constitution sets out the procedures by which Council policy is set. Any proposed changes to the Constitution would need to align with the requirements of legislation which often stipulates the Council decision-making route associated with the adoption of policies.

#### **6.0 Financial Implications**

- 6.1 There are no financial implications associated with the proposed review.

#### **7.0 Legal Implications**

- 7.1 Any changes to the Constitution would need to be agreed by Council, following a recommendation from the Constitution Committee. Proposed changes would need to align with any statutory requirements.

## **8.0 Risk Management**

- 8.1 There would appear to be no risks associated with this element of review of the Constitution. The proposed review will provide an opportunity to ensure that all elements of the document are consistent with one another.

## **9.0 Background**

- 9.1 The Constitution contains both Executive Procedure Rules (pages 183 – 188) and Cabinet Procedure Rules (pages 215 – 220). Both contain similar or duplicate information and a consolidated Cabinet Procedure Rules Section has been produced for consultation with the Cabinet and are attached at Appendix 1.
- 9.2 Cabinet Members and Directors have been consulted and no specific matters have been raised.

## **10.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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## **PART C – EXECUTIVE ARRANGEMENTS AND CABINET PROCEDURE RULES**

### **Introduction**

This Part describes the Council's executive arrangements and sets out the Cabinet Procedure Rules. It should be read in conjunction with the appropriate paragraphs of Part 1 of this Constitution, the Budget and Policy Framework Procedure Rules, Part 3 Responsibility for Functions and the Access to Information Procedure Rules.

### **Description of Executive Arrangements**

As provided by Section 11(3) and (8) of the Local Government Act 2000, and pursuant to the requirements of the Local Government and Public Involvement Act 2007 the Council has resolved to have an executive model of leadership that consists of a strong leader with a cabinet form of governance. With effect from May 2011 the Council will appoint a Leader for a four year term of office.

The Leader shall appoint a Deputy and up to eight other Members to the Cabinet and shall determine their responsibilities. The Leader may vary the membership of the Cabinet or the responsibilities of Cabinet Members and fill any vacancies on the Cabinet which may arise from time. The Leader and Deputy Leader may take a portfolio responsibility as determined by the Leader. Any changes to the membership or portfolios of the Cabinet shall be notified to the Council.

A member of the Cabinet can only be removed from office by the Leader. This does not preclude an office holder from resigning his/her position at any time. Where there is a delay between a resignation being tendered and the date of the next Council meeting, in the case of the Leader's resignation, the Deputy Leader will chair Cabinet meetings. Where both the Leader and the Deputy Leader resign, the Monitoring Officer in consultation with the Chairman of the Council will call a special meeting of the Council to appoint a new Leader. Where a Member of the Cabinet resigns and holds a portfolio responsibility, the Leader may reallocate the responsibilities of that Member or appoint a replacement.

For the time being, the Cabinet's responsibilities will consist of the following portfolios:

- Leader and Resources
- Deputy Leader and Adult Services
- Children and Family Services
- Health and Wellbeing
- Environmental Services
- Prosperity
- Procurement, Assets and Shared Services
- Performance and Capacity
- Safer and Stronger Communities

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

## **Cabinet Procedure Rules**

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

- 40.1 At the Annual Meeting of Council, the Leader will present to the Council a written record of delegations made by him for inclusion in the Council's scheme of delegation at Part 3 of this Constitution. The document presented by the Leader will contain the following information about executive functions in relation to the coming year:
- 40.2. the names, addresses and wards of the people appointed to the Cabinet by the Leader;
- 40.3 the extent of any authority delegated to Cabinet Members individually, including details of the limitation on their authority;
- 40.4 the terms of reference and constitution of such Cabinet committees as the Leader appoints and the names of Cabinet Members appointed to them;
- 40.5 the nature and extent of any delegation of executive functions to area committees, any other authority or any joint arrangements, and the names of those Cabinet Members appointed to any joint committee for the coming year; and
- 40.6 the nature and extent of any delegation to officers with details of any limitation on that delegation, and the title of the officer to whom the delegation is made.
- 40.7 Where the Cabinet, a committee of the Cabinet, or an individual Member of the Cabinet is responsible for an executive function, they may delegate further to a committee of the Cabinet, an area committee, joint arrangements, or an officer.
- 40.8 Even where executive functions have been delegated, that does not prevent the discharge of delegated functions by the person or body who delegated them.

### **41 The Law and Executive Functions**

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

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

41.3 The Cabinet, and any individual member or committee thereof, must ensure, and be satisfied, that they have appropriate and adequate legal, financial and other relevant professional advice from officers before taking a decision on any matter before them. Advice from the Council's Monitoring Officer and Chief Finance Officer should always be obtained where there is doubt about vires or probity.

## **42 Conflicts of Interest**

42.1 Where the Leader or any Cabinet Member has a conflict of interest, he will follow the requirements of the Council's Code of Conduct for Members.

42.2 If all (or a majority) of the Members of the Cabinet present have a conflict of interest then consideration will be given to applying to the Standards Committee for a dispensation from the provisions of the Code.

42.3 If the discharge of an executive function has been delegated to another body or individual and a conflict of interest arises, then it will fall to the body or individual who delegated the matter to take the decision. Where that body or individual also has a conflict of interest, then the action set out in 42.2 shall be considered.

## **43 Meetings of the Cabinet**

43.1 The Cabinet will meet as indicated in the Council's programme of meetings. The Cabinet or the Leader may agree to change the date of any programmed meeting, to cancel a meeting or to arrange additional meetings as it/he sees fit. Locations of meetings will be published in the calendar of meetings.

43.2 The Cabinet may meet in public or in private, subject to legal requirements and the Access to Information Procedure Rules contained in the Constitution.

43.3 The Leader will preside at meetings of the Cabinet. If the Leader is absent then the Deputy Leader will preside. Where both the Leader and Deputy Leader are absent, the Cabinet Members present shall appoint one of their number to chair that meeting.

43.4 All Members of the Cabinet shall be entitled to attend meetings of the Cabinet unless the Cabinet determine otherwise.

43.5 Attendance by other Members of the Council or the public shall be in accordance with the Access to Information Procedure Rules, by invitation, or as set out in paragraphs 45.1 to 45.4 below.

**44 Quorum at Cabinet Meetings**

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

**45 Attending and speaking at Cabinet Meetings**

- 45.1 The Chairmen and Spokesmen of the Council's Scrutiny Committees shall be entitled, at any formal public meeting of the Cabinet, to speak to any matter on the agenda for that meeting.
- 45.2 Other Members not previously described above may also speak at such meetings with the permission of the Leader or person presiding in his/her absence.
- 45.3 Members wishing to ask a question at a Cabinet meeting must submit their question in writing to the Monitoring Officer at least three clear working days before the meeting.
- 45.4 The Cabinet may invite any person to its meetings to discuss matters of mutual interest or concern or to advise. Such persons may only be given access to confidential and/or exempt information on terms to be decided by the Monitoring Officer so as to ensure that the Council's obligations under the Local Government Acts in respect of Access of Information are observed.

**46 Business at Cabinet Meetings**

- 46.1 The business to be transacted at a meeting of the Cabinet will be set out in an Agenda for that meeting, subject to any requirements or exemptions under the Access to Information Procedure Rules.
- 46.2 The Agenda may be supported by additional papers prepared by the Officers or by or on behalf of other bodies, subject to requirements about disclosure of confidential or exempt information. Full agendas for meetings of the Cabinet will be made available, electronically, in advance of the respective meeting, to all Members of the Council and in accordance with the Council's current policy.
- 46.3 The Cabinet is obliged to consider matters referred to it by a Scrutiny Committee, or by the Full Council, for consideration under the Scrutiny Rules.
- 46.4 The Cabinet will, at each formal meeting, confirm the record of decisions taken at its previous meeting as a correct record.
- 46.5 The Monitoring Officer, or his/her nominated officer, shall be responsible for preparing and distributing the Agenda for Cabinet meetings, attending

meetings for the purpose of advising the Cabinet on matters within his/her area of responsibility and recording decisions as required under this Constitution.

- 46.6 In taking decisions, the Cabinet must satisfy itself that it has before it adequate and appropriate advice from the relevant service, and from legal and financial advisers who shall, where appropriate, be present at any meeting where a decision is being taken and that that advice is taken into consideration in determining the matter. Where there is any doubt about vires or probity then advice must be obtained from the Monitoring Officer and the Chief Finance Officer.
- 46.7 Meetings of the Cabinet will be programmed into the Council diary prepared under Procedure Rule 1.1. The Cabinet can agree to change the date of any programmed meeting, to cancel a meeting or to arrange additional meetings as it sees fit.
- 46.8 The order of business at Cabinet meetings is a matter for the Cabinet to determine.
- 46.9 Any Member of the Cabinet may require the Monitoring Officer to place an item on the Agenda for a stipulated meeting of the Cabinet.
- 46.8 Any Member of the Council may request the Leader to place an item on the Agenda of a meeting of the Cabinet. The Leader shall have sole discretion as to whether or not to accede to such a request and, if such a request is granted, whether the Member in question can speak to the item at the meeting in question.
- 46.10 The Head of the Paid Service, the Monitoring Officer and/or the Chief Finance Officer can include an item for consideration on the Agenda of a Cabinet Meeting. In pursuance of their statutory duties they can require that a special meeting of the Cabinet be convened.
- 46.11 Except where it is urgent, business cannot be conducted at formal meetings of the Cabinet unless it is included in the Agenda for the meeting. an item of business which is not included on an agenda for a Cabinet meeting may not be considered unless the Leader or person presiding is of the opinion that the matter is urgent and cannot await another meeting, and unless the requirements of the Access to Information Procedure Rules have been complied with. This shall also apply to any committee of the Cabinet or to an individual Portfolio Holder.
- 46.12 The Cabinet will report to the Council, as required under the Access to Information Procedure Rules, on any matter which is classified as a key decision and which is dealt with under special urgency procedures.
- 46.13 Subject to 3 clear working days' notice being provided to the Monitoring Officer, questions can be submitted by members of the public at

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

- 46.14 Cabinet decisions, including those taken under delegated powers, shall not take effect until they have been recorded in writing, as required under the Council's procedures, and shall not be implemented where the right of call-in applies and has been exercised until the call-in process has been concluded. Where the right of call-in applies but is not exercised, a Cabinet decision may be implemented immediately after the expiry of the call-in period.
- 46.15 A written record of all Cabinet decisions will be kept by the Monitoring Officer and these will be made available publicly as soon as practicable after the decision has been taken (excluding the disclosure of confidential and exempt information and in accordance with the Scrutiny Procedure Rules). In recording decisions of the Cabinet, the Monitoring Officer will set out the decision, the reasons for the decision and alternative options considered as required under the Access to Information Procedure Rules in the Constitution.

#### **47 Voting at Cabinet Meetings**

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

#### **48 Cabinet Committees/Sub-Committees and Task Groups**

- 48.1 The Leader or the Cabinet may appoint such Committees or Sub-Committees as are considered necessary and appropriate to assist in the discharge of executive functions. In making such appointments, the name of the Committee/Sub-Committee must be specified, along with its membership (including its Chairman and, if appropriate, Vice-Chairman) and its powers.
- 48.2 The Cabinet may also appoint whatever task or advisory groups it deems necessary, comprising some or all of its own membership, any other member or non-member of the Council.

#### **49 Decision Making By Individual Portfolio Holders**

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

**50 Motion Under Standing Order 12**

- 50.1 A mover of a motion under Standing Order 12 which has been referred to the Cabinet for consideration may attend the meeting of the Cabinet when his/her motion is under consideration and explain the motion. The mover of the motion will be advised of the date and time of the meeting when the matter is to be considered and he/she will be sent a copy of the relevant papers. This does not affect the right of the mover or seconder of the motion to attend a Scrutiny body when his/her motion is being considered.

**51 Resolving Disputes**

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

**52 Reserves/substitute members**

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

**53 Approval of Urgent Business**

- 53.1 Where any matter is urgent and cannot await the next meeting of the relevant executive body or Portfolio Holder, the Chief Executive may take the necessary action, provided that she has first consulted the appropriate members as set out in Appendix 4 of the Council Procedure Rules .

**54 The Forward Plan and Key Decisions**

- 54.1 The Leader will ensure that the requirements of the Access to Information Procedure Rules are met in relation to the publication of the Cabinet's Forward Plan of Key Decisions.
- 54.2 Those decisions which are Key Decisions are defined in Chapter 13, paragraph 4 of this Constitution.
- 54.3 Where the Cabinet as a body is making Key Decisions, that meeting shall be held in public. Where a matter is to be considered and Regulation 7 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 is applicable then the meeting will be held in public. In both cases the public may be excluded from the meeting where confidential or exempt information is likely to be disclosed. This also applies to any body or Portfolio Holder to whom the relevant executive powers have been delegated.
- 54.4 Where an officer exercising an executive function under delegated powers receives a report which he/she intends to take into consideration

when making a Key Decision that decision shall not be taken until the report has been made available for inspection by the public for five clear working days following receipt of the report by the decision taker. A copy of such report must be supplied as soon as reasonably practicable to the Chairman of the relevant Scrutiny Committee or, in his/her absence, the Vice-Chairman of the Committee. The report must also list any background papers.

54.5 Where the inclusion of a matter in the Forward Plan is impracticable and the matter would be a Key Decision, that decision shall only be made:-

- (a) where the Monitoring Officer has notified the Chairman of the relevant Scrutiny Committee, or in his/her absence the Vice-Chairman of the Committee, of the matter about which the decision is to be made;
- (b) where the Monitoring Officer has made available for public inspection a copy of the notice given under (a) above; and
- (c) where a period of five clear working days has elapsed since the Monitoring Officer made available the notice referred to in (b) above.

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

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

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

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

54.8 Where an executive decision which was not classified as being a Key Decision has been made and the relevant Scrutiny Committee is of the opinion that the decision should have been so classified, that Committee

may require the Cabinet to submit a report to the Full Council within such reasonable period as the Committee may specify, containing the following details:-

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

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## **CHESHIRE EAST COUNCIL**

### **Constitution Committee**

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**Date of Meeting:** 14<sup>th</sup> July 2011  
**Report of:** Borough Solicitor and Borough Treasurer & Head of Assets  
**Subject/Title:** Proposed Amendments to the Council's Contract Procedure Rules

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#### **1.0 Report Summary**

- 1.1 The purpose of this report is to propose amendments to the Council's Contract Procedure Rules (the Rules) and to seek the approval of the Committee and a recommendation from it to the Council that the amendments be made.

#### **2.0 Recommendations**

- 2.1 That
- (1) the amendments to the Council's Contract Procedure Rules (as set out in the Appendix to this report) be recommended to the Council for approval and the Constitution be amended accordingly; and
  - (2) a further report be brought to a future meeting reviewing and amending the Finance element of the Finance and Contract Procedure Rules.

#### **3.0 Reasons for Recommendations**

- 3.1 The Rules form part E of the Council's Finance and Contract Procedure Rules, within the Council's Constitution. The amendments are proposed to reflect best practise developed by the Procurement Unit, including clarification on the use of Delegated Decisions by Chief Officers. Amendments are also proposed to take into account new legislation and the Councils ability to receive electronic tenders, as well as to clarify and remove parts of the Rules which are no longer applicable. There is also a proposal to increase the financial threshold at which the Rules require a formal tendering procedure from £50,000 to £75,000 which it is anticipated will make it easier for SMEs to engage in business with the Council.

#### **4.0 Wards Affected**

- 4.1 Not applicable.

#### **5.0 Local Ward Members**

- 5.1 Not applicable.

**6.0 Policy Implications**

6.1 None identified.

**7.0 Financial Implications**

7.1 None identified.

**8.0 Legal Implications**

8.1 Any changes to the Constitution need to be agreed by the Council following a recommendation from the Constitution Committee. Any changes which are proposed also need to comply with the relevant statutory requirements.

8.2 The Purchase of goods, services and works by the Council as a public sector body is regulated by the Public Contracts Regulations 2006 (the Regulations) which implement into English law the EU procurement regime currently in place throughout the EU.

8.3 It is important to note that the Regulations only apply to contracts with a value that exceeds the relevant thresholds. The current thresholds that apply to local authorities are as follows:

SUPPLIES (GOODS)	SERVICES	WORKS
£156,442	£156,442	£3,927,260

8.4 However, in undertaking any procurement (including those below the EU threshold) a contracting authority must also comply with the following key principles (derived from the Treaty on the Functioning of the European Union (TFEU) and the fundamental freedoms of the EU):

- Proportionality
- Mutual recognition
- Transparency
- Non-discrimination
- Equal treatment

8.5 In simple terms, the Council is required to act in a transparent way, treating all potential providers equally and in a non-discriminatory way. There are also detailed requirements in relation to the drafting of technical specifications, the requirement to publish contract award notices and submission of returns to the Office of Government Commerce (OGC).

- 8.6 As third parties have a right to take court action for financial loss if there is any failure to comply with the principles, it is extremely important that the Council does comply with the key Principles set out in paragraph 8.4.

## **9.0 Risk Management**

- 9.1 Increasing the threshold beyond which a formal tendering exercise is undertaken potentially exposes the Council to the risk of challenge if the principles within the Treaty of Rome are breached and it is therefore imperative that if an increase is made the Procurement Unit introduce mechanisms to ensure that officers involved in the procurement process are fully aware of the relevant requirements. These officers will be identified by way of a skills audit and delivery of appropriate training.

## **10.0 Background and Options**

### **10.1 Contract Procedure Rules - Amendments**

Since vesting day, the Council has approved a number of amendments to the Constitution. As new legislation comes into force, and as the Council finds better ways of doing things, building upon experience and best practice, the Constitution will continue to need to be amended. The proposed amendments to the Contract Procedure Rules reflect the above. In addition, the opportunity has been taken to make it easier for SMEs to do business with the Council by raising the financial threshold, so that a formal tender process is only required for goods works and services in excess of £75,000 from the current threshold of £50,000.

The Contract Procedure Rules form part of the Finance and Contract Procedure Rules and a separate report will be brought to a future meeting to review and amend the finance element of the Rules.

### **10.2 Electronic Tendering**

Electronic Tendering was introduced by the Procurement Unit in order to achieve a more efficient, more transparent and more accessible to the market method of procurement. This has a number of benefits for the Council and also the Business community. The use of e tendering allows suppliers to be notified of an opportunity, to express an interest, to pre qualify, download tender documents and submit a response. This increases the awareness of our opportunities to the supplier community and also the likelihood of increased value for money for the Council. This promotes competition for the tender, and provides a process that is efficient for both the council and suppliers and a selection process that is transparent to bidders. It is proposed that Rule E55 is amended to incorporate this process.

### 10.3 Knowledge Map

It is recommended that the Rules be amended to incorporate appropriate references to the Council's Knowledge Map which has been launched and provides an online interactive guide to the procurement processes. The Knowledge Map is very easy to use and provides detailed guidance on how to procure goods and services. It contains policies, procedures and standard templates for use in the procurement process. The map will not only improve efficiency and ensure consistency in the procurement process but will also reduce the risk of non-compliance.

### 10.4 Increase to Thresholds

10.4.1 It is recommended that the threshold be increased from the current threshold of £50,000 so that a formal tender process will in future only be required for goods, works and services in excess of £75,000.

The proposed new thresholds will be:

	<b>Total Value</b>	<b>Procedure to follow where no Contract exists</b>
<b>Informal</b>	Below £10,000	E-mail /telephone quotation(s)
	Above £10,000 but below £75,000 for goods, services and works.	Comparison of written quotations from at least 3 bidders.
<b>Formal</b>	Above £75,000 but below the EU threshold* for goods, services and works.	Formal tender process from at least 3 suppliers.
	Above the EU threshold* for goods, services and works.	Tender process in accordance with EU Procurement Rules.

10.4.2 The difference between the formal tendering process for contracts above £75,000 but below the EU threshold and a full tender process in accordance with EU Rules is that the EU Rules have mandatory procedures and mechanisms which the Council must comply with. This includes, for example, the time scales for issuing the advert and minimum response times which are laid down and prescribed. The Council's formal tendering procedure is not as strict or prescriptive, particularly in relation to the various timescales required.

10.4.3 The current Rules provide that procurements for spend exceeding £50,000 should follow a formal tender procedure. This enables the Council to control and monitor the manner in which below EU threshold procurements are conducted and to ensure that the principles of proportionality, transparency and equal treatment are not breached.

10.4.4 There is a concern, however, that the formal tendering route may disadvantage SMEs and there is growing support for awarding contracts to smaller local organisations with a view to stimulating and supporting the Local Economy and the Procurement Unit is working to encourage SMEs to become involved in tenders, by various means, including providing training on the procurement procedure. Unfortunately there are tensions with the underlying principles of European Procurement Regulations which seek to put all European operators on an equal footing in tendering and ensure that the foremost evaluation criteria is MEAT ( Most Economically Advantageous Tender ) with no discrimination on the grounds of nationality. In effect a balance needs to be found between making the Council's opportunities more accessible to SMEs without in fact giving SME's an unfair advantage.

10.4.5 Accordingly, if the threshold for the formal tender process is increased to £75,000 as recommended, the Council must ensure that the selection of contractors is transparent, non-discriminatory and treats all parties equally in order to avoid the risk of challenges to its appointment of contractors.

#### **10.5 Informal Tenders below £10000**

10.5.1 Quick quote provides the ability to run a simplified quotation procedure for one off purchases with a low value (under £10,000). This function is especially useful for procedures with a quick turnaround time. The system suggests three local suppliers where available for the specific category and allows them to be notified of the opportunity along with other potential suppliers thus increasing the opportunities for local SME success in contracting with the Council.

10.5.2 For contracts under £10,000 there is currently no requirement for a written contract signed on behalf of the Borough Solicitor. The possibility of increasing the threshold for which a contract signed by the Borough Solicitor is required has been considered but from a legal perspective certainty in relation to the terms on which the Council is purchasing is essential. The Council is bound by law to include certain provisions when it contracts, for example ensuring that a contractor's sub contractors are paid within certain time scales. Other terms are needed to identify each party's responsibilities so that in the event of disagreement the recourse of the parties is clear. As a result an increase in the current threshold of £10,000 is not recommended.

#### **10.6 Bribery Act 2010**

The Bribery Act 2010 came into force on the 1<sup>st</sup> July 2011 and introduced a new offence of a commercial organisation failing to prevent bribery. The Council already has anti corruption provisions in its tendering documentation and contracts. The government has confirmed that a conviction for the offence will trigger discretionary not mandatory exclusion from competing for public contracts under regulation 23 of the Public

Contracts Regulation 2006 (SI 2006/05). It is proposed that our procurement documentation is amended to include reference to the new offence and that our contracts contain a right to terminate a contract in the event that a contractor has such a conviction.

#### **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writers. There are no specific background documents.

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<b>E</b>	<b>Contract Procedure Rules</b>
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**Why is this important?**

This section covers all aspects of procurement and Contracts procedures in relation to EU and National legislation.

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

The roles and responsibilities of:

- The Cabinet
- The Committees of the Cabinet
- The Statutory Officers
- All Officers procuring goods and services on behalf of the Authority

## Introduction

- E.1** These Rules set a clear framework for the procurement of goods, works and services for the Council. (**detailed guidance on these Rules can be found by accessing the Procurement Knowledge Map which can be found on the Council's intranet site**). This aims to ensure a system of openness, integrity and accountability where the probity and transparency of the process will be beyond reproach. Working within the Rules in turn leads to better value for money and gives confidence to all concerned that the Council is fulfilling its fiduciary responsibilities. These Rules apply to all quotations (informal procurement with a value up to £**5075**,000) and tenders (formal procurement over £**5075**,000)]

***The reason is to update the Constitution following the development of the Knowledge Map. The Knowledge Map has been developed to assist officers in following the correct procurement path and to assist in ensuring compliance with the Council's Finance and Contract Procedure Rules. Also to increase the financial threshold from £50,000 to £75,000 for informal tenders making it easier for small businesses to do business with the Council.***

- E.2** Any dispute or difference as to the interpretation of these procurement procedure rules shall be resolved by the Borough Solicitor in consultation with the Borough Treasurer and Head of Assets.
- E.3** There is a clear requirement for the Council to achieve Value for Money in its purchase of goods, works or services. These Contract Procedure Rules have been written to ensure that this requirement is achieved on behalf of the whole Council. Any procurement decision by a Service must therefore be made in the context of this overall Value for Money aims of the Council. It is a requirement that in all cases these Rules will be applied.
- E.4** These Rules will ensure that the Council will:
- get value for money;
  - keep within the law;
  - maintain standards of conduct;
  - be fair to suppliers;
  - protect officers;
  - demonstrate accountability for public money ;
  - meet its corporate and directorate aims and policies; and
  - comply with the Council's Procurement Strategy.
- E.5** Officers must procure goods and services in the first instance through Corporate Contracts, where these have been awarded. Details of current Corporate Contracts can be obtained from the Borough Treasurer and the Head of Assets. Failure to comply with this Rule may be considered a breach of the Officer Code of Conduct.

## Compliance and Officer Responsibilities

- E.6 Every contract made by or on behalf of the Council must comply with these Contract Procedure Rules and the associated detailed guidance.
  
- E.7 All Council employees and third parties/contractors engaged to act in any capacity to manage or supervise a Contract must comply with these Rules, and each Head of Service must ensure such compliance in the Service for which they are responsible. Failure to comply with these Rules or the associated detailed guidance maybe considered a breach of the Officer Code of Conduct and may result in disciplinary action and legal proceedings against the officers or third parties concerned. All Council employees and third parties engaged on the Council's behalf must ensure that any conflicts of interest are avoided. Any conflict of interest must be declared to appropriate line managers in the Council as defined and in line with the Officer Code of Conduct.
  
- E.8 ~~Where a Chief Officer or his designated representative intends to seek an exception to these Rules, as they apply to contracts and tenders, he/she shall arrange for a report to be prepared and submit it for consideration and approval by the Borough Solicitor and the Borough Treasurer and Head of Assets prior to the start of the relevant procurement process. Prior to the start of the relevant procurement process where a Chief Officer or his designated representative intends to seek an exception to these Rules, as they apply to contracts and tenders, he shall arrange for a Delegated Decision to be prepared (see E.23). Reason to update Constitution following clarification of when it is appropriate to seek a DD.~~
  
- E.9 All such exceptions should be recorded in the delegated decisions register and available for inspection as required.
  
- E.10 National or European Union legislation overrides these Finance and Contract Procedure Rules.
  
- E.11 Where it becomes apparent that a Service has failed to comply with these Rules then the Chief Officer or his designated representative shall issue a report outlining the reasons for the non-compliance and the steps taken to prevent a re-occurrence. The Chief Officer or his designated representative will be required to submit the report to the Borough Treasurer and Head of Assets and Borough Solicitor before reporting to the Audit and Governance Committee.
  
- E.12 When any employee either of the Council or of a service provider may be affected by any transfer arrangement. Officers must ensure that Transfer of Undertaking (Protection of Employment) Regulations (TUPE) issues are considered and obtain legal advice before proceeding with inviting tenders and quotations.

### Appointment of Consultants

- E.13** Any appointment of a consultant or consultancy body is subject to these Rules and any detailed guidance. Advice should be sought from the Borough Treasurer and the Head of Assets prior to entering into any such arrangement.

### Pre Contract Requirements

- E.14** The Council's Service Schemes of Delegation set out the approvals necessary for different types of contract.
- E.15** Before beginning a purchase, the authorised officer responsible for letting the contract must:
- make sure that the appropriate authority is in place to start the process and spend the money in accordance with the appropriate Scheme of Delegation;
  - make sure that there is enough money in the budget to cover the total whole-life financial commitment being made (including any consultant's or other external charges or fees);
  - make sure that the Forward Plan requirements have been followed where the purchase is a Key Decision.
- E.16** The authorised officer must ensure when entering into supply agreements that the requisition order and payment processes to be provided by the supplier are in accordance with Section D (Ordering and paying for work, goods and services) of these Finance and Contract Procedure Rules.
- E.17** For procurements above £10,000 advice should be sought from the Borough Solicitor's Department as to the relevant form of Contract to be employed for the procurement.

### General Requirements

- E.18** Before beginning a purchase, the authorised officer responsible for it must also:
- Where the proposed value of the procurement is estimated to be over £50,000 **£75,000** ~~where it is necessary due to the nature of the procurement,~~ the appropriate officer should seek advice from The Borough Treasurer and the Head of Assets and where appropriate enquire whether the service is able to be provided by an 'in-house' Provider;
  - Carry out an options appraisal, to decide what procurement method is most likely to achieve the purchasing objectives, in a form specified by the Borough Treasurer and the Head of Assets;
  - Assess the risks associated with the purchase and how to manage them;

- Prepare a procurement plan where the value of the purchase exceeds ~~£50,000~~ **£75,000** or where the purchase poses a significant risk to the Council and send a copy to the Borough Treasurer and the Head of Assets;
- If the procurement is subject to European Procurement Rules, advice should be sought from the Borough Treasurer and the Head of Assets.
- Ensure that all bid evaluation criteria have been determined in advance; and
- Ensure that these Rules and ~~any~~ **the** detailed guidance **contained in the Procurement Knowledge Map** have been complied with, and that the proposed contract represents value for money. ***Reason to include the new guidance available on the Knowledge Map and to raise the financial threshold for informal tenders.***

### Contract Procedures

**E.19** The table below sets out which procedures must be followed for different contract values.

The Total Value of the contract is the Yearly contract value x Contract period in years (including any extension periods).

	Total Value	Procedure to follow where no Contract exists
Informal	Below £10,000	E-mail /telephone quotation(s)
	Above £10,000 but below <del>£50,000</del> <b>£75,000</b> for goods, services and works.	Comparison of written quotations from at least 3 bidders.
Formal	Above <del>£50,000</del> <b>£75,000</b> but below the EU threshold* for goods, services and works.	Formal tender process from at least 3 suppliers.
	Above the EU threshold* for goods, services and works. <b><u>See Procurement Knowledge Map for up to date current thresholds. Reason Knowledge Map can easily be updated thereby negating the need to formally update the Constitution when the thresholds change.</u></b>	Tender process in accordance with EU Procurement Rules.

\* ~~See E.35 for EU thresholds.~~

## Exceptions to Requirements of Competition

### Framework Agreements

- E.20** ~~Only~~ Government, ~~and~~ Local Government ~~and other legally procured~~ Framework Agreements may ~~only~~ be used for the procurement of goods or services. ~~if they can be clearly identified on contract schedules held by these bodies.~~ The framework agreement must allow the Council to participate in such an agreement and must adhere to the principles of these Rules ~~and the specification must encompass the Council's requirements.~~ Before starting any procurement guidance should be sought from the Borough Treasurer and the Head of Assets.
- E.21** Examples of Government Frameworks ~~appear on the Office of Government Commerce are found on the "Catalist" and the Office of Government Commerce (OgC Buying Solutions) website~~ [www.ogcbuyingsolutions.gov.uk](http://www.ogcbuyingsolutions.gov.uk). ~~If the Council is entitled to use the Framework Agreement a mini competition process may be performed to evaluate the best value supplier for the Council. Under these Framework Agreements already tendered under EU Rules value for money can be determined following the Catalist "mini competition" process set out on their website.~~ Advice on the process should be sought from the Borough Treasurer and the Head of Assets.
- E.22** Framework agreements must be for a maximum of four years. If there is any doubt about their duration advice should be sought from the Borough Treasurer and the Head of Assets.

### Other Exceptions to Requirements of Competition

- E.23** ~~A Delegated Decision form must be completed by the Chief Officer or his designated representative for every exemption listed below and sent for approval to the Borough Treasurer and Head of Assets and the Borough Solicitor. Any request to approve waiving of any Finance and Contract Procedure Rule is also subject to such approvals by the Borough Treasurer and Head of Assets and the Borough Solicitor. Where a Chief Officer or his designated representative intends to seek an exception to these Rules as they apply to contracts and tenders, he shall arrange for a Delegated Decision (DD) to be prepared in accordance with the detailed guidance on DDs on the Knowledge Map. DDs are not available if the proposed exception would breach National or EU legal requirements. A DD can only waive the Council's internal rules. Reason clarifies when a DD may be used and directs officers to the Knowledge Map where guidance is provided on completing the forms and also the forms themselves.~~

**E.24** Provided that a proposed contract award complies with national and EU legislation and any other Finance and Contract Procedure Rule and subject to the Chief Officer or his designated representative ~~keeping a record of the reasons~~ **having a DD signed by the Borough Solicitor and the Treasurer and Head of Assets**, ~~reported annually to the Borough Treasurer and the Head of Assets~~, then the competition requirements may not apply to:

- The purchase of goods or services or the execution of works which in the opinion of the appropriate Chief Officer or his Authorised Officer and the Borough Treasurer and the Head of Assets is certain are obtainable only from one source or contractor, and where no reasonably satisfactory alternative is available;
- The purchase of a product required being compatible with an existing installation and procurement from any other source would be uneconomic given the investment in previous infrastructure as approved by the Chief Officer;
- The instruction of, advice from, or service provided by Counsel or, by exception, Solicitors to act on the Council's behalf;
- Special education or social care contracts if, in the opinion of the Chief Officer, following consultation with the Borough Solicitor and the Borough Treasurer and the Head of Assets, it is considered the **Client's Council's** interests are best met if there is exemption from the competition rules;
- The exercise of statutory grant aid powers delegated to a Chief Officer or his authorised officer (which shall be specified by that Chief Officer or his designated representative in each case);
- Circumstances which in the opinion of both the Borough Treasurer and Head of Assets and Borough Solicitor warrant an exception to the requirements for competition, to include, but not limited to when an emergency requires an immediate contract (which should in any event be procured from an approved list of suppliers where available) or when exceptionally the Chief Officer his authorised officer considers that is inappropriate in the interests of the efficient management of the service;
- Any other general circumstances, up to the EU threshold, as agreed by both the Borough Treasurer and Head of Assets and the Borough Solicitor.

**E.25** ~~If in written~~ **In those** circumstances ~~requiring where~~ only 3 quotations or tenders **are required**, ~~quotations or tenders~~ cannot be obtained due to lack of suitable contractors prepared to quote/tender then a record of the reasons for this action must be kept and be reported annually to the Borough Treasurer and the Head of Assets.

**E.26** The Chief Officer or his authorised officer must be satisfied that if three quotations/tenders have not been received that the offer accepted offers the Council best value and the prices are competitive. Advice from the

Borough Treasurer and the Head of Assets should be sought as to the most appropriate form of Contract to employ for the procurement.

### Variations and Contract Extensions

- E.27** All variations must be in the form of written instruction to the contractor. Any such variation should be agreed, documented and signed by both parties.
- E.28** The Contract term cannot be extended where this would result in the value of the contract exceeding the European Procurement threshold. In such circumstances the advice of the Borough Treasurer and the Head of Assets should be sought.
- E.29** The term of a Contract may be extended with the approval of the Chief Officer or his authorised officer if there is provision within the Contract terms and conditions to extend and the ~~agreement of the Borough Treasurer and Head of Assets has been received with regards to the~~ budgetary provision **allows**. If the contract has already been extended to the full extent provided in the contract it cannot be extended further.
- E.30** If there is no provision within the contract terms and conditions for the Contract to be extended the approval of the Borough Solicitor and the Borough Treasurer and Head of Assets must be sought to any proposed extension of the term of contract, and a record kept by the Chief Officer and the reasons why.

### Advertising of Procurement Opportunities

- E.31** To determine the market for each procurement in excess of £10,000 the Chief ~~O~~fficer **or his authorised officer** should identify the most appropriate method of advertisement including but not restricted ~~to l~~ocal press, relevant trade journals, council websites and other websites. The Borough Treasurer and the Head of Assets will facilitate advertisement in the OJEU.

### Competition Requirements below £10,000

- E.32** Officers must seek quotations so as to demonstrate Value For Money. Procurement of goods and services below £10,000 must be in accordance with 'Ordering and paying for work, goods and services' (D.19 – D.43).

### Competition Requirements for Procurements between £10,000 and **£5075,000**

- E.33** Procurement of goods and services must not be split to avoid a formal tender award procedure, or to have the effect by such a split indicate that the value of the goods or services would if not split breach the European Procurement Rules threshold.

- E.34** Records required to be kept under Contract Procedure Rules E.20 – E.26 and E.32 – E.53 shall be in a format to be determined by the Borough Treasurer and Head of Assets.

**Competition Requirements for Procurements over £5075,000 but below the EU Procurement threshold**

- E.35** Where contracts have an aggregate value over the life of the contract estimated at £5075,000 or more, a formal tendering procedure must be undertaken in a format to be approved by the Borough Treasurer and the Head of Assets. The invitation to tender must be advertised in an appropriate manner and tenders received must be dealt with and evaluated in accordance with these Rules. Subject to E37, either the Open or Restricted Procedures, described below, should be used as practicable. The full European Procurement Regime does not apply below the financial threshold (shown below **which is subject to change and should be verified by accessing the Knowledge Map**) it is not imperative to publish an OJEU notice in these circumstances, however advertising in the OJ may be a consideration. Further advice can be sought from the Borough Treasurer and the Head of Assets.

**Competition Requirements under European Procurement Rules (currently applicable for Contracts valued as follows, until ~~January~~ 31<sup>st</sup> December 20110)**

Services	Goods	Works
<del>£139,893</del> £156,442	<del>£139,893</del> £156,442	<del>£3,497,313</del> £3,927,260
(£206,000)(£193,000)	(£206,000)(£193,000)	(£5,150,000)(£4,485,000)

These levels are set by the Public Sector Directive 2004/18/EC, The Public Contracts Regulations 2006, Council Regulation 1422/2007 (L317/34 5/12/07) Sterling Equivalents were published in C301/07 dated 13/12/07. Thresholds are net of VAT.

- E.36** The procedures set out below follow the model set out in the European Procurement Rules. They represent best practice and should be adopted as the norm for all exercises over the threshold values. Either the Open or Restricted Procedure must be used as practicable. The Negotiated Procedure and Competitive Dialogue Procedure may only be used in exceptional circumstances and with the approval of the Borough Solicitor. Advice on the appropriate procedure to apply may be obtained from the Borough Treasurer and the Head of Assets or the Borough Solicitor.

**Negotiated and Competitive Dialogue Tendering Procedure**

- E.37** The Negotiated and/or the Competitive Dialogue procedure should

only be used in exceptional cases where advice has been sought from the Borough Treasurer and the Head of Assets and the Borough Solicitor.

### **General Procedure**

**E.38** Contracts that are subject to the EU procurement rules (and other contracts where that is appropriate) generally follow a three-stage process:

▪ **Stage 1 - PQQ**

This stage uses a Pre-Qualification Questionnaire (PQQ) to short-list those tenderers to be invited to submit a tender. Templates are available from the Borough Treasurer and the Head of Assets and;

▪ **Stage 2 – Tender**

This stage involves the preparation of a detailed tender specification and instructions which explains what is required to be provided and how tenders will be managed and evaluated. Bidders will submit their tenders based on the information provided in this document and give contract specific proposals (including as to delivery and price) and;

▪ **Stage 3 - Evaluation**

This will usually lead to the award of the contract. It is at this stage that any contract specific proposals (e.g. price and how the contract will be delivered) are assessed. Evaluation is dealt with in more detail below.

**E.39** Stage 1 PQQ - the only considerations are those matters which are relevant to the performance of the contract in question (e.g. financial standing, expertise, experience and technical capacity). There can be no consideration of the suppliers' proposals as to *how* the contract would be delivered.

**E.40** Once an organisation has been selected through the PQQ stage, they are deemed to be suitable to undertake the contract and they cannot be failed on the same criteria at the Tender and Evaluation stage (Stage 2 & 3) unless relevant changes occur during the later stages of the procurement process (e.g. a change in a supplier's financial standing).

**E.41** A minimum number of short-listed suppliers are then invited to submit tenders within a strict timetable. At the close of the period of time allowed for tender submission, each tender is evaluated against the criteria identified in the tender instructions/specification document sent out at Stage 3. (See paragraph E.42 below).

**E.42** If following the PQQ stage less than 3 organisations meet the selection criteria consideration should be given as to whether continuing with the process will achieve a competitive price, value for money and quality of services. A further advertisement may be required to achieve a better response and more tenderers.

- E.43** The Chief Officer or his authorised officer must keep a record of the reasons for this action and report these annually to the Borough Treasurer and the Head of Assets.

### **Open Tendering Procedure**

- E.44** All companies expressing an interest will receive an invitation to tender. There is no restriction or selection process prior to the dispatch of tenders.
- E.45** Public Notice must be given in relevant trade journals, newspapers, websites and the Official Journal of the European Union (OJEU) if the EU threshold is breached or exceeded, and where appropriate on the Council's Web-Site. At least 52 days public notice must be given in one or more local newspapers or trade journals circulating amongst such firms who undertake such contracts, and on the Council's Web-Site, setting out details of the proposed contract, inviting tenders from applicants and stating the last date on which tenders will be received. Tenders must be sent out within 6 days of a request. The OJEU must state the date and time of the opening of tenders whether or not the supplier is to be allowed to attend the tender opening.
- E.46** The time limits referred to in E.45 may be reduced by 5 days where electronic versions of the contract documents are made available or be reduced to a shorter period of generally not less than 36 days and in any event not less than 22 days where a prior information notice has been published in accordance with the EU Regulations. These two reductions in the periods of time may be combined. No decision to reduce those time limits must be taken without consulting the Borough Treasurer and the Head of Assets and the Borough Solicitor.
- E.47** If an alternative (variant) bid is to be permitted, the OJEU must say this. The Instructions for tendering specification document must give details of what is to be regarded as the minimum requirements of a variant bid. If these requirements are not met, a variant bid cannot be accepted.
- E.48** Evaluation of tenders submitted through the Open Procedure must be undertaken in accordance with the EU Procurement Regulations. All tenders submitted must be evaluated. The Open Procedure does not allow any negotiation with bidders.
- E.49** The Open Procedure may not be suitable where it is anticipated that there may be a large number of potential contractors interested in bidding for the contract. The Open Procedure is the most suitable for the procurement of non specialist goods such as stationary. The selection stage and the award stage can be undertaken simultaneously.

### **The Restricted Procedure**

- E.50** This is a two stage process involving the invitation of expressions of

interest from interested bidders. A contract notice must be published in the OJEU **if the EU threshold is exceeded and where appropriate on the Council's website** allowing at least 37 days for receipt of expressions of interest from prospective bidders. A shortlist of bidders is then drawn up in accordance with qualification criteria. At least 5 bidders must be selected at this stage, based on economic standing and professional or technical ability. If an alternative (variant) bid is to be permitted, the OJEU must say this. The Instructions for tendering and specification document must give details of what is to be regarded as the minimum requirements of a variant bid. If these requirements are not met, a variant bid cannot be accepted. ***Reason clarifies when notice should be served.***

- E.51** Those bidders on the shortlist must be invited to tender, allowing at least 40 days for receipt of completed tenders. Tenders are evaluated at the end of the 40 day period. No negotiation with bidders is allowed.
- E.52** The contract will be awarded in accordance with the criteria specified in the OJEU notice. An award notice must be published within 48 days. Unsuccessful tenderers must be de briefed.
- E.53** In circumstances of urgency, the time limits can be reduced. The 37 day period for expressions of interest may be replaced by a period of not less than 15 days. The time for inviting short listed suppliers to tender can be reduced from 40 to 10 days. No decision to reduce the time limits must be taken without first consulting with the Borough Treasurer and the Head of Assets and the Borough Solicitor.

### **Despatch of Tenders**

- E.54** If an invitation to tender is required such invitations can be made using any available form of communication providing all invited parties receive identical information despatched at the same time.

### **Submission and Receipt of Tenders**

- E.55** Tenders should be submitted as instructed in the tender documentation. **The tendering process can be undertaken using an electronic tendering system and shall be opened by the Borough Solicitor or her authorised officer. The authorised officer will be given 'Verifier' status for the purpose of this task by the system administrator. The task of opening the tender should be performed when the authorised officer opens the electronic seal facility within the system. Following this action the authorised officer shall release the received tender to permit access by the Procurement Unit. Tenders received electronically shall be recorded as received when the authorised officer opens the electronic seal facility within the system. Reason to update Constitution to reflect the Council's ability to receive electronic tenders.** Non compliance with this requirement will result in the tender not being considered. Electronic tenders should only be sought following advice from the Borough Treasurer and the Head of Assets.

- E.56** The tender must be submitted to the location, and by the time and date specified in the invitation to tender as being the last time and date for the receipt of tenders in the envelope provided bearing “ Tender “ or carrying any Tender label supplied with the Invitation to Tender.
- E.57** Where the Council estimates the tender value to be £**5075**,000 or more, all tenders must be submitted to the Borough Solicitor.
- E.58** Unless it forms part of an electronic tender process tenders will be submitted in hard copy in the first instance and must bear no details of name, mark, slogan or logo of the contractor on the tender envelope. Non compliance with this requirement may result in the tender not being considered. The Borough Treasurer and the Head of Assets will in such circumstances determine whether it is in the interests of the Council to consider the relevant tender. Electronic versions of tenders must not be delivered or opened before the opening of hard copy tenders.
- E.59** The Council is not bound to accept the lowest (**see** E.83) or any tender.
- E.60** Each **hard copy** tender submitted in accordance with the procedures detailed in E.55 – E.62 will remain in the custody of the Borough Solicitor until the time appointed for opening.
- E.61** Upon receipt of a hard copy tender the receiving officer must indicate on the envelope the date and time of its receipt.
- E.62** Tenders received after the date and time indicated for the receipt of tenders will not normally be considered except with the agreement of the Borough Solicitor and Borough Treasurer and Head of Assets. Such tenders will be opened and returned to the tenderer if they are not to be considered.

### Opening and Registration of Tenders/Quotations

- E.63** **Hard copy t**~~T~~enders shall be opened at one time by the Borough Solicitor or ~~his~~**her a**uthorised ~~o~~fficer, in the presence of the purchasing Chief Officer or his designated representative and Borough Treasurer and Head of Assets or his designated representative. ~~and any electronic tenders service provider, where applicable.~~
- E.64** The **a**uthorised ~~o~~fficer must at the time **non electronic** ~~the~~ tenders are opened, record on the Register:
- the type of goods or materials to be supplied or disposed of, or the work or services to be carried out;
  - the name of each contractor submitting a tender;
  - the amount of each tender where appropriate
  - the date of the opening of a tender

- the signatures of all persons present at the opening of each tender
- the reason for any disqualification of any tender
- the name of each contractor invited to tender but who did not submit a tender. *Reason to make clear that this only applies to hard copy tenders*

**E.65** Every written quotation obtained for each proposed contract must be opened at one time and details recorded by the Chief Officer or his/her Authorised Officer.

**E.66** Any request for an extension to the tender period must (in normal circumstances) be no later than 5 working days before the tender closing date. If the date is to be extended the revised date must be advised to all tenderers.

### **Errors in Tenders**

**E.67** Errors in Tenders shall be dealt with in one of the following two ways:

- the tenderer shall be given details of the error(s) found during the examination of the tender and shall be given the opportunity of confirming without amendment or withdrawing the tender; or
- Amending the tender to correct genuine error(s) provided that in this case, apart from these genuine errors, no other adjustment, revision or qualification is permitted.

**E.68** Tender documents must state which method will be used for dealing with errors in tenders.

### **Exclusions of Tenders**

**E.69** No valid tender received should be excluded from the tender process without the approval of the Borough Solicitor and the Borough Treasurer and Head of Assets.

### **Evaluation of Tenders and criteria for selecting a supplier**

**E.70** All the procedures, with the exception of the Open Procedure, anticipate a selection process which involves at least two stages. The first stage is to draw up a shortlist of candidates who will be invited to submit tenders, and a second stage when the contract is awarded to one (or more) of the bidders. Where the procedure is a Negotiated Procedure or Competitive Dialogue Procedure when there may be an intermediate stage which allows further refinement of the shortlist.

**E.71** The following criteria (set out in Public Contracts Regulations 23, 24, 25 and 26) may be used to draw up the shortlist of those who are to be invited to tender:

- Suppliers who have, or whose directors have been convicted of certain offences listed in Public Contracts Regulation 23 are

- ineligible to submit bids and must not be included in the short list;
- A public authority can (but does not have to) refuse to shortlist businesses which are insolvent, have been convicted of a criminal offence relating to the running of the business, or committed grave misconduct in the running of the business
  - Businesses can be excluded if they have not paid all their taxes or social security contributions
  - Businesses can be excluded if they are not included on the appropriate trade register in their home state
  - Public authorities are allowed to request evidence from prospective bidders to allow them to assess whether any of the above factors apply.
  - Public authorities may make an assessment of bidders' economic and financial standing by taking into account all or any of the following:-
    - statements from the bidders' bankers or evidence of relevant professional indemnity insurance;
    - published accounts where publication of such accounts are a legal requirement;
    - a statement covering the 3 previous financial years setting out the overall turnover of the bidder's business and the turnover in respect of the goods or services being provided.
  - Technical or professional ability which can only be assessed against the criteria set out in the Regulations.

### **Acceptance of Tenders/Quotations**

- E.72** The award of a contract to the successful tenderer must be conditional upon the tender costs being within budgetary limits and subject to any prior Member decision making procedures.
- E.73** For goods and services procured in accordance with EU Procurement Rules notification to the successful tenderer of the award of the contract is subject to the 10 day "Alcatel" standstill period, (the Borough Treasurer and the Head of Assets can provide advice), and may, if a decision by Cabinet Members was required, involve the 5 working day 'call in' period. (see E.84)

### **Criteria for Awarding the Contract**

- E.74** There are only two possible criteria:
- Lowest price; or
  - Most economically advantageous tender

NB where the selection is based on price the contract must be awarded to the bidder offering the lowest price unless it is made clear in its invitation to tender that it reserves the right not to award the contract at all.

- E.75** Where the winning bid is to be selected on the basis of the most

economically advantageous tender, this is assessed from the point of view of the contracting authority. Criteria linked to the subject matter of the contract must be used to determine the most economically advantageous tender. These might include:

- quality;
- price;
- technical merit;
- aesthetic and functional characteristics;
- environmental characteristics;
- running costs;
- cost effectiveness;
- after sales service;
- technical assistance;
- delivery date;
- delivery period;
- period of completion

**E.76** The criteria to be used to evaluate bids and the weightings to be attached to them, or if weightings cannot be established, their relative importance, must be set out in the invitation to tender. However, it is not possible to take into account tenderer's experience, staffing levels, equipment or ability to perform the contract within a set timescale. These factors can only be considered at PQQ stage.

### Specifications

- E.77**
- Any technical specifications to be met by the goods, services or works to be provided must be set out in the contract documentation.
  - Technical specifications can include requirements relating to quality, environmental performance and accessibility or usability by the disabled (among others)
  - Any reference to British Standards in the specification must be followed by the words "or equivalent"
  - A public authority is only allowed to consider bids which vary from the requirements set out in the specification if the OJEU notice states that variants are permissible
  - Where variants are to be permitted the public authority must set out its minimum requirements.

**E.78** Subject to E.72 and E.73 above:

- in the case of a tender the Chief Officer or his authorised officer authorise the acceptance of the tender on behalf of the Council, such acceptance to be notified in writing to the successful tenderer in a manner specified by the Borough Solicitor; or
- in the case of a quotation the Chief Officer or ~~his—authorised~~**his authorised** officer may accept the quotation by issuing either an official order (which should be signed by the Chief Officer or his authorised officer (as set in the Scheme of Delegation) or an

Agreement signed by the Borough Solicitor or his/her Authorised Officers, as set out in E.98 - E.111.

- E.79** If a decision is taken to abandon or to recommence a tender process in respect of which a contract notice has been published, each tenderer must be informed of the decision and the reasons for it, as soon as possible after it has been made.

### **Post Tender Negotiations (Open and Restricted Procedure)**

- E.80** Providing clarification of matters in the Invitation to Tender to potential or actual bidders or seeking clarification of a Tender, whether in writing or by way of a meeting, is permitted. However, the discussion with tenderers after submission of a Tender and before the award of a Contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must not be conducted. There are special rules relating to procurements using the Negotiated and Competitive Dialogue Procedures.
- E.81** Negotiations post-award of the Contract are only permissible in exceptional circumstances and should only be commenced after the Borough Treasurer and Head of Assets and the Borough Solicitor have given written approval of the procedure(s) to be adopted in any negotiation. The Borough Treasurer and the Head of Assets or the Borough Solicitor must be involved in the negotiation process and any consequent amendments to the contract terms and conditions must be approved by the Borough Solicitor.
- E.82** Where post-tender negotiation results in a fundamental change in specification (or contract terms) the Contract must not be awarded but re-tendered.

### **Best Offer**

- E.83** As a rule the award of a contract will be made to the organisation offering the lowest price, or in the case of a sale the highest price. The lowest price may not then be the "best offer" and may not merit award of the Contract. In assessing the tender however consideration may be given to quality, service and other determining factors as well as price. Where this is intended then this must be clearly set down in the tender documentation and the evaluation criteria. The Chief Officer or his/her Authorised Officer will record the detail of the contract award where the basis of the award is "best offer" rather than lowest price, which should then be reported to the appropriate Member. Advice should always be sought from the Borough Treasurer and the Head of Assets as to whether the "best offer" approach is appropriate in the circumstances.

## Procedure for Notification of Contract Award for EU Contracts

- E.84     ■ All participants in a tender procedure must be notified in writing as soon as possible after the successful bidder has been chosen.

### Content of Standstill Notice

- The criteria for the award of the contract
  - The reason for the decision, including the characteristics and relative advantages of the successful tender
  - The score (if any ) obtained by the tenderer to whom the notice is addressed and that of the successful tenderer
  - Any reason why the unsuccessful tenderer did not meet the technical specifications.
  - The name of the successful tenderer:
  - A precise statement setting out the date on which the standstill period ends or before which the contract will not be let. If a precise date cannot be given the notice should explain when it is expected to end, including anything which might affect the date.
- ~~■ The notice must set out the name of the successful bidder, the contract award criteria, the score received by the recipient of the notice and the score received by the successful bidder~~
- ~~■ An unsuccessful bidder who makes a written request to the public authority for details of the reasons why it was unsuccessful by midnight on the second working day after despatch of notification that it has been unsuccessful, must be provided with this information within 7 days of the despatch of the original notice. If a request is made outside of this deadline, information must be made available within 15 days of the date of receiving the request. In both cases, the information to be provided is –~~
- ~~a) the reason(s) why the bidder was unsuccessful and;~~
- ~~b) the characteristics and relative advantages of the successful tender including the name of the successful tenderer.~~
- ~~■ There must be a period of 10 days between the notification to the bidders of the successful bidder and the signature of the contract. This is to allow time for aggrieved parties to challenge the contract award process. This is the "Alcatel" standstill period referred to above~~
- A contract award notice must be published in OJEU within 48 days after the award of the contract
  - Information may be withheld if disclosure would :
    - a) improve law enforcement;
    - b) otherwise be contrary to public interest;
    - c) prejudice the legitimate commercial interests of any economic operator or

d) might prejudice fair competition.

### Challenging the award of a Contract

**E.85** Any person who was eligible to bid for the contract (even if they did not bid) or actually bid for the contract can challenge the award of the contract on the basis that the Regulations have not been complied with:

- A person proposing to bring proceedings must notify the public authority concerned of that fact;
- The proceedings must be brought promptly, and in any event within 3 months from the date when the grounds for bringing proceedings first arose unless the Court considers there is good reason for extending the period;
- ~~There are two possible remedies available to a party who wishes to challenge the award of a contract. The remedies available for a successful challenge are either the setting aside of the contract aware of the contract or and the award of damages. The contract can only be set aside prior to signature. After that the only remedy available is damages;~~
- Where the contract is set aside it may be necessary to carry out a further procurement process to award the contract. ***Reason new remedies have now been introduced that permit the set aside of a contract after signature if it has been illegally let.***

**E.86 Advice as to the extent and detail necessary for debriefing tenderers should be sought from the Borough Treasurer and the Head of Assets.**

### Keeping Written Records

**E.87 The Chief Officer or his/her designated representative must keep proper written records of:**

- the different stages of the tendering process including all the quotes and letters you have received, and notes of phone calls and meetings about selecting suppliers;
- the awarding of the contract;
- any information provided to tenderers or contractors; and
- any decisions made, together with the reasons for those decisions.

**E.88** Records must be kept for the periods set out in E.91.

### Contracts Register

**E.89** The Chief Officer or his designated representative must record on the Contracts Register held by the Borough Treasurer and the Head of Assets details of all contracts it has awarded with a total value of £50,000 or above

including contracts above the EU threshold for goods and services.

### Changes to Contracts

- E.90** Contract Extensions/Variations which take place must be consistent with the term specified in the OJEU notice. Any extension provision must be consistent with the OJEU notice, otherwise it is a breach of the Regulations. Similarly any substantial variation of the contract may amount to a breach of the Regulations, such as a change to include the provision of additional services.

### Storing Documents

- E.91** All documents relating to a tender award must be kept at least 12 years. Officers must consider confidentiality when storing contracts and other information relating to tenders and agreements.

### Requests for Information under the Freedom of Information Act

- E.92** Before making any disclosures to third parties on any element of a procurement following a request under the Freedom of Information Act advice should be sought from the Borough Treasurer and the Head of Assets and the Borough Solicitor.

### Contracts where the Council is the supplier

- E.93** Any Service, ~~including Cheshire Business Services~~ where such exists whose goods, works or services have been subjected to competition and who has now been approved as a nominated supplier, or are included on the Council's electronic marketplace, or where there is a Corporate Contract in place, in accordance with the Procurement Strategy, for those particular goods or services must be the first choice for that particular procurement. ***Reason CBS no longer exists.***

### Collaborative and Partnership working

- E.94** Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must also follow these Finance and Contract Procedure Rules (Section F).
- E.95** Collaborative and partnership arrangements include joint working where one partner takes the lead and awards contracts on behalf of the other partners, long term collaborative partnerships, pooled budgets and joint commissioning.
- E.96** Further guidance can be obtained from the Borough Treasurer and the Head of Assets and the Borough Solicitor.

### E Procurement

- E.97** The use of e-procurement technology does not negate the requirement to comply with all elements of these Finance and Contract Procedure Rules, particularly those relating to competition and value for money.

### Written Contracts and Signing of Contracts

- E.98** Every contract must be in writing and advice should be sought from the Borough Solicitor.

The table below sets out which procedures must be followed for different contract values:

Total Value	Form of Contract
Below £10,000	As per Section D – Ordering and paying for work, goods and services (D.19 – D.28).
Above £10,000	As for Below £10,000, plus:  The advice of the Borough Solicitor must be sought to agree an appropriate form of contract or written agreement which must be signed by the successful third party and on behalf of the Council by the Borough Solicitor and/or one of his/her authorised signatories, or by two of his/her authorised signatories.
Above £5075,000	Formal contract executed under seal and attested by the Borough Solicitor or his/her authorised signatory.

### Content of Contracts

- E.99** The appropriate Chief Officer or his/her authorised officer must ensure that in addition to terms and conditions set out in E.103 every contract details:

- The goods, works and services, materials, matters to be carried out or supplied;
- The price to be paid and/or the amounts and frequency or the method of calculation of contract payments including the treatment of inflation, with a statement of discounts or other deductions including terms of payment and settlement periods;
- The time(s) within which the contract is to be performed;

- E.100** Every contract with an estimated value of £50,75,000 or more must state that if the third party fails to comply with its contractual obligations in whole or in part, the Council may:

- cancel all or part of the contract
- perform the contract
- recover from the firm any additional costs in completing the contract
- take other legal action against the contractor

### **Contract Terms and Conditions**

**E.101** A glossary set out in Annex 1 defines the terms used throughout this Section.

**E.102** The Rules set out below will apply to all contracts entered into by the Council involving goods, works or services, with the exception of contracts of employment and contracts relating to the purchase or disposal of land and property. They will also apply to contracts entered into as where the Council acts as agent for another body, subject to the specific terms of the agency agreement.

**E.103** Advice should be sought from the Borough Solicitor, prior to taking action to secure quotations and tenders referred to in the following paragraphs, on the specific Conditions of Contract, in addition to any standard terms and conditions, appropriate in each individual case. They may include some or all of the following:

- Form of Contract
- Authorised Officer
- Modifications
- Bonds and Guarantees
- Contractors Obligations
- Contractors Employees
- Control and Supervision of Staff
- Complaints
- Confidentiality
- Health and Safety
- Agency
- Standards
- Observance of Statutory Requirements
- Gratuities and Inducements
- Indemnities and Insurance
- Use of Authority's Premises and Facilities
- Security
- Equipment and Materials
- Freedom of Information and Data Protection
- Royalties and Patent Rights
- Certificates and Payments
- VAT
- Equality and Diversity
- Fluctuations
- Review of Prices
- Assignment and Sub-Contracting

- Emergencies
- Default
- Termination
- Recovery of Sums Due (set off)
- Notices
- Waiver
- Special Conditions

All contracts must also include appropriate clauses referring to:

- Prevention of Corruption
- Assignment or sub-contracting without the Council's agreement
- Quality Standards
- Indemnities and Insurance
- Compliance with Council policies and procedures where appropriate (see E.105 to E.111)
- Where possible application of TUPE or a successor provision could apply then the Personnel and Pensions Services must be consulted.
- **Transparency**
- **Anti Bribery**

**E.104** Unless the Borough Solicitor and the Chief Officer or his/**her** designated representative considers it to be unnecessary or impractical, every contract must provide that:

- Where under any contract, one or more sums of money are to be received by the Council, the contractor responsible for the payment of such sum or sums must pay interest at the rate stated in the contract from the date when payment is due until the date when payment is received;
- In the performance of the contract, the contractor must not act incompatibly with the rights contained within the European Convention on Human Rights or the Disability Discrimination Act; **or the Bribery Act 2010**
- The contractor must provide any information reasonably requested relating to the performance of the contract to ensure that the Council meets its statutory obligations including under: Section 71 of the Race Relations Act 1976; Race Relations Amendment Act 2000; Best Value Legislation; Transfer of Undertakings and Protection of Employment Regulations; Code of Practice on Workforce Matters in Local Authority Service Contracts;
- In the performance of the contract, the Contractor must comply with the requirements of the Health and Safety at Work Act 1974, and of any other relevant Acts, Regulations, Orders or Rules of Law pertaining to health and safety;
- without prejudice, and subject to any other condition of the contract, no sub-letting by the contractor will relieve the contractor of its liability to the Council for the proper performance of the

contract;

- the contractor must not sub-contract the contract or any part of the contract, without the prior written consent of the appropriate Chief Officer or his/~~her~~ Authorised Officer who will take advice from the Borough Solicitor where appropriate.

**E.105** The contractor is responsible to the Council for the proper performance and observance of all sub-contractors of all the Contractor's obligations under the contract as if references in the contract to "the contractor" were references to the sub-contractors. Failure or neglect by a sub-contractor is deemed to be failure or neglect by the contractor;

**E.106** The contractor is prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever any part of its contract, without the prior written consent of the appropriate Chief Officer or his/~~her~~ ~~A~~authorised ~~o~~Officer (following consultation with the Borough Solicitor and the Borough Treasurer and Head of Assets);

**E.107** All goods, works and services must comply with any appropriate European Union Specification or Code of Practice or British Standard Specification or British Standard Code of Practice or European Union equivalents in force at the date of tender/quotation;

**E.108** The Council is entitled to cancel the contract and to recover from the contractor the amount of any direct loss resulting from such cancellation, if the contractor or its employees or agents (with or without its knowledge):

- does anything improper to influence the Council to give the contractor any contract;
- commits an offence under the **Bribery Act 2010** ~~Prevention of Corruption Acts 1889 to 1916~~ or under Section 117(2) of the Local Government Act 1972; ***Reason the Bribery Act 2010 came into force on 1<sup>st</sup> July and repealed previous legislation on corruption to reflect modern concerns.***

**E.109** Whenever under the contract any sum of money is recoverable from or payable by the contractor, this sum may be deducted from any sum due or which at any time may become due to the contractor under this or any other contract with the Council. Exercise by the Council of its rights under this clause will be without prejudice to any other rights or remedies available to the Council under the contract.

**E.110** The contractor must provide evidence of adequate insurance to cover both Public Liability and Employers' Liability. Indemnity Levels to reflect the risk to the Council which typically will be £10m for both public and employer liability policies. In some cases where the contract is of low risk this may be reduced to £5 million but advice should be sought from the

Insurance team on indemnity levels before the issue of Invitations to Tender have been despatched.

- E.111** Any standard terms and conditions of contract submitted by contractors must not be accepted without advice from the Borough Solicitor. Proposed payment arrangements under a contract must be discussed with and agreed by the Borough Treasurer and Head of Assets in advance of any contract being entered into.

### **Parent Company Guarantees and Performance Bonds**

- E.112** Advice of the Borough Treasurer and Head of Assets whether a parent company guarantee or performance bond is needed in cases where;
- there is doubt about the suppliers financial standing
  - the contract poses a high risk to the Council

### **Performance Monitoring**

- | **E.113** During the life of the contract, the ~~Authorised-authorised Officer-officer~~ should monitor the contract in respect of the following:
- Performance;
  - Compliance with specification and contract;
  - Cost;
  - Any Best Value requirements;
  - User satisfaction; and
  - Risk management
- E.114** Where the contract is to be re-let this information should be available early enough to inform the approach to re-letting the subsequent contract.

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## CHESHIRE EAST COUNCIL

### Constitution Committee

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**Date of Meeting:** 14<sup>th</sup> July 2011  
**Report of:** Borough Solicitor  
**Subject/Title:** Overview and Scrutiny Committees – Terms of Reference

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#### **1.0 Purpose of Report**

- 1.1 To make a recommendation to Council to adopt new Terms of Reference for the new structure of six Overview and Scrutiny Committees.

#### **2.0 Recommendations**

- 2.1 That

- (1) the proposed terms of reference for the six Overview and Scrutiny Committees as set out in the Appendix be recommended to Council for approval and part 3 of the Council's Constitution in relation to Scrutiny Committees be amended accordingly; and
- (2) the responsibility for undertaking pre-decision scrutiny work as expressed in paragraph 10.5 below be incorporated into the General Responsibilities of all Scrutiny Committees as contained in part 3 of the Council's Constitution and the Borough Solicitor be authorised to amend the Constitution accordingly.

#### **3.0 Reasons for Recommendations**

- 3.1 Clear terms of reference enable committees to prepare work effective programmes.

#### **4.0 Wards Affected**

- 4.1 N/A

#### **5.0 Local Ward Members**

- 5.1 N/A

#### **6.0 Policy Implications (including Climate Change/Health)**

- 6.1 N/A

**7.0 Financial Implications (Authorised by the Borough Treasurer)**

7.1 NA

**8.0 Legal Implications**

8.1 None

**9.0 Risk Assessment**

9.1 There are no identifiable risks.

**10. Background and Options**

10.1 At its Annual Meeting on 18<sup>th</sup> May 2011, Council increased the number of Overview and Scrutiny Committees from 5 to 6 by dividing the functions of the former Health and Adult Social Care Committee and thereby creating two new committees: Health and Wellbeing Overview and Scrutiny Committee and Adult Social Care Overview and Scrutiny Committee.

10.2 The two new Committees considered draft terms of reference in June and the Scrutiny Chairmen's group met with the Leader of the Council on 14<sup>th</sup> June 2011 to review the terms of reference of all 6 committees in light of the changes made by the Leader in respect of the portfolio responsibilities of each of the Cabinet Members.

10.3 The Scrutiny Chairmen's Group's aspiration was to ensure that each portfolio was aligned to one Overview and Scrutiny Committee. This was achieved in all cases apart from two specific matters. The first relates to the operational delivery of leisure and cultural services which falls under the Environment Portfolio Holder. This would under normal circumstances be in the terms of reference of the Environment and Prosperity Scrutiny Committee but the Chairmen's group wished to maintain links between the operational and strategic delivery of Leisure and cultural strategy, the latter of which sits in the Health and Wellbeing Portfolio. The group considered that these two matters should be dealt with by the Health and Wellbeing Committee.

10.4 Secondly, Development Management and Building Control, which both sit in the Safer and Stronger Portfolio, were considered by the group to have strong links with matters contained in the terms of reference of the Environment and Prosperity Committee, and these two matters now appear in the Environment and Prosperity Committee's terms of reference.

10.5 The Appendix contains proposed new terms of reference for all six committees which reflect the discussions held with the Leader of the Council. The Appendix also contains an extract from the Constitution setting out the general responsibilities of all Scrutiny Committees. The Scrutiny Chairmen's Group recently discussed the need for the general responsibilities set out in Section 3 of the Constitution to be amended to

make clear that Scrutiny Committees have the right to undertake pre-decision scrutiny work as part of their work programme.

- 10.6 Members will be aware that following the Government's decision to 'pause' the passage of the Health Bill through Parliament, some significant changes to the makeup of the proposed Health and Wellbeing boards have emerged, which suggests that in 2013 they will become formal committees of upper tier local authorities. If this proposal is implemented, it will have an impact on the responsibilities of the Health and Wellbeing Overview and Scrutiny Committee and a further review of that Committee's terms of reference would be required to address issues that emerge in the new Act.

## **11.0 Access to Information**

Background Documents: None

For further information:

Officer: Mark Nedderman Senior Scrutiny Officer

Tel No: 01270 686459

Email: [mark.nedderman@cheshire.gov.uk](mailto:mark.nedderman@cheshire.gov.uk)

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## **Overview and Scrutiny Committees – Terms of Reference**

Six Scrutiny Committees have been appointed which, between them, relate to the Cabinet and specifically as appropriate to the ten individual Portfolios:

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

### **1 General Responsibilities of all Scrutiny Committees**

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

The Committees each consist of 12 Members (plus appropriate co-option).

The Scrutiny Committees may specifically:

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

- if requested, offer any views or advice to the Cabinet in relation to any matter referred to the Committee for consideration;
- undertake general policy reviews with a cross-service and multi-organisational approach wherever possible and make recommendations to the Council or the Cabinet to assist in the development of future policies and strategies;
- in performing its role, the Committee may consult and involve the local community and other local public, private and voluntary bodies or organisations;
- review the Council's response to its obligations in respect of the overall performance management regime and where appropriate advise the Cabinet and the Council of its findings;
- scrutinise decisions after implementation to examine their effect and outcomes;
- review and make recommendations in relation to matters which are not the direct responsibility of the Council but which affect the social, economic and environmental well-being of an area, or the Council's area as a whole, or under any statutory requirement or Council contract, procedure or practice;
- develop, maintain and monitor policies and procedures for handling complaints made against the Council and monitor on a regular basis the level and nature of complaints received and ensure that advice is formulated regarding action to be taken to address areas of concern;
- monitor the level and nature of Ombudsman complaints and advise the Cabinet, Committees, Sub-Committees and officers on remedial action as appropriate;
- ensure in conjunction with the Standards and Constitution Committees that the Council has in place appropriate mechanisms to protect organisational Integrity including the development of appropriate policies and guidance;
- deal with any overview and scrutiny matter which is the subject of a call-in, a Councillor Call for Action or a Local Petition (a Councillor Call for Action Protocol is included in Part 5 of this Constitution);
- provide a regular programme of training and development for all Members and Co-opted Members involved in the work of the Committee.

## 2 Specific Responsibilities

### 2.1 Health and Wellbeing

The Health and Wellbeing Scrutiny Committee will fulfil the functions of an Overview and Scrutiny Committee as they relate to performance management, Corporate Resources and Strategy and in particular (but not restricted to):

1. Health Scrutiny duties falling on the Authority by virtue of the relevant Health acts and subsequent relevant legislation and Government Guidance;
2. liaison with NHS Trusts and GP Consortia on any matter relating to the planning, provision and operation of Health services in Cheshire East, including commenting on any performance or quality documents.
3. responding to any formal consultations undertaken by relevant NHS Trusts and GP Consortia or relevant health providers or commissioners on any substantial development or variation in service; and any formal consultations undertaken by social care providers and commissioners and on any substantial development or variation in service that appears likely to affect the health and wellbeing of the citizens of Cheshire East.
4. participation with other relevant local authorities in joint scrutiny arrangements of NHS Trusts providing cross-border services to Cheshire East residents, in particular the Cheshire and Wirral Partnership, NHS Foundation Trust;
5. liaison with the Local Involvement Network (LINK) for Cheshire East, commissioning work and receiving reports and recommendations as appropriate;
6. deal with any matter referred by the Department of Health, the Local Involvement Network or by the Council;
- 7 scrutinise, the effective integration of the NHS and the work of the Council and its partners in delivering improved public health and public health protection
8. analyse and comment on the progress towards achieving the outcomes relevant to health and wellbeing whether specified locally, regionally or nationally

And the following specific portfolio holder responsibilities:

- Leisure and cultural strategy
- Mental health
- Disability
- Ensure Director of Public Health influences strategy
- Develop integrated services with health partners

- Support improved health and wellbeing
- Support health and wellbeing board
- Ensure delivery of health and wellbeing strategy
- Monitor impacts and outcomes of H and W strategy
- Joint Strategic Needs Assessment
- Ensure effective working of commissioners
- Support transition of public health within the council
- Help shape Health and Social Care local structure
- Ensure transition of LINks to Healthwatch
- Public health promotion
- Liaise with NHS trusts
- Health promotion
- Operational delivery of leisure and cultural services

## 2.2 Adult Social Care Committee

The Adult Social Care Scrutiny Committee will fulfil the functions of an Overview and Scrutiny Committee as they relate to performance management, Corporate Resources and Strategy and in particular (but not restricted to): the operation of the Council's Adult Social Care functions, the Council's progress towards the objectives of 'Think Local, Act Personal', which is the overarching policy for social care nationally, to respond to reports from the care Quality commission in its regulatory function and to any formal consultations undertaken by social care providers and commissioners and on any substantial development or variation in service;

And the following specific portfolio holder responsibilities:

- Re-ablement
- Support to Informal Carers
- Community Equipment
- Occupational Therapy
- Assistive Technology
- Mobile Meals
- Respite and Short Breaks
- Family Based Care
- Domiciliary Care
- Residential Care
- Nursing Home Care
- Extracare housing
- Supported Employment
- Sensory Impairment Services
- Safeguarding Adults
- HIV/Aids
- Drugs and Alcohol Action team (DAAT) Services
- Domestic Violence Service
- Equality in service access and delivery
- Adult Social Care
- Welfare Rights
- Community Legal Service

- influence Health and Wellbeing Strategy
- Support connected service delivery for families.

### 2.3 Sustainable Communities Committee

The Sustainable Communities Scrutiny Committee will fulfil the functions of an Overview and Scrutiny Committee as they relate to performance management, Corporate Resources and Strategy and in particular (but not restricted to):

Community Strategies, and Crime and Disorder matters as provided by Section 19 of the Police and Justice Act 2006

And the following specific portfolio holder responsibilities:

- Civil protection/emergency planning
- 3<sup>rd</sup> sector and community delivery
- Youth Offending Team (liaise with Children and Families)
- Crime reduction/Crime and Disorder Reduction Partnership/police and emergency services liaison
- Anti Social Behaviour/drug abuse/domestic violence (liaise with Adult Social care)
- Community Safety Wardens
- CCTV
- Trading Standards
- Registration Services
- Licensing
- Food Safety
- Reviewing fares and licensing
- Environmental health
- Air pollution control and monitoring
- Environment enforcement
- Contaminated land
- Pest/vermin control
- Dog wardens
- Local Transport Plan
- Health and Safety enforcement
- Monitoring all enforcement activity
- Local Area Partnerships/Neighbourhood working
- Neighbourhood and community cohesion
- Performance management and transformation
- Customer access/services
- Risk management
- Information, intelligence and consultation
- Partnerships for Action in Cheshire East (PACE)
- Community strategy and planning
- Equality and diversity
- Voluntary, community and faith sector relationship/development
- Corporate and business planning
- Local Development Framework

- Twinning
- Communications and marketing
- ICT
- Revenues/exchequer functions including benefits
- Local Transport Plan
- Policy advice and developments
- Customer complaints and responses

## **2.4 Children and Families**

The Children and Families Scrutiny Committee will fulfil the functions of an Overview and Scrutiny Committee as they relate to performance management, Corporate Resources and Strategy and in particular (but not restricted to): Education, Children's Social Care, Early Years Provision, Looked After Children and Youth Services.

And the following specific portfolio holder responsibilities:

- Children Act 2004
- Early Years and Child Care
- Children's Centres
- Education
- Children's social care and wellbeing
- Youth Support Services including Connexions and Youth Offending Service
- Services to Children & Young People with disabilities 0-25
- Lifelong Learning
- Family Support Services
- Strategy for responding to Health Inequalities
- Cared for Children and Care Leavers
- Children's Trust – Children & Young People's Plan
- Local Safeguarding Children's Board
- Children's Safeguarding Unit
- Child Poverty Needs Assessment
- Influence and inform the Health and Wellbeing Strategy and support implementation of operational services.
- Think Family approach

## **2.5 Environment and Prosperity**

The Environment and Prosperity Scrutiny Committee will fulfil the functions of an Overview and Scrutiny Committee as they relate to performance management, Corporate Resources and Strategy and in particular (but not restricted to): Environmental matters, Highways, Strategic management of Assets, Economic Development, Housing and the Visitor Economy

And the following specific portfolio holder responsibilities:

- Economic development
- Employment initiatives

- Credit union and co-ops
- Industrial and commercial activities
- Public/private housing strategy and provision
- Homelessness
- Tourism and visitor economy
- Events programme coordination
- Tatton Park
- Arts
- Assets
- Strategic Highways and transport
- Highways operational management
- Waste management
- Development management
- Building control
- Strategic highways and transport
- Highways operational management
- Carbon reduction
- Waste management
- Environmental cleansing and street cleaning
- Street scene
- Markets
- Cremation and burial services

## 2.6 Corporate

The Corporate Scrutiny Committee will fulfil the functions of an Overview and Scrutiny Committee as they relate to performance management, Corporate Resources and Strategy and in particular (but not restricted to):  
The Annual Budget, Civic matters, Audit, Human Resources and Procurement,

And the following specific portfolio holder responsibilities:

- Member training
- Finance service
- Annual budget
- Capital strategy
- Income and funding
- Business management
- Audit
- Civic matters
- Finance
- Financial strategy
- Capital programme
- Reserves strategy
- Treasure management
- Insurance
- Democratic services
- Electoral services
- Procurement Forward plan

- Human Resources Strategy
- Contracts register
- Procurement including participation in regional procurement hubs
- Transactional HR
- Liaison with employers, organisations and unions
- Corporate contracts
- Legal services
- Employee training and development
- Occupational health
- Corporate Health and Safety
- PFI projects
- Organisational development
- Procurement Strategy
- Shared services
- Pensions

## **CHESHIRE EAST COUNCIL**

### **Council**

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**Date of Meeting:** 21 July 2011  
**Report of:** Democratic and Registration Services Manager  
**Subject/Title:** Overview and Scrutiny Annual Report 2010/11

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#### **1.0 Report Summary**

1.1 The 2010/2011 Overview and Scrutiny report is attached.

#### **2.0 Recommendation**

(1) That the annual report be received.

(2) That the report be posted on the Council's Website.

#### **3.0 Reasons for Recommendations**

3.1 It is good practice to produce an annual report reviewing Overview and Scrutiny Activity.

#### **4.0 Wards Affected**

4.1 N/A

#### **5.0 Local Ward Members**

5.1 N/A

#### **6.0 Policy Implications**

6.1 There are no identifiable policy implications

#### **7.0 Financial Implications**

7.1 N/A.

#### **8.0 Legal Implications**

8.1 There are no legal implications.

## **9.0 Risk Management**

9.1 There are no identifiable risks

## **10.0 Background**

10.1 The reference text version of the 2010/2011 Overview and Scrutiny Annual report attached summarises the activities of the Council's 5 Overview and Scrutiny Committees during the period of the 2010/2011 Municipal Year.

10.2 The report explains how Scrutiny plays its part in the governance of Cheshire East. The report also sets out in section 4 some of the lessons learned during the two years since the Council's inception and in section 5 the report addresses the future challenges for Overview and Scrutiny as details emerge of the Government's Localism agenda.

## **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

Name: Mark Nedderman  
Designation: Senior Scrutiny Officer  
Tel No: 01270 68659  
Email: [mark.nedderman@cheshireeast.gov.uk](mailto:mark.nedderman@cheshireeast.gov.uk)

# 1 Introduction

- 1.1 Welcome to this Council's second Annual Overview and Scrutiny Report.  
Overview and Scrutiny plays a large part in the governance of Cheshire East and involves a large proportion of the Council's 81 elected Members. It is our job to ensure that the Council's decision makers and those of our partner organisations are held to account for their decisions. By doing so, we strive to ensure that we achieve the best value possible from the services provided on behalf of the residents of Cheshire East.
- 1.2 Cheshire East, like many Local authorities, is facing difficult times ahead, Overview and Scrutiny will play a key role in those challenges by taking a hard look at not only what we do, but the way that we do it. We will play our part in helping public services adapt to the new circumstances.
- 1.3 During the last twelve months, Overview and Scrutiny Committees have built upon the strong foundations laid during the first year of Cheshire East's existence, by strengthening relations internally with Cabinet Members and Corporate Management Team, and externally with partner organisations.
- 1.4 The Scrutiny Chairmen's Group, which comprises the Chairmen and Vice Chairman, meets on a monthly basis and is forging a crucial role in many aspects of the Overview and Scrutiny function and particularly, in its role acting as a sounding board for matters of common interest across all Overview and Scrutiny Committees, especially in the fields of new legislation and best practice. The group also monitors progress with work programmes and reviews work loads to ensure that there is an even distribution of tasks across the five committees.
- 1.6 The Localism agenda of the coalition government has promised to make Scrutiny less prescriptive with new themes such as accountability, transparency, and involvement at the heart of our future activity.
- 1.7 The five committees have between them, undertaken a number of in depth reviews on a wide range of topics such as Family Support, Community Warden Service, Diabetes and Obesity and Business Generation Centres. These reviews are evidence that Overview and Scrutiny is beginning to make its mark in Cheshire East. Further details of these reviews and others can be found in section 2 of this report.
- 1.8 Our thanks is extended to all those who have taken part in the work of Overview and Scrutiny over the past year. The process would not be

**Annual Report of Scrutiny Cheshire East Council 2010/2011**

possible without the co-operation and support of Cabinet Members, co-opted members, officers and public.

I hope you find this report informative and look forward to the year ahead.

Councillor Andrew Thwaite

## 2. The work of Scrutiny Chairmen's Group

- 2.1 The Scrutiny Chairs Group (SCG) is an informal body which meets monthly to review the work programmes of the five Overview and Scrutiny Committees. Its role is to develop Overview and Scrutiny by sharing best practice, reviewing forthcoming Cabinet agendas and reviewing procedures. The group is now formally acknowledged in the Council's Constitution and now takes the lead resolving conflict between committees, advising on cross-cutting issues and reviewing work programmes and workloads.
- 2.2 The group was instrumental in setting up arrangements for individual Chairman and Vice Chairmen to meet their respective Cabinet Members and Service Heads on a regular basis to ensure that work programmes take account of latest Cabinet thinking. This has led to stronger relationships between Overview and Scrutiny and Cabinet. The group also revamped the Committee work programmes to ensure that links are clearly made to the Council's Corporate Strategies and key performance targets.
- 2.3 The group oversaw the production of the Council's 'Scrutiny Toolkit' which sets out a step by step guide to Scrutiny in Cheshire East. This is now available on the Council's website.
- 2.4 The group strives to continually improve the performance of the Overview and Scrutiny function, and to clarify the rules under which it operates. To this end, the group has recently made recommendations to revise the Council's 'Councillor Call for Action' protocol which has resulted in the Scrutiny Chairs Group now having a formal role in the protocol. The group has also reviewed the rules which allow Overview and Scrutiny to review decisions (the call-in rules) and the Council's urgency procedures. The Constitution Committee is due to consider amending the procedural rules in the new civic year.
- 2.5 The group has received briefings on the new localism agenda proposals and in particular on the future challenges facing Overview and Scrutiny. The group has been consulted on the media protocol, on new regulations relating to petitions and is leading discussions with colleagues in Policy and Performance on the production of performance management information to replace the now defunct national performance indicator set.
- 2.6 The group is grateful to the Leader of the Council and Chief Executive for their continued support.



## 3. The work of Overview and Scrutiny Committees

### 3.1 Corporate

Chairman: Cllr A R Thwaite

Vice Chairman: Cllr J Narraway

Committee Membership: A Arnold, G Barton, G Baxendale, D Brickhill, S Conquest, J Crockatt, H Davenport, M Davies, P Edwards, P Findlow, D Topping and S Wilkinson.

- 3.2 The Corporate Scrutiny Committee is mainly concerned with the internal operation of the Council, budget setting, management of its assets, risk management, governance and human resources.
- 3.3 The Committee has spent most of its efforts monitoring the progress of many of the internal strategies and policies that are required to enable a complex organisation to function.
- 3.4 The Committee is continuing to develop its understanding of the vast array of services provided by the Council and has received a number of very informative presentations on the shared services arrangements, the competitive dialogue process in procurement, the Council's asset register, the management of the Council farms estate, lifestyle centres and exciting new proposals to revitalise Tatton Park.
- 3.5 The Committee has overseen the asset challenge process, a huge task to put in place a strategy to manage the Council's portfolio of land and buildings which have a current value of £480million. Two pieces of work have stemmed from the asset challenge. The first involved the Committee overseeing the process to rationalise the 20 depots that the Council inherited from its former constituent authorities. The second relating to Business Generation Centres resulted in the Committee setting up a task and finish group to advise Cabinet on the future of the four inherited by the Council.

### 3.6 Business Generation Centres – Task and Finish Group

#### 3.7 What we wanted to do

The Business Generation Centres were originally set up to provide space for small start up businesses. The Task and Finish Group looked at whether it is appropriate for a local authority to provide facilities for small businesses and looked at a variety of options available in the market.

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The Group visited a range of facilities provided for small and start up business by the public and private sector in the North West. Interviews were conducted with experts in the field, the Council's own managers, and the Cabinet Members responsible for the management of the buildings and the promotion of Economic development. Benchmarking information was gathered which compared Cheshire East's operation with that of similar sized local authorities elsewhere in the country. The group also compared the potential capital receipts that could be generated by selling the buildings with the income generated by operating them as business units.

**3.9 What we found out**

The four units owned by the Council are very different in appearance, size and in the facilities offered. The best facilities that we visited elsewhere, have managers on site whose responsibility it is to market the facilities and to ensure that occupancy rates are high enough to secure a reasonable return. Flexibility was also identified as a key component. Small businesses require easy in easy out terms and tenants do not like to be tied into long term agreements. Business support is advantageous in helping embryonic businesses to survive the early stages of their operation.

**3.10 Future Implications**

The recommendations are due to be considered by Cabinet in August 2011. The group concluded that Cheshire East should continue its involvement in BGC's as they underpin one of the key aims of the Council's Economic Development Strategy. However, the group believed that the management of the centres should be through a third party arrangement and the group therefore recommended Cabinet to investigate opportunities to go into partnership initially through a 'soft' market testing exercise. The group also recommended that one of the BGC's at Thomas Street Congleton should closed down and the building disposed of, on the grounds that this particular facility is underused and the building is in urgent need of refurbishment.

**3.11 Other Activities**

- 3.12 The committee undertook site visits to Crewe Lyceum Theatre and Knutsford Cinema prior to commenting on a Consultant's report on the future of the two facilities. Cabinet agreed with the conclusions of the Committee that these two valuable assets should continue operating, to allow the Council to investigate alternative management arrangements to ensure their long term survival.

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- 3.13 The Budget monitoring group was charged at the beginning of the municipal year with overseeing the budget consultation process for the 2011/2012 budget process. The group had put in place arrangements to ensure a full programme of consultation on the budget challenge and budget setting processes. This programme was derailed by the Government's Comprehensive Spending Review which delayed the grant settlement announcement until mid December. Nevertheless, the Budget consultation group still managed to challenge Cabinet and Corporate Management Team on the budget proposals for the coming year at two in depth sessions held in January and February.
- 3.14 A Cabinet sub – committee decision to procure a new Highways contract was 'called-in' by the Committee. Members rigorously tested the rationale of opting for the preferred procurement method, by questioning Cabinet and senior officers at a specially convened meeting held in Crewe on 26 August 2010. One outcome of the call-in of this decision was that an Overview and Scrutiny monitoring group is now shadowing the procurement process for the new highways contract.
- 3.15 Looking Ahead to 2011/12
- 3.16 The Committee will be taking an in depth look at various parts of the Council's asset challenge process. A major piece of work will centre on the Council's farm estate with a view to making recommendations to Cabinet on the future retention/disposal of farms.
- 3.17 Additional work will be undertaken in the field of discretionary leisure facilities, devolution of assets to Town and Parish Councils. The committee is also committed to reviewing a matter of great importance to the residents of Cheshire East, the future of libraries.
- 3.18 The Committee will continue in its monitoring role in respect of performance management and risk management, and will again embark upon a process to oversee the budget consultation and monitoring arrangements throughout the year.
- 3.19 The Committee is also keen to have a better understanding of and greater influence over the shared services operated across Cheshire East and Cheshire West and Chester Councils

**3.20 Children and Families Committee**

- 3.21 The Children and Families Committee deals with the scrutiny of Education, Children's Social Care, Early Years Provision, Looked After Children and Youth Services. These services are often complex, with a large budget allocation and cover some of the most vulnerable in

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Cheshire East. An added challenge for the Committee this year has been with the Children's Service being in a period of flux with a number of new systems and structures being formulated and embedded.

- 3.21 In order to meet this challenge, the Committee has often taken a policy review role, providing an essential steer for some major changes that will affect the children and young people of Cheshire for years to come.

*Key to this approach has been the Committee's Task and Finish Reviews. Here the Committee has built on last year's work by investigating in more detail the issues that arose during the 2009/10 work programme. In doing so, the Committee has helped to shape Cheshire East's approach to ensuring that its children and young people have the best chance in life as possible.*

### 3.22 Review of Residential Provision – Task and Finish Group

Membership: Councillors D Neilson (Chairman), D Flude, M Simon, D Beckford and J Goddard.

#### What we wanted to do

This review of the residential provision in Cheshire East looked at the inheritance from the former Cheshire County Council (CCC). Ofsted inspections had found that the two CCC residential homes in the east of the county did not meet their standard.

A Group was therefore established with the following Terms of Reference:

“To review and examine current residential provision for young people for 11 – 17 and make recommendations as to future residential provision for Cheshire East children”.

#### How we did it

The Group had the opportunity to visit all existing provision as well as two new homes in the Crewe area and this proved to be a very useful exercise. These visits plus information from officers provided the basis for the Group's work. The Group also received valuable first hand information from members of the Children in Care Council which informed a number of the recommendations.

#### What we found out

That the current and future focus for residential provision appears to be towards smaller units in established residential areas. Members heard how the new units will achieve a homely and ordinary feel. The recommendations of the group supported this approach and proposed measures to extend it.

### Future Implications

The recommendations have been adopted by Cabinet, albeit with some slight modifications due to financial implications. The review contributed to a new approach for Cheshire East in how it provides residential provision, one that it will continue to follow.

### **3.23 Review of Family Support – Task and Finish Group**

Membership: Councillors R Westwood (Chairman), D Neilson, D Flude, D Beckford and G Merry

#### What we wanted to do

Today, it is widely recognised and agreed by experts across the world that early intervention works, both with regards to improved outcomes and greater efficiency of resources and services being delivered. The evidence is unarguable that a good start in life, in terms of physical, emotional and cognitive development, will result in better individual and social outcomes later in life. The Group therefore wanted to make a series of recommendations that would help to develop a wider, more targeted model of family support that would improve systems and most importantly improve outcomes for the children and young people of Cheshire East

#### How we did it

The Task and Finish Group embarked on a research and review process which incorporated interviews, questionnaires and site visits in order to uncover the best way forward for Cheshire East's Family Support Services and early intervention agenda.

#### What we found out

The review was heartened to find teams and individuals involved in family support that were dedicated, knowledgeable and skilled, both from within Cheshire East and its partner authorities and third sector organisations. Whilst a number of innovative programs are in place, it was clear that services were currently not well co-ordinated, joined up, performance managed or operating efficiently within a value for money framework.

### Future Implications

Following the findings of the review, a number of recommendations were made which suggested that in an increasingly difficult economic climate, there was a need to bring services together, with an emphasis on co-ordination, improved information and data sharing and targeted intervention based on a continuum of need. The recommendations are

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currently in the process of being adopted by Cabinet and the Group are hopeful that if accepted, outcomes for Cheshire East's people and their families will be greatly improved.

*In addition to the specialist and more discrete Task and Finish Reviews, the Committee took a themed approach in its work programme to provide a more overarching take to service redesign.*

**3.24 Safeguarding**

3.25 In April 2009, the interim the Council commissioned a number of reviews to establish whether the Children and Families service had inherited effective arrangements from the Cheshire County Council. The outcome of this work found some significant concerns around the ability of the inherited statutory social care services to adequately identify safeguarding risks.

3.26 Members decided to allow officers to design new and improved systems and put these in place with minimal interference. Members received regular briefings on the progress of the redesign and helped to provide direction at crucial junctures. This process has left the service in the healthy position.

**3.27 SEN Review**

3.28 This review began in July 2010 as a result of how the distribution of special schools had been split with the reconfiguration of the Cheshire authorities. It had been discovered that this process had left Cheshire East with insufficient capacity and as a result, the authority was inefficiently spending the relevant budget on out-of-Borough provision.

3.29 Once again, Members have been involved in providing a steer at crucial periods of this review as regular updates have been brought to Committee. Once the new structure of provision is in place, the Committee will be well placed identify gaps and drive forward improvements.

**3.30 Looking Ahead to 2011/2012**

3.31 Whilst congratulating the Children's Service on their hard work and progress, the Committee in its role as a scrutiny body will not be complacent. As the various teams and departments settle into their new structures, the Committee will extend its role as a 'critical friend' and will continue to drive forward improvements.

3.32 As part of this, Task and Finish Reviews of the Fostering and Adoption Services are expected to report and Members of the Committee will be embarking on an innovative project to observe Social Care Services to enable them to gain even more understanding and insight into the

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child's journey through the statutory process. This will leave those involved in an excellent position to assess the efficacy of the systems and to note any gaps that become apparent. There will also be a need for strong links to be forged with the Health and Adult Social Care Scrutiny Committee as the new public health responsibilities for local authorities and their relation to children and families become apparent. With a newly developed comprehensive work programme which aides the Committee in receiving regular reviews in a timely manner, there is certainly confidence that the Committee will be able to keep fully abreast of an expanding remit.

- 3.33 The Committee will also continue to monitor a fast-moving policy landscape and will endeavour to assist the Children's Service in formulating and improving policy to help Cheshire East's children and young people to fulfil their potential in what is expected to be a challenging year ahead.

**3.34 Environment and Prosperity Scrutiny Committee**

Chairman: Cllr G Walton  
Vice Chairman: Cllr A Martin

Committee Membership: G Barton, S Broadhurst, S Davies, H Davenport, R Fletcher, L Gilbert, M Hollins, T Jackson, M Parsons, M Simon, C Thorley, J Weatherill.

- 3.35 The Environment and Prosperity Scrutiny Committee deals with Environmental Services, Regeneration and Planning and Policy. The Council has had some major challenges to meet over the past year, not least of which was the Council's response to the second severe winter in succession the first of which had been the worst for over 30 years. In September 2010 the committee had considered a report prepared by the Strategic Director places under the banner 'winter learning', which had outlined the council's response to the previous year's winter. The report had been framed to facilitate scrutiny of the Council's performance and to highlight what could be key lines of inquiry by Scrutiny Committee Members.
- 3.36 In addition the Committee has received regular updates on Highway maintenance, waste, and the Total Transport Transformation Programme.
- 3.37 In order to address these challenges, the Committee has taken on a policy development role, helping the authority to achieve its corporate objectives to grow and develop a sustainable Cheshire East and enhance the Cheshire East Environment.

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- 3.38 The Committee has submitted several recommendations to Cabinet, all of which have been approved.

**3.39 Affordable Housing**

- 3.40 The Committee received a presentation on affordable housing, which provided the committee with a definition of affordable housing, explained why affordable housing is required and why it is important to Cheshire East. The Committee was apprised of the current policies and details of the interim policy statement. On 9 September 2010 the Committee undertook visits to housing schemes in Sandbach, Crewe, Nantwich, Bunbury, Holmes Chapel and Macclesfield to see at first hand, typical examples of affordable housing.

- 3.41 The tour enabled Members to review the interim policy statement in a much more informed manner.

3.42 The Committee subsequently commended the interim planning statement on affordable housing to Cabinet for consultation purposes and recommended that the document should be treated as a material consideration in the determination of planning applications.

**3.43 Review of Towns and Villages – Task and Finish Group**

**Membership:** Councillors G Walton, B Dykes, R Fletcher, G Merry and C Thorley.

What we wanted to do

The Cabinet Member for Environment, asked the Committee to set up a Task and Finish Group to review the towns and villages within Cheshire East, and to rank them by judging them against a set of criteria suggested by the Portfolio Holder.

Terms of Reference

The group agreed to rank towns and villages by a set of criteria suggested to it by the portfolio holder, which compared such matters as socio economic conditions and other factors such as facilities, retail, hospitality, business and travel for each of the towns and villages. The review was undertaken to provide a basis upon which towns and villages considered to be comparable are treated equally in the event that the Council decides to review its car parking charging policy in the near future and to ensure that a fair and equitable tariff scheme is created, although the level of charges was outside the scope of the review.

How we did it

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The Task and Finish Group undertook a series of site visits, and noted the various facilities within each town, such as whether there was a railway station, the nightlife, shopping facilities etc and marked each category out of 10. This allowed the group to give each town or village an overall score and to give them a final ranking ranging from A-E, with A indicating the towns with most facilities and E the least.

Outcome

The Portfolio Holder accepted the following recommendations of the Task and Finish Group:

1. That the rankings of towns and villages identified within the report be agreed.
2. That any future decisions made by the Portfolio Holder should be in line with the Cheshire East Council Parking Strategy and agreed that when car parking is reviewed in the future, consideration be given to the following observations:
  - That the parking charges on Thomas Street car park in Crewe be reviewed.
  - That the parking restrictions in Disley be enforced on a regular basis.
  - That the possibility of charging for parking in Disley be investigated.
  - That a solution to the parking problems on the Rams Head public house car park be sought.
  - That the possibility of the Borough Council managing the privately owned car parks in Handforth be investigated.
  - That the car park at the Paddock in Handforth have a maximum waiting time, which must be enforced.
  - That due to the size of the car parks Audlem, Haslington, Holmes Chapel and Middlewich, parking charges should not be implemented.
  - That the working arrangements for the Booths supermarket car park in Knutsford be used as an example of good practice.
  - That the legal issues regarding the car park in Poynton be investigated.
  - That action be taken to increase the usage and cleanliness of Spring Street car park in Wilmslow.

**3.43 Looking Ahead to 2011/2012**

- 3.44 During 2010/2011, the Committee has mainly concentrated on policy development and has worked closely with Cabinet on a number of policy documents. It is hoped that in the year ahead, the committee will be able to take on work specifically commissioned by the committee

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itself, and to review the outcomes of the recommendations made to cabinet during the 2010/2011 civic year. Close attention will also be paid to highway policies, the improvement of the planning service and waste harmonisation, particularly recycling and collection methods.

**3.45 Sustainable Communities Scrutiny Committee**

Chairman – Councillor H Murray

Vice Chairman – Councillor B Livesley

Committee Membership – E Alcock, A Barratt, J Crockatt, M Davies, P Edwards, D Flude, S Furlong, M Hardy, D Hough, J Jones, Wilkinson and J Wray.

Expert Advisor – E Lam

- 3.46 The Sustainable Communities Scrutiny Committee deals with the Safer and Stronger Communities service, Internal Audit, Policy and Planning, Customer Services, Partnerships and Communications. The Committee is also responsible for the external scrutiny of community strategies and statutory crime and disorder matters in accordance with the Police and Justice Act 2006.

**3.47 External Scrutiny**

- 3.48 The Committee has undertaken external scrutiny of the Safer Cheshire East Partnership, Cheshire Constabulary and the Probation Service.

- 3.49 Particular attention has been paid to the Neighbourhood Policing Grant, Road Safety and Restorative Justice.

- 3.50 The Committee has expressed serious concerns regarding the Neighbourhood Policing Grant, as the ring-fenced CDRP (Crime and Disorder Reduction partnership) grant which had supported the funding of Police Community safety Officers (PCSO's) in recent years was no longer earmarked for neighbourhood policing in the new formula grant settlement announced in the Governments Comprehensive Spending Review late in 2010. The Committee are continuing to investigate the impact this will have on the authority and PCSO's.

- 3.51 Road safety is highlighted in the Safer Cheshire East's Partnerships Strategic Plan and the Council's own Corporate Plan as priorities. The Committee has been aware for some time that the authority has been underperforming in this area' and the Committee met a representative from the Fire Authority at regularly to address Member's concerns. A Working Group has been established to tackle road safety; and as there have been significant budget cuts in this area and the Committee has decided to continue to monitor the situation.

**3.51 Review of Community Safety Wardens – Task and Finish Group**

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Membership: Councillors P Edwards (Chairman), D Flude, D Hough and B Livesley.

### 3.52 What we wanted to do

- 3.53 Cheshire East Council inherited two existing Community Warden services from Congleton Borough Council and Crewe and Nantwich Borough Council, and from Macclesfield Borough Council, a distinctly different service of Environmental Enforcement Officers. Whilst the warden services from Crewe and Congleton shared many common features, Macclesfield's Environmental Warden's focused on the Clean Safer Neighbourhood Agenda and mainly dealt with environmental offences such as fly tipping. The Council therefore needed to harmonise the 3 services into one service in order to deliver the objectives of Cheshire East Council in a more focused and cost effective manner and to assist in this process, the Committee set up a Task and Finish Group.

The task and Finish group therefore set about to establish

- Existing service delivery
- whether or not there are any overlapping services
- the services unique to the Community Safety Wardens
- best practice

### How we did it

The group took evidence from a range of sources including other local authorities, private sector operators and the representatives of the community warden service about how they approached their service delivery.

### What we found out

It was evident that there is duplication of some of the services being carried out, between the Council Warden service, PCSO's and Fire and Rescue Service, particularly in the field of education. The Community Safety Wardens and Cheshire Constabulary were both undertaking crime prevention tasks and the Community Safety Wardens and Cheshire Fire and Rescue Service were both undertaking home and fire safety issues.

Cheshire Fire and Rescue Service had the capacity to take on additional duties, however they did not currently have the powers to issue fixed penalty notices.

### Outcome

The Committee noted that the economic landscape had changed considerably since the review of the service had commenced, it was

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therefore agreed that the Community Safety Manager should undertake some additional work and bring a report back to the Committee outlining:

- A revised job description –after consulting with Street scene, Enforcement Officers etc, to highlight any gaps in need.
- A deployment proposal outlining how many Community Wardens would be required and where they would be placed.
- How performance would be measured
- How the Wardens would be managed.

Members considered the new working arrangements at a subsequent meeting and asked the Community Safety Manager to report back to the Committee in six months time on progress with the service and with detailed financial information on the savings achieved through the restructure.

**3.54 Looking Ahead**

- 3.55 As well as continuing to closely monitor the work of the Community Safety Wardens, a Task and Finish Group will be established to review all of the other Warden Services that exist within Cheshire East, with a view to bringing the services together under one management structure.
- 3.56 The Committee will also be review the effectiveness of the recent restructure of the CCTV Service, to ensure that the goals and objectives of that restructure have been achieved.
- 3.57 Road safety and the Neighbourhood Policing Grant will continue to be monitored.
- 3.58 The Committee would like to thank Emily Lam for her hard work and expert advice throughout the year on behalf of the Police Authority.

**3.59 Health and Adult Social Care Scrutiny Committee**

Chairman: Councillor B Silvester  
Vice Chairman: Councillor C Beard

Members: Councillors C Andrew, G Baxendale, D Bebbington, S Bentley, D Flude, S Furlong, S Jones, W Livesley, M Lloyd, A Moran, A Thwaite and C Tomlinson.

- 3.60 The Health and Adult Social Care Scrutiny Committee deals with the scrutiny of health and social care services by holding the Council and the many healthcare service providers to account to ensure that health and wellbeing objectives are achieved. The Committee has fulfilled the statutory health scrutiny role by commenting on substantial

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developments and variations proposed by the NHS, commented on changes to adult social care services including “Calling In” for detailed scrutiny the Council’s proposals to close some Community Support Centres and undertaken a policy review role by setting up Task and Finish Groups to look in depth at specific service areas.

- 3.61 The Committee has also kept up to date with proposed changes in the NHS outlined by the coalition government
- 3.62 The Committee continues to have a strong focus on the work and performance of the North West Ambulance Trust (NWS). The Chairman held a meeting with the Chief Executive of NWS in December 2010 at which the issue of response times in Cheshire East was discussed – figures from NWS showed that the service was not meeting response time targets in many of the postcode areas of Cheshire East.
- 3.63 The Committee was keen to question representatives of NWS about their performance and heard from senior NWS officers about the difficulties in meeting response time targets, without additional resources, due to the rural nature of the Borough. However, various other measures have been introduced to help patients including an increase in Community First Responders Schemes, “Hear and Treat” (use of paramedics to assess callers), See and Treat (use of Advanced Paramedics to treat), as well as plans to introduce Co-Responder schemes (joint schemes with the Fire Service) more widely.
- 3.64 There are estimated to be 4,500 people living with dementia in Cheshire East over the age of 65, with one in five people over 80 having a form of dementia. The Committee received detailed presentations on various aspects relating to dementia including how the Council would deliver services in the future, investment in Assistive Technology which would enable people to stay in their own homes for longer, maximising the use of Extra Care Housing developments and investment for carers and respite.
- 3.65 Alongside this, the Committee was concerned when proposals by Age UK to close its Day Care Centres came to light. There was similar concern among members of the public; in response, the Chairman requested that representatives of Age UK attend a meeting of the Committee to explain their proposals. In a packed meeting, Age UK announced that they were to postpone any decision on closure to enable alternative providers to come forward; representatives of a voluntary group, Wishing Well, were at this meeting and indicated they would be keen to investigate providing the service themselves.
- 3.64 In response to this important issue, the Committee set up a Task/Finish Group to look at services for older people and dementia, including the future provision of Day Care Centres. So far Members of this Group have visited an Assistive Technology demonstration flat, visited an Extra Care Housing Scheme and a number of Community Support

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Centres owned and run by the Council, as well as visiting a Dementia Café. The Group has heard evidence from the Alzheimer's Society, Crossroads (a carers' organisation) and Age UK. The Group was consulted on the proposals around future provision of Day Care Centres and supportive of the proposals for Wishing Well to take over the running of six of them with the remaining one being run by a Community Action Group in Audlem. The work of the Group is currently ongoing.

- 3.65 Members questioned the Deputy Chief Executive of Mid Cheshire Hospitals NHS foundation Trust (MCHfT) following the publication of a report by the Dr Foster organisation "How safe is your hospital?" that raised concerns about mortality rates – according to Dr Foster, mortality rates in MCHfT were higher than the average Standardised Mortality Rate (SMR) of 100. Members were advised that two different methods of measuring mortality rates were used which meant different mortality rates could arise for the same hospital; also figures published by Dr Foster related to the previous year so were slightly out of date. Nonetheless, the Committee was pleased to hear about specific work being undertaken to address mortality rates by the Hospital Mortality Reduction Group. There were also various other "improving patient safety" projects taking place across the Trust and MCHfT had set itself an improvement programme to reduce its mortality rate by 10 points by March 2011. In February 2011, Members were advised that mortality rates were below the SMR and the 10 point reduction had already been achieved.
- 3.66 The Committee took part in the Centre for Public Scrutiny pilot project on how scrutiny can help address health inequalities – this was through a Joint Scrutiny Panel with members from Cheshire West and Chester Council. The project focused on trying to identify health inequalities in rural areas which may exist in small hidden "pockets"; this was done through contacting various organisations to find out what information they held on health inequalities; and, additionally, through questionnaires to local residents conducted by Members and Officers through door step interviews and interviewing people who had attended an Age UK exercise class. Members also carried out a half day "mini scrutiny review" of mental health services in rural areas when they heard from officers of the Cheshire and Wirral Partnership NHS foundation Trust (provider of mental health services), the Local Involvement Network and Cheshire Community Action. The findings from the Panel's work have contributed to a national Scrutiny Toolkit to be launched soon and it is hoped that the findings from the review will be a useful reference document for the emerging Health and Wellbeing Boards in their role in tackling health inequalities.

**3.67 Obesity and Diabetes- Task and Finish Group work**

Membership: Councillor A Moran (Chairman), Carolyn Andrew, Rachel Bailey (until 13<sup>th</sup> May 2010), Chris Beard, Gillian Merry and Christine Tomlinson

What we wanted to do

The Terms of Reference for the Group are set out below:

- 1 To review the outcomes and recommendations from the Scrutiny Report on Diabetes (2004) and Tackling Obesity in Cheshire (concluded in 2006) taking into account:
  - a) Ongoing performance in Cheshire East on the detection, access to services and preventative element of the NHS National Framework for Diabetes (with particular reference to Type 2 Diabetes)
  - b) The effectiveness of various initiatives on children's eating habits undertaken in Cheshire East by the relevant agencies and schools.
  - c) The "Think Family" strategy currently being developed by Cheshire East Council and partner organisations.
- 2 To report on and produce a revised action plan, reflecting progress achieved to date and any developments since 2006.

How we did it

The methodology adopted by the Panel was the careful review of the recommendations from both of the original reports (including recommendations from a review on "Food in Schools" carried out by the former Central Cheshire Local Health Scrutiny Committee) and the review of the Diabetes Action Plan in 2006. The focus was very much on work with children and younger people, particularly in the school setting. The Group heard evidence from officers of the Council's Health and Wellbeing Team, the Primary Care Trust, Cheshire East Catering, Trading Standards (regarding food labelling) and a Diabetes Consultant.

What we found out

A great deal of activity has been successfully led by schools, and the Central and Eastern Cheshire Primary Care Trust (the PCT) has contributed fully to these initiatives and in addressing the rise in diabetes in the general population. Inevitably, the Panel noted several areas where more remains to be done including addressing the pressure on pupils' time in school at mealtimes and the physical constraints of some canteens; making school facilities open to the community when the school is closed, the dependence of many exercise and activity programmes on "one – off"

opportunistic funding, rather than being consolidated in core programmes, which may impact on longer term viability especially in the current economic climate; and the lack of progress nationally towards a single regulated system of food labelling and nutritional information.

#### Future implications

The recommendations were forwarded to the Cabinet who heard that progress has been made in relation to a number of recommendations. The Committee will monitor progress at a future meeting.

**3.68 Looking ahead to 2011/12:** the Committee will be finalising its report on services for Older People and Dementia; scrutinising proposals for the provision of specialist dementia services in the north of the Borough; studying proposals for Lifestyle Centres which are intended to provide a variety of health and wellbeing services; as well as keeping an eye on all the changes in the NHS with the introduction of GP consortia and the transfer of responsibility for public health to the Council and how this will impact on the work of the Committee. We will also continue to press the North West Ambulance Services (NWAS) to improve their performance. In addition, we will need to ensure that the new providers of day care centres are meeting the required standards and working within the budget available.

## 4 Lessons Learned

- 4.1 At the end of the 2010/2011 civic year, the Scrutiny Chairmen's Group undertook an 'end of term' review of the scrutiny function.
- 4.2 The group summarised their findings as follows:
- 4.3 Meetings of Overview and Scrutiny Committees**
- 4.4 Meetings of Overview and Scrutiny Committees had taken place in the following forms:
- **Formal meetings** – in accordance with the statutory deadlines either monthly or bi - monthly
  - **Mid point meetings** – mainly to deal with agenda setting and review of actions from previous meetings
  - **Informal meetings** – to deal with matters not yet in the public domain, awareness sessions
- 4.5 As there had been some confusion about the status of mid point meetings and informal meetings, the group agreed that there should be a consistent approach wherever possible across all 5 committees as much as possible. Mid points should be used for agenda setting purposes and to review actions from previous meetings. Informal meetings should be used occasionally, as a means to increase awareness of forthcoming issues, but should not be used to deal with formal business.
- 4.6 The general consensus of the group was that monthly meetings should be continued, but that each Chairman should have discretion to vary the schedule of meetings.
- 4.7 The group was also aware of the impact that requests for information was having on some service departments, The group agreed that in order to avoid placing additional demands on service departments, Scrutiny should adopt a flexible approach and allow innovative means of receiving information.
- 4.8 1-1's**
- 4.9 There had been a mixed response to the effectiveness of 1:1's with portfolio holders. One committee had not used them at all, whereas other committees had ranged from regular monthly meetings to occasional meetings held as and when required. It is considered important that the use of 1:1's should continue as appropriate as continuing dialogue between Cabinet Members and Scrutiny Chairs is essential to achieve the best from Overview and Scrutiny.

**4.10 Task and Finish Groups**

- 4.11 A continuing concern has been that only a small cohort of Members has been involved in Task and Finish Groups.
- 4.12 Another concern is the potential for duplication of work streams. On a number of occasions, Cabinet/and or officer groups had commenced work in an area already identified by Overview and Scrutiny. Communication between Cabinet and Scrutiny needs to be improved to avoid duplication of effort. This matter will be taken up in future by the Statutory Scrutiny Officer

**4.13 Member Involvement**

- 4.14 An opportunity should be taken after the election to reduce the number of Members on each committee. It is acknowledged that this can only happen in accordance with the normal proportionality rules. Also in view of the sweeping changes affecting future health arrangements, the group also believe that there is a strong case to separate Health and Wellbeing from Adult Social care, thereby creating a 6th Committee.

**4.15 Co –option**

- 4.15 The group feel that the existing arrangements on Co-option, should remain in place.

**4.16 External Organisations**

- 4.17 As a relatively new Overview and Scrutiny function, it is understandable that there hasn't been much activity in scrutinising external organisations, however the group hope that the Scrutiny function will widen its horizons in future and scrutinise partner organisations. In particular it was suggested that the Children and Families Committee may wish to scrutinise organisations affiliated to the Council such as the Children's trust etc.

## 5 Future Developments

- 5.1 The landscape for Overview and Scrutiny is changing as the government pursues its Localism agenda. Although there is uncertainty about the future, the Council is determined to embrace any opportunities that arise from the new Act when it receives Royal Assent. The Council will strive to pursue the new themes of accountability, transparency and involvement with enthusiasm. The move away from the 'top down' style of governance will free the Council to challenge decision makers in new innovative ways. There will be scope for greater community involvement and Overview and Scrutiny Committees must ensure that they are in the vanguard of such movements.
- 5.2 We are in no doubt that Overview and Scrutiny is ideally placed to review commissioning with the voluntary and community sector, and can help take into account the impact that funding such organisations has on the community. Scrutiny should play a role in ensuring that community groups or other organisations who are providing local services are held to account. Scrutiny can also hold the council to account on behalf of these groups and organisations.
- 5.3 However, not all of the Council's statutory responsibilities have disappeared and the news that Health Scrutiny is still to be a key responsibility of the Council is warmly welcomed. The latest information from Whitehall suggests that Local authorities will have a pivotal role in Scrutinising the work of health Commissioners although details are still emerging resulting from the eleventh hour Government announcement to pause the parliamentary timetable to engage with people about the changes. There are also likely to be other opportunities connected with the new police commissioner regulations.
- 5.4 Now that CAA and the national performance set have disappeared, it is for local authorities themselves to determine how they measure performance. Overview and Scrutiny in Cheshire East will be working closely with colleagues in Policy and Performance to ensure that accurate and timely performance information is made available to Overview and Scrutiny Committees, so that they can maintain their lead role in challenging the Cabinet on its performance.

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