

## Cheshire East Council New Constitution

### Content of the Constitution

Chapter	Title	Contents
1	<a href="#">Introduction, Summary and Explanation</a>	This section sets out an overview of how the Council operates, what the key parts of the Constitution cover and what rights members of the public have.
2	<a href="#">Responsibility for Functions</a>	<p>This section sets out the way in which functions have been allocated and which decision-making body/person within the Council has responsibility for making those decisions:</p> <ol style="list-style-type: none"> <li>1. Diagrammatic explanation of Member decision making bodies</li> <li>2. Council (including "Local Choice" Functions)</li> <li>3. Cabinet</li> <li>4. Committees</li> <li>5. Officer delegations (including a diagram of the officer structure/council management)</li> </ol>
3	<a href="#">Procedure Rules</a>	<p>This section sets out the procedural rules relating to all Council activities grouped into the following sections:</p> <ol style="list-style-type: none"> <li>1. Rules governing meetings and decisions <ul style="list-style-type: none"> <li>• Full Council Meetings</li> <li>• Committees and Sub Committee Meetings</li> <li>• Cabinet Meetings</li> <li>• General Provisions relating to Procedure Rules</li> <li>• Budget and Policy Framework Rules</li> <li>• Overview and Scrutiny Procedure Rules</li> </ul> </li> </ol>

Chapter	Title	Contents
		<ul style="list-style-type: none"> <li>2. Access to documents and information</li> <li>3. Finance Procedure Rules</li> <li>4. Contract Procedure Rules</li> <li>5. Employment Procedure Rules</li> </ul>
4	<a href="#">Codes and Protocols</a>	<p>This section sets out codes and protocols covering Member and Officer conduct, including:</p> <ul style="list-style-type: none"> <li>1. Member Code of Conduct</li> <li>2. Officer Code of Conduct</li> <li>3. Member/Officer Protocol</li> <li>4. Whistleblowing Policy</li> </ul>
5	<a href="#">Members' Allowance Scheme</a>	
6	<a href="#">Index and Glossary</a>	

# Chapter 1

## Introduction, summary and explanation

---

- 1 This document is the Council's Constitution. It contains details of how the Council works, how decisions are made and where to find information about the Council.

### Purpose of the Constitution

- 2 This is a document to help residents, businesses, partners, stakeholders, Members and Officers understand how the Council works. We have included hyperlinks between different parts of the Constitution wherever possible to make it easy to navigate your way around the information. We have also included hyperlinks to other documents/sites where we think this will be helpful. All hyperlinks are coloured [blue like this](#).
- 3 If you have any queries about anything in this Constitution please contact [details](#).

### The Council

- 4 Cheshire East Council has 82 elected Councillors (also called Members). Each Councillor represents the residents in their Ward. There are 52 Wards in the Council's area. Councillors are elected every four years. Click to find out when the [next election](#) will take place.
- 5 Click to find out which [Ward](#) you are in and who your [Councillors](#) are. Click for a [list of all Councillors](#) with their contact details. Click for details of the [political composition](#) of the Council.

### Councillors

- 6 Councillors are directly accountable to citizens for the running of the Council. They have a duty to represent all constituents in their Ward and they must make decisions in the best interests of the borough as a whole. They are involved in decision making in the Council ([Part 2](#) of the Constitution gives details of how Councillors make decisions at the Council). Councillors can also represent the Council on external bodies.
- 7 Councillors have to observe a [Code of Conduct](#) and a [Protocol on Member/Officer Relations](#).
- 8 Councillors also have to register and declare certain interests. You can access the [Register of Members' Interests](#) here.

## How the Council makes decisions

- 9 All Councillors meet together a number of times each year as the Full Council. You can get details of the [Full Council Meeting here](#). Full Council appoints a Mayor (who is chairman of the Full Council Meeting, performs the Council's civic role and represents the Council in the community) and a Deputy Mayor. Click to get details of how the [Full Council operates](#).
- 10 The Council operates an "executive" form of governance. This means that the Full Council appoints a Leader of the Council. The Leader then appoints up to 9 other Councillors who, together, form the Cabinet. Each of the Councillors on the Cabinet is responsible for a particular area of the Council's activities (called "portfolios"). Cabinet Members are also cackled Portfolio Holders. Click to get details of how the [Cabinet operates](#) and to see the current Cabinet portfolios. Click to see the role of the [Mayor](#) and the [Deputy Mayor](#). Click to get details of the [Cabinet meetings](#) this year.
- 11 The Full Council also appoints a number of Committees to deal with different aspects of the Council's functions, for example, planning and licensing. There are also Overview and Scrutiny Committees which help the Cabinet formulate policy and hold the Cabinet to account. Click to see details of the [Council's Committees](#).
- 12 [This diagram](#) shows the overall structure of the Council's decision making arrangements.

## The Council's Staff/Employees

- 13 Councillors are supported by the Council's staff/employees (who are also called "officers"). Officers provide advice, implement decisions and manage the day to day delivery of the Council's services.
- 14 The most senior officer is the Chief Executive. Other senior managers lead different parts of the Council's services. Some officers have specific duties to ensure that the Council operates within the law and uses resources wisely. These are the Monitoring Officer and the Section 151 officer (Chief Finance Officer).
- 15 Click to see the [Council's Senior Management Structure](#). Click to see the functions and responsibilities which the Council has given to the senior officers – [the Scheme of Delegation](#).
- 16 The Council's Corporate Leadership Team comprises the following officers who shall be regarded as "Chief Officers":
  - 16.1 Chief Executive
  - 16.2 Executive Director People
  - 16.3 Chief Operating Officer (Section 151 Officer)

- 16.4 Executive Director Place
- 16.5 Strategic Director of Adult Social Care and Health
- 16.6 Director of Legal Services (Monitoring Officer)
- 17 The Chief Executive will designate one of the Executive Directors as the Deputy Chief Executive.
- 18 Officers have to comply with the [Officers' Code of Conduct](#) and the [Protocol on Member/Officer Relations](#).
- 19 The recruitment, selection, discipline and dismissal of officers must be done in accordance with [specific rules](#).

### **Rights of citizens and residents**

- 20 Everyone has an equal right to access high quality Council services. Members of the public have rights to:
  - 20.1 vote at local elections
  - 20.2 attend the Council's meetings except where confidential or exempt information is being discussed
  - 20.3 [speak at meetings](#)
  - 20.4 contact local Councillors about any matters of concern – click to access [Councillor details](#)
  - 20.5 contribute to investigations by the Overview and Scrutiny Committees
  - 20.6 complain where there are problems with Council services – click to access a [complaint form](#)
  - 20.7 complain to the Commission for Local Administration (the Ombudsman) if the Council has not followed its procedures properly – click to access the [Ombudsman complaint form](#)
  - 20.8 complain to the Council if you believe there is evidence that a Councillor has not followed the Council's Code of Member Conduct – click to access the [Code of Conduct Complaint Form](#)
  - 20.9 inspect the Council's accounts.
- 21 You also have rights to view public reports to the Council, the Cabinet and the Council's Committees. Click to get more details of these [public rights](#).

### **Review of the Constitution and Decision Making**

- 22 This Constitution will be kept under review by the [Constitution Committee](#).

This page is left intentionally blank

## Chapter 2

### Responsibilities for Functions

---

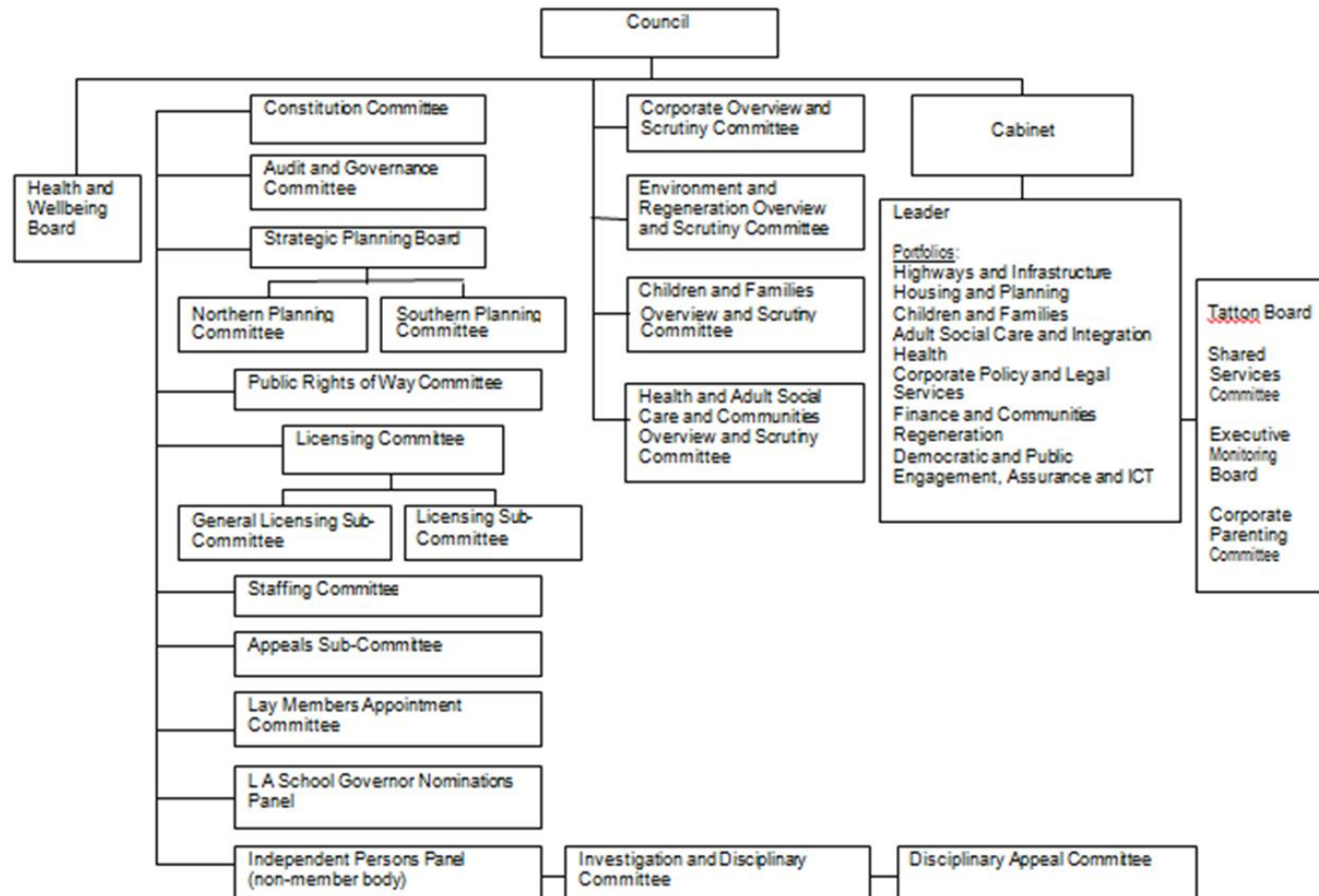
Part	Title	Contents
1	<a href="#">Diagrammatic Explanation of Decision Making and Introduction to Decision Making</a>	This section shows a diagram of the Council decision making arrangements and also sets out an introduction to decision making including the <a href="#">Principles</a> of good decision making, who makes decisions in the Council and what are <a href="#">Key Decisions</a> .
2	<a href="#">The Full Council</a>	This section sets out: <ul style="list-style-type: none"><li>• <a href="#">Functions of the Full Council</a></li><li>• <a href="#">Council Meetings</a></li><li>• <a href="#">Policy Framework</a></li><li>• <a href="#">The Budget</a></li><li>• <a href="#">Local Choice Functions</a></li><li>• <a href="#">Appointment to Outside Organisations</a></li><li>• <a href="#">Role of the Mayor and Chairmanship of the Council</a>.</li></ul>
3	<a href="#">The Cabinet</a>	This section sets out: <ul style="list-style-type: none"><li>• <a href="#">Role of the Cabinet</a></li><li>• <a href="#">The Leader and Cabinet Members</a></li><li>• <a href="#">General Responsibilities of the Cabinet, Committee and Sub Committees</a></li><li>• <a href="#">Responsibilities of all Cabinet Members</a></li><li>• <a href="#">Specific Responsibilities of Cabinet Members</a></li><li>• <a href="#">Role of Deputy Cabinet Members</a></li></ul>
4	<a href="#">Functions of Committees</a>	This section sets out the Functions, Roles and responsibilities of the Committees of the Council, which are: <ul style="list-style-type: none"><li>• <a href="#">Overview and Scrutiny Committees</a><ul style="list-style-type: none"><li>○ <a href="#">Corporate</a></li></ul></li></ul>

Part	Title	Contents
		<ul style="list-style-type: none"> <li>○ <a href="#">Environment and Regeneration</a></li> <li>○ <a href="#">Children and Families</a></li> <li>○ <a href="#">Health and Adult Social Care and Communities</a></li> <li>• <a href="#">Planning</a> <ul style="list-style-type: none"> <li>○ <a href="#">Strategic Planning Board</a></li> <li>○ <a href="#">Northern and Southern Planning Committees</a></li> </ul> </li> <li>• <a href="#">Public Rights of Way Committee</a></li> <li>• <a href="#">Licensing Committee</a></li> <li>• <a href="#">Staffing Committee</a></li> <li>• <a href="#">Investigation and Disciplinary Committee</a></li> <li>• <a href="#">Disciplinary Appeals Committee</a></li> <li>• <a href="#">Independent Persons Panel</a></li> <li>• <a href="#">Lay Members Appointment Committee</a></li> <li>• <a href="#">Constitution Committee</a></li> <li>• <a href="#">Audit and Governance Committee</a></li> <li>• <a href="#">Independent Remuneration Panel</a></li> <li>• <a href="#">Corporate Parenting Panel</a></li> <li>• <a href="#">Health and Wellbeing Board</a></li> <li>• <a href="#">Joint Arrangements</a> <ul style="list-style-type: none"> <li>○ <a href="#">Shared Services Joint Committee</a></li> <li>○ <a href="#">Cheshire Police and Crime Panel</a></li> </ul> </li> </ul>
5	<a href="#">Officer Delegations</a>	<p>This section sets out the <a href="#">Scheme of Officer Delegation</a> and contains a diagram of the officer structure at the Council. It sets out the areas of responsibility of the Senior Officers and Statutory Officers and the arrangements for the discharge of the Proper Officer functions.</p>



## Part 1

### Diagrammatic explanation of member decision making bodies and introduction to decision making



## **Introduction to decision making**

- 1 The Council makes many decisions relating to matters within its area. This Part of the Council's Constitution sets out how these decisions are made so that members of the public are clear about what decisions are made and which part of the Council or individual has responsibility for particular types of decisions.
- 2 The Council, the Cabinet, the Leader of the Council and any Committee or Sub-Committee of the Council may delegate a function or decision to another Member decision making body or to an officer in accordance with this Constitution. This can be on a permanent or one-off basis.
- 3 The Cabinet has delegated decision-making powers to individual members of the Cabinet.

## **Principles of decision-making**

- 4 The following principles will apply to all decision makers. Decision makers will:
  - 4.1 take into account all relevant considerations and ignore those which are irrelevant
  - 4.2 undertake a realistic evaluation of alternatives and options
  - 4.3 carry out appropriate consultation
  - 4.4 take decisions which are proportionate to the desired outcome
  - 4.5 consider relevant professional advice
  - 4.6 respect human rights
  - 4.7 approach decision making on a transparent and open basis wherever possible will be open.

## **Types of decision and the decision-takers**

- 5 When the Full Council makes decisions, it will comply with the [Council Procedure Rules](#).
- 6 When the Cabinet makes decisions, it will comply with the [Cabinet Procedure Rules](#).
- 7 When the Overview and Scrutiny Committees make decisions, they will comply with the [Overview and Scrutiny Procedure Rules](#).
- 8 When Committees and Sub-Committees make decisions, they will comply with the [Council Procedure Rules](#).

- 9 On occasions, the Council, a Councillor or an officer will act as a tribunal or in a quasi-judicial manner when they determine the civil rights, obligations or criminal responsibility of an individual. When this happens, they will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

### **Key decisions**

- 10 Certain types of decisions made by the Cabinet, individual Cabinet Members, Committees and Sub-Committees of the Cabinet are “[Key Decisions](#)”. Except in cases of urgency, these types of decision receive special advance publicity so that members of the public and Councillors are able to consider the implications of the decision and so that members of the public have an opportunity to make representation to the decision maker before the decision is made. Key Decisions appear on the [Council’s Forward Plan](#).
- 11 A Key Decision is defined as:
- “an executive decision which
- (a) is likely to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; and/or
  - (b) is likely to be significant in terms of its effects on communities living or working in an area comprising one or more wards or electoral divisions in the area of the local authority.”
- 12 For the purposes of the above, savings and expenditure are “significant” if they are equal to or greater than £1m.
- 13 For clarification, no treasury management decision of the Council shall constitute a Key Decision.

This page is left intentionally blank

## Part 2

### The Full Council

---

#### Functions of the Full Council

- 1 The following functions are the responsibility of the Council and will be discharged by the Full Council (all councillors meeting together) unless specifically delegated to another Committee, Sub-Committee, body or officer elsewhere in this Constitution. The Council:
  - 1.1 is accountable to its citizens for the proper discharge of all of its functions and the delivery of all its services
  - 1.2 will keep under review the running of the Council's affairs and will implement changes where it considers there is a need to do so to improve the way in which the organisation operates, its relationships with the Council's citizens and the delivery of any services in the most effective and efficient way
  - 1.3 will adopt the Council's Constitution and approve any amendments to it (except where specifically delegated to the Constitution Committee or the Monitoring Officer) will:
    - elect the Mayor
    - appoint the Deputy Mayor
    - elect the Leader of the Council
    - appoint to such other offices and/or positions as may be required under this Constitution or by law.
  - 1.4 will adopt the [Policy Framework](#) and any of the policies within it
  - 1.5 will agree the Council's [Budget](#)
  - 1.6 will determine any decision which would otherwise be contrary to the Policy Framework or contrary to/or not wholly in accordance with the Budget
  - 1.7 will determine whether functions which are classified as "[Local Choice](#)" functions should be reserved to the Council or exercised by the Cabinet
  - 1.8 will adopt the Council's Codes of Conduct for Members and Officers and the Protocol on Member/Officer Relations
  - 1.9 will agree:
    - the establishment and composition of Committees and Sub-Committees, other than those which may be established within the Cabinet

- The political balance of such bodies as required from time to time
  - the allocation of chairmen and vice-chairmen to those bodies (see para below).
- 1.10 will agree and amend the terms of reference of its Committees and Sub-Committees and the job description for committee chairmen
  - 1.11 will consider any matter which has been referred or submitted to it by the Cabinet for information, views or debate (but recognising that an Executive matter remains the sole responsibility of the Cabinet and the Council cannot make a decision in relation to it)
  - 1.12 will determine any matter which is referred to it for determination by a Committee or Sub-Committee other than a Cabinet body
  - 1.13 will adopt (or otherwise) Motions submitted in accordance with the Council Procedure Rules except those that relate solely to a Cabinet function
  - 1.14 will approve the [Members' Allowance Scheme](#) for elected Members following advice from the [Independent Remuneration Panel](#)
  - 1.15 will appoint/dismiss the Head of Paid Service, dismiss the Monitoring Officer and Section 151 Officer, designate an officer to act as Monitoring Officer and an officer to act as Section 151 Officer
  - 1.16 will appoint the Returning Officer and Electoral Registration Officer
  - 1.17 will approve the Council's response to any issues or proposals in relation to local government boundaries including Electoral Wards, the conduct of elections and the discharge of local authority functions
  - 1.18 may take decisions relating to the name of the area and may confer the title of Honorary Alderman or Freedom of the District
  - 1.19 may make decisions relating to the making, amending, revoking, re-enacting, adopting or enforcing byelaws and promoting or opposing the making of local legislation or personal bills
  - 1.20 will take decisions in respect of functions which are not the responsibility of the Executive, and which have not been delegated by the Council to Committees, officers or elsewhere.

- 2 Nominations to the Council's non-executive committees, sub-committees and decision-making bodies, and changes to such nominations, including nominations to chairmanships and vice-chairmanships, shall be notified by the Council's Group Leaders or Group Whips in writing or by email to the Head of Governance and Democratic Services and shall thereafter be published on the Council's website. Such nominations shall be in accordance with the relevant numerical allocations made by Council in relation to the body in question.

### **Council Meetings**

- 3 There are different types of Council meeting:
  - 3.1 The Annual Meeting of the Council, which will be held in May
  - 3.2 Ordinary meetings
  - 3.3 Extraordinary meetings, which will be called as and when required in accordance with the Council Procedure Rules.
- 4 All Council meetings will be conducted in accordance with the [Council Procedure Rules](#).

### **Policy Framework**

- 5 By law, the council must have a policy framework. This is a list of plans and strategies which are relevant to the council's functions and are required by law to be decided by the full council, usually on the recommendation of the executive.
- 6 The policy framework includes:
  - Children and Young People's Plan
  - Crime and Disorder Reduction Strategy
  - Education Development Plan
  - Local Transport Plan
  - Local Development Framework
  - Youth Justice Plan
  - Licensing Policy
  - Gambling Statement of Principles
  - Food Law Enforcement Service Plan
  - Housing Investment Programme.

## Budget

- 7 The Full Council sets the Council's budget each year. The budget has a number of elements as follows:
- The allocation of financial resources to different services and projects
  - Proposed contingency funds
  - The council tax base
  - Setting the council tax
  - The council's borrowing requirement
  - Its capital expenditure
  - The setting of virement limits.

## Local Choice Functions

- 8 Certain functions of local authorities are classified as “Local Choice” functions under the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) Regulations 2000, Schedule 2. This means that the Council can decide which of these decisions should be taken by the Full Council and which should be taken by the Cabinet.
- 9 The following table sets out who makes decisions on Local Choice Functions:

Local Choice Functions	Decision Making Body	Delegation of functions to Committees (where applicable)
Functions under a local Act (other than one specified or referred to in Reg 2 or Schedule 1 of the Regulations 2000)	Cabinet	
To determine appeals <sup>1</sup> against any decision of the authority	Full Council	Appeals Panel insofar as not delegated to any other Committee or officer
To make arrangements	Full Council	Appeals Panel

<sup>1</sup> Including appeals in relation to access to information by Members under s100F Local Government Act 1972, Part 5 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012, and the common law “need to know” rules



for appeals against exclusion of pupils from maintained schools		
To make arrangements for appeals regarding school admissions <sup>2</sup>	Full Council	Appeals Panel
To make arrangements for appeals by governing bodies <sup>3</sup>	Full Council	Appeals Panel
Any function relating to contaminated land <sup>4</sup>	Cabinet	
The control of pollution or the management of air quality <sup>5</sup>	Cabinet	
To serve an abatement notice in respect of a statutory nuisance <sup>6</sup>	Cabinet	
To pass a resolution that Schedule 2 of the Noise and Statutory Nuisance Act 1993 should apply in the authority's area <sup>7</sup>	Full Council	
To inspect the authority's area to detect any statutory nuisance <sup>8</sup>	Full Council	
To investigate any complaint about the existence of a statutory nuisance <sup>9</sup>	Full Council	
To obtain information about interests in land <sup>10</sup>	Full Council	Chief Officers
To obtain particulars of	Full Council	Chief Officers

<sup>2</sup> s94(1), (1A) and (4) School Standards and Framework Act 1998

<sup>3</sup> s95(2) School Standards and Framework Act 1998

<sup>4</sup> Part IIA Environmental Protection Act 1990 and subordinate legislation

<sup>5</sup> Pollution Prevention and Control Act 1999; Part IV Environment Act 1995; Part I Environmental Protection Act 1990; Clean Air Act 1993

<sup>6</sup> s80(I) Environmental Protection Act 1990

<sup>7</sup> s8 Noise and Statutory Nuisance Act 1993

<sup>8</sup> s79 Environmental Protection Act 1990

<sup>9</sup> s79 Environmental Protection Act 1990

<sup>10</sup> s330 Town and Country Planning Act 1990

persons interested in land <sup>11</sup>		
To make arrangements for the execution of highways works <sup>12</sup>	Cabinet	
<p>To appoint any individual</p> <p>(a) to any office other than an office in which s/he is employed by the authority</p> <p>(b) to any body other than</p> <p>(i) the authority;</p> <p>(ii) a joint Committee of two or more authorities; or</p> <p>(c) to any Committee or sub Committee of such a body</p> <p>and to revoke any such appointment</p>	Cabinet or individual Portfolio Holders in respect of organisations listed in the document accessed through the link in paragraph 11 below and the Full Council in respect of other organisations.	In respect of appointments by Full Council delegated to the Constitution Committee.
To make agreements with other local authorities for the placing of staff at the disposal of those other authorities	Cabinet	

- 10 Local Choice Functions can be delegated further to other member bodies and/or officers.

## Appointment to Outside Organisations

- 11 The Cabinet, or Individual Portfolio Holders (if delegated to them by Cabinet) make appointments to a number of [local and regional organisations](#) which can be found by clicking on the link.

<sup>11</sup> s16 Local Government (Miscellaneous Provisions) Act 1976

<sup>12</sup> s278 Highways Act 1980

## **Role of the Mayor and Chairmanship of the Council**

### **Civic Role**

- 12 The Council's Mayor, supported by the Deputy Mayor will perform the Council's civic role.
- 13 This entails raising and maintaining the profile of the Council's area and its citizens. The aims and values of the Council will be promoted in an apolitical manner.
- 14 The Mayor will decide which civic and ceremonial functions to promote following consultations, where appropriate, with officers of the Council. These functions may include representing the Council at events organised by other local authorities or organisations.

### *Council Role*

- 15 The Mayor is elected at the Annual Council meeting in May. The Deputy Mayor is appointed at the same meeting.
- 16 The Mayor is the conscience of the Council.
- 17 The Mayor is responsible for:
  - 17.1 upholding and promoting the purposes of this Constitution and interpreting it, where necessary, with advice
  - 17.2 presiding over meetings of the Full Council to ensure that business is carried out efficiently and effectively
  - 17.3 ensuring the rights of Councillors and the interests of the Council's citizens are protected in the running of the Full Council meeting (Guidance on the [Role of a Chairman](#) can be found here which is relevant for all chairmen of Council meetings)
  - 17.4 ensuring that, at Full Council meetings, matters of concern to local people can be debated through the appropriate Councillors
  - 17.5 ensuring that Councillors not on the Cabinet, or who do not hold the Chairman of a main committee, are able to hold those office holders to account
  - 17.6 promoting public involvement in the Council's activities and acting as a contact between members of the public and organisations and the Council
  - 17.7 carrying out other roles on behalf of the Council.
- 18 The Deputy Mayor will:
  - 18.1 support the Mayor in his/her civic role and will also carry out civic duties on behalf of the civic office
  - 18.2 deputise for the Mayor in his/her absence.

## **The Mayoralty Code of Practice**

- 19 The Mayor shall comply with the [Mayoralty Code of Practice](#).

## **Who may become Mayor or Deputy Mayor**

- 20 Any elected Member of the Council shall be eligible for election to the office of Mayor, or appointment as Deputy Mayor, except for Members of the Cabinet.

DRAFT

## Part 3

### The Cabinet

---

#### Role

- 1 The Cabinet carries out those duties and responsibilities which are not the responsibility of any other part of the Council.
- 2 Some of the Cabinet's responsibilities are "[Local Choice](#)" functions, which Council has chosen to delegate to the Cabinet.

#### Composition

- 3 The Cabinet consists of the Leader of the Council, and up to 9 other Councillors. The Leader of the Council is elected by Full Council, but the Leader is responsible for appointing the other Members of the Cabinet, and for notifying the Council of such appointments.
- 4 No substitution arrangements will apply to the Cabinet, and neither the Mayor nor Deputy Mayor may be appointed to the Cabinet.

#### The Leader

- 5 The Leader will hold office for a period of four years from the date he/she is elected to that office by the Council or until:
  - 5.1 he/she resigns from the office of Leader
  - 5.2 he/she becomes ineligible to be a Member of the Council, either for a specific period, or indefinitely
  - 5.3 he/she ceases to be a Councillor
  - 5.4 he/she is removed from office by a no confidence resolution of the Council requiring a simple majority, in respect of which the motion has been fully set out in the agenda for the meeting.
- 6 Where there is a vacancy in the office of Leader, the Deputy Leader will assume the responsibilities of the Leader until the next meeting of the Council.
- 7 The Leader shall appoint a Deputy who shall be a member of the Cabinet and who shall hold office until such time as the term of office of the Leader who appointed him/her comes to an end, or until he/she is removed from office by the Leader, or he/she ceases to be a Cabinet member.
- 8 Where both the Leader and Deputy Leader cease to hold office at the same time, the Council's Mayor shall call a meeting of the Full Council as soon as possible, to elect a new Leader.

### **Other Cabinet Members**

- 9 Other Members of the Cabinet will hold office until any of the events listed in 3.1.1-3.1.3 above apply to them or to the Leader or until the Leader brings their term of office to an end.

### **Proceedings of the Cabinet**

- 10 Proceedings of the Cabinet shall be conducted in accordance with the [Council and Cabinet Procedure Rules](#).

### **Responsibility for Functions**

- 11 The Leader will ensure that a record is kept of the executive functions which are the responsibility of individual Cabinet Members, any Cabinet Committee or Sub-Committee, officers or joint arrangements.

### **Cabinet Members**

- 12 The following are the Council's Cabinet Portfolios (which may be varied from time to time by the Leader):
- Leader
  - Highways and Infrastructure
  - Housing and Planning
  - Children and Families
  - Adult Social Care and Integration
  - Corporate Policy and Legal Services
  - Health
  - Finance and Communities
  - Regeneration
  - Democratic and Public Engagement, Assurance and ICT.

### **Deputy Cabinet Members**

- 13 The Cabinet can appoint Members as Deputy Cabinet Members to support Cabinet Members in the performance of their functions. Deputy Cabinet Members may not take decisions on behalf of Cabinet Members.
- 14 Deputy Cabinet Members may not be members of Overview and Scrutiny committee.

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

- 15 These bodies are responsible for:

- 15.1 ensuring the effective and efficient discharge of the functions delegated to them
  - 15.2 ensuring that any Council services within their remit are appropriate for and responsive to the needs and views of the Council's citizens, and are delivered effectively and efficiently
  - 15.3 ensuring that good external relationships and effective local liaison are promoted in relation to Council services within their remit
  - 15.4 monitoring the functions of the Council within their remit and contributing to any Council aims, objectives and policies
  - 15.5 determining policies and objectives for any Council services, within their remit, reviewing the extent to which they are met, and agreeing any necessary action
  - 15.6 determining the Council's views on matters specific to their areas of responsibility and related external matters
  - 15.7 ensuring the effective and efficient management of any services and resources within their remit and, where appropriate, the effective and efficient discharge of the responsibilities of any subordinate bodies or person.
- 16 Where the Cabinet is exercising a Cabinet function, in whole or in part, as set out below, the Cabinet is empowered to take all necessary and appropriate decisions to fulfil the obligations placed upon it subject to any restrictions or constraints imposed by the law or this Constitution.
- 17 Insofar as such functions do not fall within the responsibilities of individual Cabinet Members, the Cabinet is responsible for:
- 17.1 the development of policy/strategy for the Council, the monitoring of the effectiveness of policy/strategy and the review of policy/strategy (leading to revision and further development)
  - 17.2 subject to consultation with the appropriate Scrutiny body or bodies, advising on Budget setting, including all other relevant financial matters, plans and proposals
  - 17.3 ensuring that proper arrangements exist for the effective and efficient management of the Council's executive affairs and the delivery of policy/strategy

- 17.4 monitoring and auditing the lawful, proper and efficient conduct of the Council's financial affairs, including the extent to which budgets and financial policies are being and will be met, and requiring or approving any remedial action to be taken where it considers it necessary and appropriate
  - 17.5 developing, monitoring and reviewing any Council Corporate personnel and human resources policies
  - 17.6 approving, monitoring and reviewing the provision of services to the Council which are delivered by internal and/or external suppliers
  - 17.7 overseeing, approving and co-ordinating policies on national and external communications, public and media relations and public affairs generally
  - 17.8 overseeing relationships with, participation in and contribution to external organisations and partnerships, Local Government Association, or their successors or like bodies
  - 17.9 ensuring officers exercising delegated powers on behalf of the Cabinet discharge their responsibilities efficiently and effectively
  - 17.10 monitoring and reviewing issues relating to relating to the implementation of strategy and policy
  - 17.11 preparing and approving any Regional and Sub-Regional Plans and Strategies
  - 17.12 supporting any relevant regional arrangements relating to regional policy, transportation, planning and environmental issues
  - 17.13 promoting employment and investment in the Council's area, including the preparation and approval of any Economic Development and Tourism Strategies
  - 17.14 dealing with any executive Local Development Framework functions which are delegated to the Council by the Secretary of State.
- 18 The Cabinet may discharge these functions itself, through a Cabinet Committee or Sub-Committee or by delegation to an officer. In addition, the Cabinet may appoint such advisory panels, including any member of the Council, as it considers appropriate to provide advice to it.



## **Responsibilities of all Cabinet Members**

- 19 The following are the general responsibilities which apply to all Cabinet Members, and the specific responsibilities which apply to individual Cabinet Members. These responsibilities include various functions which are delegated to each Cabinet Member to discharge.
- 20 These responsibilities and delegations are the Council's Executive Arrangements which include the Framework for Decision-Making by Individual Cabinet Members, set out below the lists of responsibilities of each Cabinet Member.
- 21 There are occasions when matters affect more than one portfolio of responsibility. On such occasions, the Cabinet Member with the primary responsibility shall take the lead and exercise their delegated powers, but in consultation with all Cabinet Members with an interest.
- 22 Each Cabinet Member is the spokesperson for the policy area or 'portfolio' they are responsible for. They also:
  - 22.1 lead on developing council policy and make recommendations to the Cabinet
  - 22.2 provide guidance to the Cabinet on delivering services within their portfolio area
  - 22.3 give guidance to the Cabinet on budget priorities
  - 22.4 monitor performance and make sure policy is delivered
  - 22.5 lead on improving council services
  - 22.6 ensure that activities meet the Council's overall vision, core values and guiding principles
  - 22.7 represent the Council at a national and local level
  - 22.8 contribute to debate and decision-making
  - 22.9 work with all councillors and officers to make sure that the overview and scrutiny process works correctly including appearing before relevant Overview and Scrutiny meetings and responding to Overview and Scrutiny committee reports
  - 22.10 make decisions within the responsibility of the Cabinet Member's portfolio
  - 22.11 ensure appropriate consultation and liaison with partners and the community on matters within the scope of their portfolio.

## **The specific responsibilities of individual Cabinet Members (Leader and Portfolio Holders)**

23 This section sets out the responsibilities of the individual Cabinet Members who comprise the following:

- [Leader](#)
- [Highways and Infrastructure Portfolio Holder](#)
- [Housing and Planning Portfolio Holder](#)
- [Children and Families Portfolio Holder](#)
- [Adult Care and Integration Portfolio Holder](#)
- [Health Portfolio Holder](#)
- [Corporate Policy and Legal Services Portfolio Holder](#)
- [Finance and Communities Portfolio Holder](#)
- [Regeneration Portfolio Holder](#)
- [Democratic and Public Engagement, Assurance and ICT Portfolio Holder](#)

### **Responsibilities of the Leader**

- 24 To chair the Cabinet.
- 25 To select the Cabinet Members and determine their Portfolios of responsibility.
- 26 To appoint Committees and sub-committees of the Cabinet and to determine their powers.
- 27 To represent and act as ambassador for the Council (recognising the role of the Mayor).
- 28 To have overall responsibility for:
- 28.1 policy development and design
  - 28.2 Ministerial and Members of Parliament/European Parliament liaison Act as Head of Cabinet.
- 29 To represent the Council's views on matters of corporate or strategic policy and any other matters which are within the Leader's terms of reference.
- 30 To submit to the Cabinet:
- 30.1 all policy and/or operational matters which have corporate implications or which cross the remits of the individual Cabinet Members

- 30.2 any matter which crosses the portfolio of more than one Cabinet Member, and which cannot be resolved, to the Cabinet for decision
- 31 To present to the Council "State of the Borough" reports and to be responsible for related debates.
- 32 To provide appropriate and timely Cabinet responses to Scrutiny Committee recommendations and to monitor the implementation of those responses.
- 33 Portfolio Holder responsibilities of the Leader:
- HS2 and Rail Strategy
  - Constellation partnership
  - CCN/LGA
  - Internal Audit
  - Strategic Partnerships
  - Sub-regional activity
  - Devolution (devolution of powers from Central Government to Combined Authorities and the Council, and devolution from the Council to Town and Parish Councils) and the Growth Deal
  - Government liaison
  - Oversight of Communications

### **Responsibilities of Highways and Infrastructure Portfolio Holder**

- 34 The Portfolio Holder is responsible for all matters relating to Environment and is responsible for liaising with other Members of the Executive, particularly where those matters affect other aspects of Council business or the Borough.
- 35 In particular, and subject to the Council's Executive Arrangements, which empower officers to make certain decisions, and which require the collective Executive to make other decisions, the Portfolio Holder has individual responsibility to make all executive decisions in respect of the following matters:
- Waste and Environmental Services
  - Highways
  - Transport strategy
  - Local Transport Plan
  - Car Parking
  - Cultural services, including: Tourism and Visitor Economy, Tatton Park, Parks and Park Rangers and Arts and Culture

- Green Infrastructure
- Public Rights of Way
- Shared Service/Archives.

### **Responsibilities of Housing, Planning and Regeneration Portfolio Holder**

- 36 The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Housing, Planning and Regeneration Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.
- 37 In particular, and subject to the Council's Executive Arrangements, which empower officers to make certain decisions, and which require the collective Cabinet to make other decisions, the Portfolio Holder has individual responsibility to make all executive decisions in respect of the following matters:
- Planning Policy
  - S106 & Community Infrastructure Levy
  - Street naming & numbering
  - Land charges
  - Housing, Housing Associations, and Homelessness
  - Development Management and Building Control
  - Neighbourhood Planning
  - Heritage
  - Planning Support Company (Civicanace)
  - Masterplanning Crewe
  - Regulatory Services: Trading Standards, Licensing, Environment Health including Air Quality matters, contaminated land and pest and vermin control
  - Economic Development
  - Regeneration
  - Land and Assets.

## **Responsibilities of Children and Families Portfolio Holder**

- 38 The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Children and Families Services and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.
- 39 In particular, and subject to the Council's Executive Arrangements, which empower officers to make certain decisions, and which require the collective Cabinet to make other decisions, the Portfolio Holder has individual responsibility to make all executive decisions in respect of the following matters:
- Lead under Children's Act 2004
  - All aspects of Education and Schools
  - Youth Support and Offending
  - Lifelong learning
  - Employment and Skills
  - Prevention and Early Intervention Strategies
  - Corporate Parenting Lead
  - All aspects of Children's social work, including:
    - Cared for children and care leavers
    - Fostering, Adoption and Residential Services
    - Children's Trust and Children's Board
    - Children's Safeguarding (including Children's Safeguarding Board)
    - Children and Young People up to 25 years old (SEND)
  - Health and Wellbeing Board (with Adult Care and Integration, and Health)
  - Lead for 0-19 Health and Health Promotion (in consultation with Health)
  - Lead for 0-19 Mental Health (in consultation with Health)
  - Domestic Violence.

## **Responsibilities of Adult Social Care and Integration Portfolio Holder**

- 40 The Portfolio Holder is responsible for all matters relating to in the Adult Social Care and Integration Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.
- 41 In particular, and subject to the Council's Executive Arrangements, which empower officers to make certain decisions, and which require the collective Cabinet to make other decisions, the Portfolio Holder has individual responsibility to make all executive decisions in respect of the following matters:
- Lead under Care Act 2014
  - Adult Safeguarding: Board/CQC/CEC Quality Assurance Team
  - Care and Carer Assessment (i) personalisation
  - Carer Services including: (ii) Respite Care and Short Breaks
  - Care Service Commissioning, including: (iii) Residential & Domiciliary Care (iv) Disability & Sensory Impairment services (v) Mental Health & Substance
  - (vi) Re-ablement Services (vii) Occupational Therapy and Community Equipment (viii) Assistive Technology
  - Equality in Service Access & Delivery
  - Extra Care Housing (jointly with Housing and Planning)
  - Lead for Adult (19 plus) Mental Health Services and Health Promotion (in consultation with Health)
  - Health and Wellbeing Board (with Children and Families and Health)
  - Rural Affairs
  - Community Hubs
  - All aspects of safer communities: Wardens, ASB and CCTV
  - Gypsies and Travellers.

## **Responsibilities of Health Portfolio Holder**

- 42 The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Health Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.
- 43 In particular, and subject to the Council's Executive Arrangements, which empower officers to make certain decisions, and which require the collective Cabinet to make other decisions, the Portfolio Holder has individual responsibility to make all executive decisions in respect of the following matters:
- Deputy Leader
  - Health and Wellbeing Strategy
  - Lead for Health (i) Health and Wellbeing Board (ii) Health & Social Care Integration (Better Care Fund/Sustainability & Transformation, Caring together/Connecting Care)
  - Joint Strategic Needs Assessment
  - NHS England/Acute Trusts
  - Leisure Strategies
  - Leisure Services
  - Engagement with Everybody Sports and Recreation (ESAR)
  - Public Health
  - Voluntary, Community and Faith sectors, including Citizens' Advice Bureaux
  - Equality and Diversity issues
  - Libraries
  - Customer operations, public engagement, complaints and resources
  - Asylum Seekers
  - Community Strategy.

## **Responsibilities of Corporate Policy and Legal Services Portfolio Holder**

- 44 The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Corporate Policy and Legal Services Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough. This includes chairmanship of the Executive Monitoring Board (although this function can be delegated as required).
- 45 In particular, and subject to the Council's Executive Arrangements, which empower officers to make certain decisions, and which require the collective Cabinet to make other decisions, the Portfolio Holder has individual responsibility to make all decisions in respect of the following matters:
- Human Resources, Workforce and Organisational Development
  - Corporate Health and Safety and Occupational Health
  - Business Improvement Programme
  - Legal Services
  - Monitoring compliance with the Council's decision-making processes
  - Information governance (e.g. Senior Information Risk Owner and Caldicott Guardian)
  - Democratic Services, including:
    - Electoral Functions
    - Civic Functions
    - Member Training and Development
  - Registration Service (Births, Marriages and Deaths)
  - Corporate Risk Management /Performance
  - Civil Protection and Emergency Planning.



## **Responsibilities of Finance and Communication Portfolio Holder**

- 46 The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Finance and Communication Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough. This includes sitting on the Executive Monitoring Board in the capacity of Vice-Chairman (although this function can be delegated as required).
- 47 In particular, and subject to the Council's Executive Arrangements, which empower officers to make certain decisions, and which require the collective Cabinet to make other decisions, the Portfolio Holder has individual responsibility to make all executive decisions in respect of the following matters:
- The Financing of the Council and its Budget, and Corporate Business Planning
  - Capital Programme and Strategy; including capital receipts
  - Reserves, Income and Funding Strategy
  - Investment Strategy
  - Treasury and Business Management
  - Procurement, Corporate Contracts and Contract Monitoring
  - Insurance
  - External Audit
  - Pensions
  - Revenues and Exchequer Functions, Including Benefits
  - Crewe Market Scheme
  - Governance and Performance of ASDVs
  - Communications and Media Relations
  - ICT and Digital matters
  - Bus Service Review
  - Car Parking (interim role)

## **Scope of, and Limitations to, Portfolio Holder Decision-Making**

- 48 Individual Portfolio Holders are empowered to make all executive decisions in respect of their own portfolio area of responsibility except:
- 48.1 Decisions already taken by the Cabinet or by an Officer acting under delegated powers
  - 48.2 Decisions involving a departure from the Council's Budget and Policy Framework or any Cabinet or Regulatory Committee Policy. (This would include any virements or supplementary estimates and is subject to the provisions of the Finance and Contract Procedure Rules)
  - 48.3 Decisions involving expenditure or savings of £1 million or more
  - 48.4 Decisions which the Leader requests are not taken by an individual portfolio holder but are referred to Cabinet because of their significance or sensitivity.
- 49 A Portfolio Holder may take a Key Decision subject to the limitations above and subject to the usual requirements in relation to Key Decisions (including advance publication).
- 50 A Portfolio Holder may refer a decision to the full Cabinet.
- 51 A Portfolio Holder may delegate a function or decision to an Officer. If a function is so delegated, the Portfolio Holder shall complete a Specific Delegation record in the agreed form to be recorded in the [Specific Delegation Register](#).

## **Procedure for Taking Portfolio Holder Decisions**

- 52 Decisions must be made following consultation with one or more of the following officers/councillors as appropriate:
- Chief Executive
  - Appropriate Director or Head of Service
  - Monitoring Officer
  - Chief Finance Officer
  - Where there are cross-cutting implications – other appropriate Portfolio Holder(s)
- 54 The Portfolio Holder must take into account professional, legal and financial advice and implications.
- 55 If any of the above officers give advice that a decision would fall outside the powers of the Portfolio Holder, the Portfolio Holder shall refer the matter to the Cabinet.

- 56 Where it is not clear in which Portfolio an issue sits, the Leader will decide.
- 57 Decisions by individual Portfolio Holders must be recorded on a Decision Notice in an agreed format. The signed copy of the Decision Notice will be held by the Democratic Services team. The decision will be published electronically.
- 58 Any decisions by individual Portfolio Holders which constitute Key Decisions must follow the statutory requirements in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

### **Role of Deputy Cabinet Members**

- 59 There are a number of Deputy Cabinet Members whose role and functions are as follows:
  - 59.1 To ensure that the Cabinet Member is kept aware of issues which are of concern to Members, liaising with non-executive Members in order to do so
  - 59.2 To provide advice and support to, and work closely alongside, the relevant Cabinet Member, liaising regularly with them upon key issues
  - 59.3 To take the lead at meetings with the relevant Corporate Leadership Team officer, and other senior officers, in order to develop policies, at the direction of the Cabinet Member
  - 59.4 To meet regularly with senior officers, in order to keep fully apprised of relevant service issues, including budget meetings, and to advise the Cabinet accordingly
  - 59.5 To advise the Cabinet Member of relevant service issues, undertaking independent research, meeting regularly with senior officers, and keeping apprised of relevant service issues in order to do so
  - 59.6 To accompany the Cabinet Member when attending overview and scrutiny committee meetings, where required, and to do so on their behalf
  - 59.7 To take the lead executive role at conferences, seminars and meetings, including those of outside bodies at the request of the Cabinet Member, thereafter providing prompt feedback to the Cabinet Member and relevant officers
  - 59.8 To advise the Cabinet Member upon which diary appointments would benefit from the attendance of the Deputy Cabinet Member, on those occasions when the Cabinet Member is unable to do so, ensuring that the Cabinet Member's diary is monitored for this purpose

- 59.9 To assist the Cabinet Member in establishing and maintaining professional, effective and efficient working relationships with opposition groups, Chairmen of Committees, other Members, and Alternative Service Delivery Vehicles (ASDVs)
- 59.10 To attend Portfolio Holder decision-making meetings and to communicate with officers, Members, and staff, as appropriate, the decisions made
- 59.11 To communicate to staff, Members, partner agencies and service users, the policies of the Council and information about excellent Council activities
- 59.12 To undertake such other roles and responsibilities as may arise, or as are allocated by the Cabinet Member, except for formal decision-making.
- 60 A Deputy Cabinet Member cannot:
- 60.1 Exercise a vote on behalf of a Cabinet member at a formal meeting of the Cabinet
- 60.2 Be a member of an overview and scrutiny committee.

## Part 4

### Functions of Committees

---

- 1 This section sets out the functions, roles and responsibilities of the Committees of the Council. In summary, these are:
  - Overview and Scrutiny Committees
    - Corporate
    - Environment and Regeneration
    - Children and Families
    - Health and Adult Social Care and Communities
  - Planning
    - Strategic Planning Board
    - Northern and Southern Planning Committees
  - Public Rights of Way Committee
  - Licensing Committee
  - Staffing Committee
  - Investigation and Disciplinary Committee
  - Disciplinary Appeals Committee
  - Independent Persons Panel
  - Lay Members Appointment Committee
  - Constitution Committee
    - Civic Sub-Committee
    - Outside Organisations Sub-Committee
    - Appeals Sub-Committee
    - Community Governance Review Sub-Committee
  - Audit and Governance Committee
    - Hearings Sub Committee
  - Independent Remuneration Panel
  - Corporate Parenting Panel
  - Health and Wellbeing Board
  - Shared Services Joint Committee

## Overview and Scrutiny Committees

- 2 The Council has established four overview and scrutiny committees:
  - Corporate
  - Environment and Regeneration
  - Children and Families
  - Health and Adult Social Care and Communities
- 3 The Council fully supports the role of its overview and scrutiny committees in holding the Cabinet and others to account in discharging their functions and in policy formulation. The Council believes that the important parts of the role are:
  - 3.1 to assist the Council and Cabinet in reviewing its major plans, policies and strategies, which will set the climate in which the Cabinet and other decision-making bodies are required to operate;
  - 3.2 to assist with policy formulation
  - 3.3 to undertake specific reviews of the Council's organisation and service provision so that improvements can be made to service delivery.
- 4 The Council's overview and scrutiny functions include responsibility for reviewing the health service provision within its area, health promotion and the health and well-being of local communities. The Health, Adult Social Care and Communities Overview and Scrutiny Committee will undertake the scrutiny role in relation to health service provision in the Council's area. The Committee discharges the duties imposed on the Council under the relevant Health legislation.
- 5 The [Overview and Scrutiny Procedure Rules](#) set out arrangements for the operation of the Overview and Scrutiny Committees.

## Role of the Overview and Scrutiny Committees

- 6 The Overview and Scrutiny Committees:
  - 6.1 will discharge the Council's functions under Section 9F of the Local Government Act 2000 (Overview and Scrutiny Committees)
  - 6.2 will be responsible for the Council's scrutiny function including the preparation, implementation, monitoring and review of an annual work programme for overview and scrutiny in accordance with the objectives of the Corporate Plan and arrangements for the scrutiny of other public bodies particularly where required to do so by law

- 6.3 may establish such task and finish groups, appointing the Chairman in accordance with the Council's criteria and with such membership as it sees fit, to undertake scrutiny on a task and finish basis
- 6.4 will, as part of the overall role, ensure the Chief Executive and Corporate Leadership Team discharge their responsibilities effectively and efficiently in relation to the overview and scrutiny function
- 6.5 will scrutinise decisions of or actions taken by the Cabinet, and offer advice or make recommendations on the matter under scrutiny once the Committee has considered the issues
- 6.6 may scrutinise matters coming before Cabinet for decision and respond appropriately to the Cabinet on the matter once the Committee has considered the issues fully
- 6.7 will review or scrutinise decisions or actions taken in respect of any functions which are not the responsibility of the Cabinet and make reports or recommendations to the Council, or appropriate body of the Council
- 6.8 may refer to the Council or appropriate Committee/Sub-Committee any matter which, following scrutiny, the Committee determines should be brought to the attention of the Council or the Committee or Sub-Committee and may, if requested, offer any views or advice to the Cabinet in relation to any matter referred to the Committee for consideration
- 6.9 may undertake reviews with a cross-service approach wherever possible and make reports and recommendations to the Council (or other appropriate Council body) or the Cabinet to assist in the review of policies and strategies
- 6.10 may offer advice and make recommendations to the appropriate body of the Council on the review of policy
- 6.11 in performing its role, the Committee may consult and involve the local community and other local public, private and voluntary bodies or organisations
- 6.12 may review the Council's response to its obligations in respect of the overall performance management regime and, where appropriate, to advise the Cabinet or appropriate body of the Council of its findings
- 6.13 may advise the Cabinet and Council, as appropriate, of the Scrutiny response to the formulation of the Council's Budget and performance management reports
- 6.14 may recommend that a decision made but not yet implemented, and taken in respect of a function which is the responsibility of the Cabinet be reconsidered by the Cabinet

- 6.15 may scrutinise decisions after implementation to examine their effect and outcomes
- 6.16 may make reports or recommendations to the appropriate body of the Council in respect of any matters which affect the Council's area or its inhabitants
- 6.17 may review and make recommendations in relation to matters which are not the direct responsibility of the Council but which affect the social, economic or environmental well-being of an area or the Council's area as a whole or under any statutory requirement or Council contract, procedure or practice
- 6.18 may give partner authority notice in writing requiring them to have regard to the report or recommendations of the Committee in exercising their functions
- 6.19 may invite expert witnesses, members, officers and partners to answer questions
- 6.20 will ensure, in conjunction with the Constitution Committee, that the Council has in place appropriate mechanisms to protect organisational integrity, including the development of appropriate policies and guidance
- 6.21 will consider and advise the Cabinet in respect of "call-in" notices under the Council's relevant procedures.

### **Chairmen and Vice-Chairmen of Overview and Scrutiny Committees**

- 7 Nominees for appointment to these offices shall be notified by the political group leaders or group whips, and the Committee shall appoint the Chairman and Vice-Chairman.

### **Membership of Overview and Scrutiny Committees**

- 8 Overview and Scrutiny Committees will comprise 12 Members (15 for Health and Adult Social Care and Communities).

### **General Responsibilities of all Overview and Scrutiny Committees**

- 9 Any of the Committees may be invited to provide advice and recommendations on the development and updating of the policies of the Council, Wholly Owned Companies (WOCs), Alternative Service Delivery Vehicles (ASDVs) and other bodies.
- 10 The Committee memberships are appointed on a politically proportionate basis (plus appropriate co-option).



## **Specific Responsibilities of Overview and Scrutiny Committees**

- 11 The following sections set out the specific responsibilities of each Overview and Scrutiny Committee. These mirror the [portfolio responsibilities of the Cabinet Members](#). Where the Leader changes the responsibilities of the Cabinet Members, the following section of the Constitution shall be changed by the Monitoring Officer using his/her delegated powers to ensure the specific responsibilities of each Overview and Scrutiny Committee continue to mirror the allocation of portfolios to the Cabinet Members.

## **Corporate Overview and Scrutiny Committee (12 members)**

- 12 The Corporate Overview and Scrutiny Committee will include the chairman and vice-chairman of each of the other three Committees. It will:
  - 12.1 ensure that the three other Committees operate in a coherent and integrated manner
  - 12.2 act as an informal discussion forum with the Cabinet regarding the Committees' work programmes and priorities
  - 12.3 undertake (typically using the task-and-finish model) pieces of work which do not fall within the remit of any of the three thematic Committees
  - 12.4 decide which thematic committee will take the lead on cross cutting issues, or undertake the task itself
  - 12.5 co-ordinate and ensure the effectiveness of the Council's Overview and Scrutiny function
  - 12.6 act as a sounding board for matters of common interest across all committees, including new legislation and best practice
  - 12.7 monitor progress of the three thematic Committees with work programmes and where necessary review the workloads of the Committees
  - 12.8 Co-ordinate the formal consultation response to the draft budget proposals on behalf of the thematic Committees.
- 13 The Committee is also responsible for scrutinising the Council's corporate core. It is responsible for the monitoring and review of the following Cabinet portfolios: (1) Leader, (2) Finance and Communities, (3) Democratic & Public Engagement, Assurance and ICT and (4) Corporate Policy and Legal Services, and will liaise with those portfolio holders and the lead officers assigned to them.

### **Health and Adult Social Care and Communities Overview and Scrutiny Committee (15 Members)**

- 14 The Health and Adult Social Care and Communities Overview and Scrutiny Committee will undertake the scrutiny role in relation to health and wellbeing service provision in the Council's areas. The Committee discharges the duties imposed on the Council under the relevant Health legislation.
- 15 The Committee is responsible for the monitoring and review of the following Cabinet portfolios: (1) Health and (2) Adult Care and Integration, and will liaise with those portfolio holders and the lead officers assigned to them. The Committee will fulfil the Council's statutory responsibility to scrutinise community safety.

### **Environment and Regeneration Overview and Scrutiny Committee (12 Members)**

- 16 The Environment and Regeneration Overview and Scrutiny Committee will fulfil the functions of an Overview and Scrutiny Committee as they relate to performance management, policy development and review. The Committee is responsible for the monitoring and review of the following Cabinet portfolios: (1) Housing and Planning, (2) Regeneration and (3) Highways and Infrastructure, and will liaise with those portfolio holders and the lead officers assigned to them.
- 17 The Committee is also responsible for any functions relating to Flood Risk Management as required by Section 9FH of the Local Government Act 2000.

### **Children and Families Overview and Scrutiny Committee (12 Members)**

- 18 The Committee is responsible for the monitoring and review of the Children and Families Cabinet portfolio and will liaise with the portfolio holder and associated lead officers.
- 19 The four statutory co-optees in respect of the Council's Education function will also sit on this Committee.

## **Planning and Development Control**

### **Committee Structure and Delegations**

20 Development control functions will be discharged by a Strategic Planning Board, supported by two Planning Committees as follows:

- **Strategic Planning Board (12)**

This Board includes two Portfolio Holders responsible for Development Management and the Local Development Framework with a quorum of 3

- **Northern Planning Committee (12)**

- **Southern Planning Committee (12)**

with a quorum of 3.

### **Substitutes and Pool of Planning Substitutes**

21 A cross party pool of 9 planning substitutes shall be maintained to supplement the substitution arrangements referred to above. Each member of the pool must receive appropriate and up to date planning training without which they may not serve as a member of a planning committee. Political groups may nominate their own members to the pool in accordance with the proportionalities in force at the time and may vary their nominees as and when required subject to the training requirements referred to.

### **Strategic Planning Board**

#### *Terms of Reference*

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

- 22.1 to monitor the volume and type of applications determined; assessing the performance of the Development Management service, and, if appropriate
- 22.2 to vary the division of functions and delegations between the Board, the Planning Committees and the Director of Planning and Sustainable Development
- 22.3 to adopt working protocols and procedures: e.g. protocols governing the direction of applications between the Planning Committees, public speaking rights, Referral procedure and others.

- 23 To exercise the Council's functions relating to town and country planning and development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges. Most of these functions are delegated to the Planning Committees and then onwards to the Director of Planning and Sustainable Development, but the following are reserved to the Board:
- 23.1 applications for Large Scale Major Development as defined by the Strategic Planning Board from time to time. Currently this includes
- residential developments of 200 dwellings or more, or 4 ha or more;
  - 10,000 square metres or more, or 4ha. or more of retail, commercial or industrial or other floor space.
- This does not include re-applications for extant schemes or detailed applications where outline consent has been given or removal/variation of conditions.
- Where the application is to vary or remove a condition that was imposed by the Planning Committee it will not be delegated.
- However, there will be a presumption that a call in request by a local ward member will be agreed where applications are for the renewal (or extension of time) of extant unimplemented permissions:
- 23.2 Applications for major minerals or waste development other than small scale works which are ancillary to an existing mineral working or waste disposal facility
- 23.3 Applications involving a significant departure from policy which has been referred to SPB which a Planning Committee is minded to approve
- 23.4 Any other matters which have strategic implications by reason of their scale, nature or location
- 23.5 Any other matters referred up to it at the discretion of the Director of Planning and Sustainable Development, including major development of less than the thresholds set out in paragraph 2.3.1 above which have wider strategic implications.
- 24 To exercise a consultation and advisory role, commenting upon the content of proposed planning policy and upon the effectiveness of existing policies employed in development control decisions.
- 25 To exercise on behalf of the Council the function of final approval of the Area Action Plans, and any other document including a Site Allocation Policy, which form part of the Local Plan.

## Northern and Southern Planning Committees

### *Terms of Reference*

- 26 To exercise the Council's functions relating to town and country planning and development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges. Some applications have been reserved to the Strategic Planning Board: others are delegated on to the Director of Planning and Sustainable Development: the following are retained for the Planning Committees:
- 26.1 applications for Small Scale Major Development for:
- residential developments of 20 to 199 dwellings or between 1 and 4ha
  - retail or commercial/industrial or other floor space of between 5,000 and 9,999 square metres or 2-4ha.
- 27 This does not include re-applications for extant schemes or detailed applications where outline consent has been given or removal/variation of conditions.
- 28 Where the application is to vary or remove a condition that was imposed by the Planning Committee it will not be delegated.
- 29 However, there will be a presumption that a call in request by a local ward member will be agreed where applications are for the renewal (or extension of time) of extant, unimplemented permissions.
- 30 To determine any other planning & development control matters:
- 30.1 advertised as a departure from policy, which the Director of Planning and Sustainable Development is minded to approve
- 30.2 submitted by a councillor, senior Council officer (Grade 12 or above) or a member of staff employed within the Development Management and Policy service area; or by an immediate family member or partner of these where representations objecting to the application have been received. Where objections have been received, applications recommended for refusal can be dealt with by officers under delegated powers
- 30.3 significant applications by the Council either as applicant or land owner. This category will not normally include minor developments which accord with planning policy and to which no objection has been made
- 30.4 referred up to them by a councillor in accordance with the Committees' Referral procedure. However:
- (a) any request must be received within 15 working days of the issue of the electronic notification of the application, and set out the material planning consideration(s) which warrant the application going before committee

- (b) applications for householder development, listed building consents to alter/extend and conservation area consents will normally be dealt with under delegated powers
  - (c) applications for advertisements, tree work, prior approvals, Certificates of Lawfulness and notifications will not be eligible for call in and will be dealt with under delegated powers
  - (d) there will be a presumption that a call in request by a local ward member will be agreed where applications are for the renewal (or extension of time) of extant, unimplemented permissions.
- 30.5 any other matters referred up to them at the discretion of the Director of Planning and Sustainable Development.
- 31 The Committees will refer up to the Strategic Planning Board matters involving a significant departure from policy which they are minded to approve contrary to recommendation by the Director of Planning and Sustainable Development
- 32 Paragraph not used

## **Public Rights of Way Committee**

***Membership:*** 7 Councillors

### *Functions*

- 33 The Public Rights of Way Committee shall:
- 33.1 discharge all the functions of the Council in relation to all matters relating to public rights of way
  - 33.2 discharge the authority's functions in respect of Commons and Town and Village Greens
  - 33.3 be apprised of, approve, and comment on a range of policies, programmes and practices relating to Rights of Way, Commons and Town and Village Greens and countryside matters including but not limited to:
    - Progress reports on implementation of the Rights of Way improvement Plan (part of the Annual Progress Review for the Local Transport Plan)
    - Statements of Priorities
    - Enforcement Protocols
    - Charging Policy for Public Path Order applications.

## **Licensing**

- 34 The Licensing functions of the Council shall be carried out by the following bodies:
- 34.1 A full Licensing Committee of 15 Members (with a quorum of 8)
  - 34.2 Sub-Committees to be established by the Licensing Committee on an ad hoc basis, comprising 3 Members drawn from the full Committee, to deal with matters under the Licensing Act 2003 and the Gambling Act 2003.
  - 34.3 Sub-Committees to be established by the Licensing Committee on an ad hoc basis, comprising 5 Members (with a quorum of 3) drawn from the full Committee (of which at least one shall, subject to availability, be the Chairman or Vice Chairman of the full Committee), to deal with 'general' licensing matters.
  - 34.4 The requirement of political proportionality under section 15 of the Local Government and Housing Act 1989 is waived in relation to the sub-committee established under paragraph 35.3 above.
- 35 Before any Councillor who is a member of the Licensing Committee can attend a meeting and participate in the determination of an application or appeal by any individual or body, that Councillor must have attended a suitable training course dealing with the quasi-judicial nature of the role of the Committee.

## **Schedule of Functions**

- 36 The Licensing Committee and its sub committees have responsibility for the following licensing and registration functions of the Council:
- 36.1 Caravan sites and moveable dwellings/camping sites
  - 36.2 Hackney carriages and private hire vehicles, drivers and operators
  - 36.3 Sex shops and sex cinemas
  - 36.4 Performances of hypnotism
  - 36.5 Acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis
  - 36.6 Pleasure boats and vessels
  - 36.7 Market and street trading
  - 36.8 Premises for the preparation of food
  - 36.9 Scrap yards and motor salvage operators
  - 36.10 Dog breeding, pet shops, animal breeding, animal trainers and exhibitors, zoos and wild animals

- 36.11 Employment of children
  - 36.12 Charitable collections
  - 36.13 Operation of loudspeakers
  - 36.14 Storage of celluloid
  - 36.15 Meat product premises and dairy establishments
  - 36.16 Egg products, butchers and fish products
  - 36.17 Auction and wholesale markets
  - 36.18 Food business premises
  - 36.19 Licensed premises
  - 36.20 Gambling
  - 36.21 Alcohol Disorder Zones
  - 36.22 Public Place Orders.
- 37 With the exception that the power to resolve not to issue a casino licence is reserved to Full Council.
- 38 The functions of the Licensing Committee or Sub-Committee shall be determined by the full committee based on the delegations set out below.
- 39 These delegations to Sub-Committees shall be subject to the proviso that the Chairman or Vice Chairman of the full Committee may refer a matter up from a Sub-Committee to the full Committee where that matter is significant or controversial in nature.

#### **Ad Hoc Licensing Act 2003/Gambling Act 2005 Sub-Committee**

- 40 All functions under the Licensing Act 2003 and the Gambling Act 2005 shall be determined by the Sub Committee other than the power to set fees for Premises Licences (section 212 2005 Act) which shall be reserved to the full Licensing Committee.

#### **General Licensing Sub-Committee**

- 41 All functions relating to:
- 41.1 licensing of hackney carriages and private hire vehicles
  - 41.2 licensing of sex establishments
  - 41.3 licensing of street collections
  - 41.4 licensing of house to house collections
  - 41.5 licensing of street trading



- 41.6 licensing of scrap metal dealers
- 41.7 any other functions referred to by officers (with the exception of matters under the Licensing Act 2003/Gambling Act 2005) shall be determined by the General Licensing Sub Committee other than the following functions which are reserved to the full Licensing Committee:
  - 41.8 power to set fees in relation to hackney carriage and private hire drivers, vehicles and operators
  - 41.9 power to set fees for sex establishments
  - 41.10 power to designate streets as consent streets, licence streets or prohibited streets.
  - 41.11 power to set fees in relation to street trading
  - 41.12 power to approve policy in relation to the Scrap Metal Dealers Act 2013
  - 41.13 power to set fees and charges in relation to scrap metal dealers licences.

## **Staffing Committee**

***Membership: 8 Members***

### *Statement of Purpose and Functions*

- 42 The Staffing Committee is a key component of the Council's corporate governance. It provides an independent and high level focus on Human Resources, Organisational Development and Health & Safety matters affecting the Council.
- 43 The purpose of the Staffing Committee is:
- 43.1 to provide independent assurance to the members of the adequacy of the HR service and staffing related matters
  - 43.2 with regard to the designated Head of Paid Service, Monitoring Officer and Section 151 Officer (Statutory Officers):
    - to undertake the recruitment and selection process in accordance with the Staff Employment Procedure Rules
    - make a recommendation to the Council to approve the proposed appointment before an offer of appointment is made to that person
  - 43.3 appoint/dismiss the Statutory Chief Officers, namely:
    - The Executive Director of People and Deputy Chief Executive (Director of Children's Services)
    - Strategic Director of Adult Social Care and Health (Director of Adult Social Services)
    - Director of Public Health including undertaking the recruitment and selection process
  - 43.4 to appoint/dismiss the Executive Director of Place including undertaking the recruitment and selection process
  - 43.5 to approve "in year" salary or other benefit increases to the Head of Paid Service provided that this is within the agreed annual pay policy.

### *HR Policies*

- 44 To have the opportunity to review the Council's HR Policies and Procedures as required and to make recommendations to the Portfolio Holder. It is noted that the authority to approve HR Policies and Procedures remains with the Executive.
- 45 To make recommendations to Council in relation to the annual Pay Policy Statement and any amendments to such statement.

- 46 To make recommendations to Council in relation to decisions affecting the remuneration of any new post whose remuneration is or is proposed to be or would become £100,000 p.a. or more, unless the remuneration for the post is already included within the Council's annually approved Pay Policy Statement.
- 47 To make decisions in relation to proposed severance packages with a value of £100,000 or more as appropriate (including any pension strain).
- 48 To exercise the functions relating to local government pensions, so far as they relate to Regulations made under sections 7, 12, or 24 of the Superannuation Act 1972 or subsequent equivalent legal provisions.

#### *Appeals*

- 49 To establish a Staffing Appeals Sub Committee of [3/5] members on an ad hoc basis:
  - 49.1 to consider appeals from Staff in the following circumstances:
    - Appeals against dismissal
    - Appeals against grievance
    - Appeals against policy (but only the first appeal where the appeals are based on the same issues/circumstances)
- 50 Councillors appointed to the Staffing Appeals Sub Committee may only hear appeals if they have received the mandatory training on appeals procedures offered by the Council (tailored in accordance with the individual Councillor's Member's existing knowledge and experience).

#### *Organisational Performance*

- 51 To receive regular updates on performance information in order to assess the effectiveness of current Human Resources Organisational Development and Health & Safety policies and practices .These will include as a minimum:
  - Appeals against dismissal
  - Headcount Data
  - Sickness Absence
  - Turnover
  - HR Casework (including disciplinary, grievance and capability)
  - Health and Safety Accidents Records
  - Health and Safety Training.

## **Investigation and Disciplinary Committee**

### **Membership: 7 Members**

- 52 The Committee shall be politically balanced, shall consist of 7 Members of the Council and at least 1 member of the committee shall be a member of the Cabinet. Members of the committee must have completed mandatory training.

### *Statement of Purpose and Functions*

- 53 Members shall be appointed to the committee, as and when a committee is required to be convened, under the normal processes for making appointments to committees (via group leader/whip notification to the Head of Governance and Democratic Services). In accordance with the Model Disciplinary Procedure contained in the JNC Handbook for Chief Executives, IDC meetings shall be convened by the Monitoring Officer (in consultation with the Chairman of Staffing Committee) who will, together, filter out and deal with allegations which are clearly unfounded, trivial or can best be dealt with under some other procedure.
- 54 For consistency, unless unavoidably indisposed or conflicted, once appointed, the same Members shall comprise the committee (and any adjournment of it) over the course of the full consideration of the matter (and any related matter) that it has been convened to consider, until such time as the matter is disposed of.
- 55 To consider allegations/issues regarding disciplinary matters relating to the designated statutory officers of the Council (the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer) (the 'DSOs') and to authorise initial investigation.
- 56 To appoint an Independent Investigator ("II") to investigate allegations of misconduct against any DSO and to commission reports from an II.
- 57 To determine appropriate action upon receipt of any preliminary investigation.
- 58 To decide whether to suspend a DSO and to review decisions taken to suspend a statutory officer.
- 59 To determine what action should be taken against a DSO following an investigation. This could include action short of dismissal or dismissal.
- 60 In the event that the Committee recommends dismissal then that recommendation shall be referred to the Independent Persons Panel prior to being referred to Council for a determination in accordance with the Staff Employment Procedure Rules.
- 61 With the exception of a decision to recommend to Council that a DSO be dismissed, there shall be a right of appeal to the Disciplinary Appeals Committee against any decisions made by the Committee to take disciplinary action against a DSO.

## *Procedure for Investigation and Disciplinary Committee*

### Investigation

- 62 It is in the interests of all parties that the proceedings be conducted expeditiously and fairly.
- 63 In the exercise of its function, the Committee is to receive and consider any complaint/allegations made. It may:
- 63.1 make such enquiries of the relevant officer or any other person as it considers appropriate
  - 63.2 request additional information, explanations or documents from any person
  - 63.3 invite or receive representations from any person.
- 64 The Committee having carried out such steps as it considers appropriate and having heard representations from the DSO or his or her adviser shall decide whether the issues:
- 64.1 require no further formal action, or
  - 64.2 should be referred to an II
- 65 In considering whether the threshold in deciding to appoint an II has been met the Committee will assess whether:
- 65.1 if the allegations are proved it would be such as to lead to the dismissal or other action which would be recorded on the DSO's personal file
  - 65.2 there is evidence in support of the allegation/issue sufficient to require further investigation.
- 66 In deciding whether the threshold for the appointment of an II has been reached the Committee may carry out such preliminary investigations as it considers appropriate or necessary or authorise officers to do so. This shall be solely for the purpose of establishing whether or not the threshold for appointing an II to carry out an investigation has been met.
- 67 Before deciding to appoint an II or suspend a DSO the Committee shall invite the representations of the DSO unless it is impracticable to do so. The DSO shall have the right to be accompanied at the Committee Meeting.

### Receiving the II's Report/ Hearing

- 68 The Committee should receive any report produced by an II in relation to a DSO within one month of the receipt of the report by the Council.
- 69 The DSO shall have the right to attend and be accompanied at the Committee Meeting which considers the II's report.

- 70 The Committee shall consider the II's report and shall invite representations from the DSO and/or his/her representative. The Committee may impose disciplinary sanctions as set out in the Council's disciplinary procedures, the JNC Terms and Conditions Handbook for Chief Officers and the JNC Terms and Conditions Handbook for Chief Executives. In conducting any hearing the Committee shall have regard to the model disciplinary procedure in the JNC handbook for Chief Executives.

#### Decision

- 71 If the Committee decides that the DSO shall be dismissed the Full Council shall consider the Committee's recommendation of dismissal. Prior to consideration by Full Council the Independent Persons Panel shall consider the matter and the Proper Officer shall give all members of the Cabinet the opportunity to raise any objections prior to the decision. This process is governed by the Staff Employment Procedure Rules set out in this Constitution. [Note the Independent Persons Panel may meet concurrently with the Investigation and Disciplinary Committee]
- 72 In the case of any disciplinary action other than dismissal the DSO may appeal to the Disciplinary Appeals Committee against the decision.

#### Suspension

- 73 If a DSO has been suspended for a period of 2 months (or in the case of a decision to suspend taken under urgency provisions) then the Committee shall review that suspension. The Committee shall continue to review any continuing suspension every 2 months. In carrying out such review the Committee shall consider any representations made by the II and the DSO and/or his or her representative.

#### *Access to Information*

- 74 The Council's [Access to Information Procedure Rules](#) shall apply to meetings of the Committee.

#### *Access to Advice and Representation*

- 75 For the avoidance of doubt, the Committee may commission and have access to external legal and professional advice.
- 76 For the avoidance of doubt, if a DSO chooses to retain professional advice and/or representation at or in respect of any meeting of or hearing before the Committee, then the DSO in question shall be responsible for the cost of that advice or representation.

## **Disciplinary Appeals Committee**

### **Membership: 7 Members**

- 77 The Committee shall be politically balanced, shall consist of 7 Members of the Council at least 1 member of the committee shall be a member of the Cabinet. No member who was a member of the Investigation and Disciplinary Committee making the decision which is the subject of the appeal may be a member of the Disciplinary Appeals Committee. Members of the committee must have completed mandatory training.

### *Statement of Purpose*

- 78 Members shall be appointed to the committee, as and when a committee is required to be convened, under the normal processes for making appointments to committees (via group leader/whip notification to the Head of Governance and Democratic Services). For consistency, unless unavoidably indisposed or conflicted, once appointed, the same Members shall comprise the committee (and any adjournment of it) over the course of the full consideration of the matter (and any related matter) that it has been convened to consider, until such time as the matter is disposed of.
- 79 To consider any appeals brought by the designated statutory officers of the Council (the Head of Paid Service, the Monitoring Officer or Chief Finance Officer/S151 Officer) (the 'DSOs') against any decision made by the Investigation and Disciplinary Committee to take disciplinary action against a DSO short of dismissal.
- 80 In the event that the Investigation and Disciplinary Committee recommends dismissal, then that recommendation shall be referred to the Independent Persons Panel prior to being referred to Council for a determination in accordance with the Staff Employment Procedure Rules.

### *Procedure for the Disciplinary Appeals Committee*

- 81 The DSO shall have the right to attend and be accompanied at the Committee Meeting which considers the appeal.
- 82 The Committee shall consider the appeal in accordance with the Council's normal procedure for dealing with appeals.

### *Access to Information*

- 83 The Council's [Access to Information Procedure Rules](#) shall apply to meetings of the Committee.

### *Access to Advice and Representation*

- 84 For the avoidance of doubt, the Committee may commission and have access to external legal and professional advice.

- 85 For the avoidance of doubt, if a DSO chooses to retain professional advice and/or representation at or in respect of any meeting of or hearing before the Committee, then the DSO in question shall be responsible for the cost of that advice or representation.

## **Independent Persons Panel**

### *Statement of Purpose and Functions*

- 86 The Independent Persons Panel is an advisory committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of the officers designated as the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer (together the “Designated Statutory Officers” or “DSOs”) in accordance with Schedule 3 to The Local Authorities (Standing Orders) (England) Regulations 2001.
- 87 The Panel must be convened having invited at least two of the Independent Persons appointed under section 28(7) of the Localism Act 2011 (to advise on member conduct allegations) by the Council or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the Council considers appropriate.
- 88 It shall be for the Monitoring Officer to invite the Council’s current Independent Persons (being those persons appointed to advise on member conduct complaints under the Localism Act 2011) and if necessary one or more of the Independent Persons of neighbouring authorities (following consultation with the Monitoring Officers of those authorities), to be considered for appointment to the Independent Persons Panel. [It shall be for the Constitution Committee to confirm appointments to the Independent Persons Panel.]
- 89 The Panel will be appointed from those Independent Persons who have accepted an invitation to be considered for appointment, in accordance with the following priority order:
- an Independent Person who has been appointed by the authority and who is a local government elector in the Council’s area
  - any other Independent Person who has been appointed by the authority
  - an Independent Person who has been appointed by another authority or authorities.



- 90 One or more reserve members will be appointed to the Panel from Independent Persons who have been appointed under section 28(7) of the Localism Act 2011 by the authority or by another authority or authorities. A reserve member will take the place of any member of the Panel who is unable to act for the duration of the Panel meeting in question, or any adjournment of it. If more than one reserve member is available for the meeting then selection will be by the alphabetical order of their surnames so long as it does not conflict with the priority order set out in paragraph 90 above.
- 91 The appointment of a Panel Member to preside at the meeting will be the first item of business at each Independent Persons Panel meeting. Where there are equal votes cast at a meeting on any matter the Chairman may exercise a second or casting vote.
- 92 The quorum for a meeting shall be two members of the Panel.

#### *Terms of Reference*

- 93 To advise the Council on matters relating to the dismissal of a DSO.
- 94 The advice of the Independent Persons Panel must be sought in accordance with the Staff Employment Procedure Rules where the Investigation and Disciplinary Committee propose to recommend the dismissal of a DSO.
- 95 The advice of the Independent Persons Panel may (but need not) be sought by the Investigation and Disciplinary Committee at any other point in an investigation of disciplinary process or (if not conflicted) by the Disciplinary Appeals Committee.
- 96 For the avoidance of doubt, the Committee may commission and have access to external legal and professional advice.

## **Constitution Committee**

***Membership: 14 Members***

### *Terms of Reference*

- 97 The Constitution Committee is responsible for:
- 97.1 overseeing, monitoring, co-ordinating and implementing the Council's administrative and political business, including electoral matters; administrative boundaries and parishing; support for and facilities for Members, including Members' learning and development and party groups for the purpose of their duties as councillors; and administrative arrangements for and the conduct of the Council and other meetings
  - 97.2 determining policies and conventions in relation to the political management of the Council, including statutory requirements concerning political balance and rights to information
  - 97.3 reviewing the Council's Constitution and recommending any changes to the Council, except that:
  - 97.4 the Committee may make any changes which are not major, subject to the Monitoring Officer and the s.151 Officer agreeing that the proposed changes are not major and to Council subsequently being informed of such changes. Changes that are considered by the Committee and agreed by the Monitoring Officer and the s.151 Officer to be major shall be referred to Council for approval
  - 97.5 advising the Council on, and overseeing the promotion of private legislation on behalf of the Council
  - 97.6 recommending to the Council, as appropriate, the appointment of Members to Committees and Sub-Committees (including any co-opted members other than in respect of overview and scrutiny committees)
  - 97.7 appointing representatives to serve on outside bodies and organisations (including education bodies and establishments) not falling to the Cabinet to appoint
  - 97.8 overseeing and monitoring the Members' Allowance budget and keeping under review the scheme for the payment of allowances to Members through the appointment of an Independent Remuneration Panel to advise the Council on the adoption of the scheme and on any proposed amendments
  - 97.9 approving annual conference and seminar attendance
  - 97.10 making recommendations to the Council on civic issues, including those affecting the Mayor, Freeman and Aldermen

- 97.11 approving reasons for absence for Members
- 97.12 approving the overall seating plan for Council meetings
- 97.13 appointing persons to fill vacancies on parish councils where such councils are otherwise unable to act
- 97.14 approving the payment of a reasonable and proper allowance/expenses for the work undertaken by those Independent Persons appointed to the Independent Persons Panel.
- 98 The Constitution Committee shall appoint Lay Members (who shall not be Members of the Council) to serve on the Independent Admissions and Exclusion Appeals Panel as required under the relevant legislation.
- 99 The Constitution Committee has appointed a number of sub-committees as follows:
- [Civic Sub-Committee](#)
  - [Outside Organisations Sub-Committee](#)
  - [Appeals Sub-Committee](#)
  - [Community Governance Review Sub-Committee](#)

### **Civic Sub-Committee**

***Membership: 8 Members***

#### *Functions*

- 100 The Sub-Committee is responsible for:
- 100.1 reviewing and making recommendations to the Constitution Committee on the Mayoralty, including the Mayoral Code of Practice
  - 100.2 reviewing and making recommendations to the Constitution Committee on all matters relating to Honorary Aldermen and Freemen, including upon the benefits, rights and privileges to which they should be entitled
  - 100.3 determining all matters relating to nationally significant events except for those matters which the Sub-Committee considers it appropriate to refer to the Constitution Committee for determination
  - 100.4 reviewing and making recommendations to the Constitution Committee on civic matters such as the Council's flag flying policy and civic regalia.

## **Outside Organisations Sub-Committee**

**Membership:** 6 Members

### *Functions*

101 The Sub-Committee is responsible for:

- 101.1 overseeing the Council's appointments to outside organisations and making recommendations to the Constitution Committee or the Cabinet as appropriate; and
- 101.2 reviewing the process for considering appointments to outside organisations and recommending any changes to the Constitution Committee.

## **Appeals Sub-Committee**

**Membership:** 5 Members drawn from a pool of 10

### *Functions*

102 The Sub-Committee is responsible for:

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

## **Community Governance Review Sub-Committee**

***Membership:*** 6 Members

### *Functions*

- 103 The Sub-Committee is responsible for conducting a Borough-wide review of community governance arrangements for Cheshire East.

## **Audit and Governance Committee**

***Membership:*** 11 Members

- 104 The success of the Audit and Governance Committee depends upon its ability to remain apolitical. It must adopt a non-political approach to its meetings and discussions at all times. Remaining apolitical also places a duty on members not to make inappropriate use of information provided to the Committee for other purposes.
- 105 The Committee is composed of 11 Members, comprising 10 members of the Council and one independent non-voting member (a member who is not a Councillor) with the Chairman and Vice-Chairman being appointed at full Council. The co-option of an independent member is intended to bring additional knowledge and expertise to the Committee and reinforce its political neutrality and independence. To ensure that the Committee remains focussed on its assurance role, all members of the Committee, and any designated substitute, must be appropriately trained.

### *Statement of Purpose*

- 106 The Audit Committee is a key component of the Council's corporate governance. It provides an independent and high-level focus on the audit, assurance and reporting arrangements that underpin good governance and financial standards.
- 107 It provides an independent assurance to the Council of the adequacy of the risk management framework and the internal control environment.
- 108 It provides independent review of the Council's governance, risk management and control frameworks and oversees the financial reporting and annual governance processes.
- 109 It oversees internal audit and external audit, helping to ensure efficient and effective assurance arrangements are in place.
- 110 It promotes high standards of ethical behaviour by developing, maintaining and monitoring Codes of Conduct for Members of the Council (including co-opted Members and other persons acting in a similar capacity).

### *Functions*

- 111 The Committee has responsibility for the following areas of the Council's activities and Operations.

112 Detailed explanations of the areas covered in each heading are available by clicking on the links:

- [Governance, Risk and Control](#)
- [Internal Audit](#)
- [External Audit](#)
- [Financial Reporting](#)
- [Accountability arrangements](#)
- [Whistleblowing](#)
- [Anti-fraud](#)
- [Complaints](#)
- [Ombudsman](#)
- [Member Conduct and Standards](#)

113 The powers of the Committee in delivering these functions shall include (but not be limited to) the following:

- 113.1 To review and monitor the Council's treasury management arrangements in accordance with the CIPFA Treasury Management Code of Practice
- 113.2 To consider the head of internal audit's annual report
- 113.3 To consider the external auditor's annual letter, relevant reports, and the report to those charged with governance.
- 113.4 To consider specific reports as agreed with the external auditor
- 113.5 To review and approve the annual statement of accounts
- 113.6 To approve and monitor Council policies relating to "whistleblowing" and anti- fraud and corruption
- 113.7 To consider all findings of the Local Government Ombudsman (subject to statutory requirements relating to reporting and timings) including reports resulting in a finding of maladministration against the Council, and to make recommendations as to actions that may be necessary in connection with the Ombudsman's findings
- 113.8 To promote high standards of ethical behaviour by developing, maintaining and monitoring Codes of Conduct for Members of the Council
- 113.9 To grant dispensations under the provisions of the Localism Act 2011 to enable a member or co-opted Member to participate in a meeting of the Authority

- 113.10 To deal with complaints about member conduct under the Code of Conduct
- 113.11 To convene a Hearing sub-committee to hear complaints about Member conduct when required.
- 113.12 To review and approve the Annual Governance Statement and consider whether it properly reflects the risk environment and supporting assurance, taking into account internal audit's opinion on the overall adequacy and effectiveness of the Council's Framework of governance, risk management and control.

## **Hearings Sub-Committee**

### *Membership*

- 114 3 members drawn from a cross party panel of 15 members of the Council. An Independent Person is invited to attend all meetings of the Hearings Sub-committee and his/her views are sought and taken into consideration before the Hearings Sub-committee takes any decision on whether the member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.
- 115 An Independent Person is a person who is appointed under the Localism Act and has applied for the post following advertisement. He/she is appointed by Council.

### *Functions*

- 116 To consider complaints about member conduct under the Code of Conduct in accordance with the [Arrangements](#) for dealing with such complaints.

## **Independent Remuneration Panel**

**Membership:** 4 members (the minimum is 3 members)

### *Functions*

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

118.1 To make recommendations to the Council:

- as to the amount of basic allowances that should be paid to Members
- about the responsibilities or duties which should lead to the payment of a special responsibility allowance and as to the amount of such allowance
- about the duties for which a travelling and subsistence allowance can be paid and as to the amount of such allowance
- as to the amount of the co-optees' allowance
- as to whether the Council's allowances scheme should include an allowance in respect of the expenses for arranging for the care of children and dependants and, if it does make such recommendation, the amount of such allowance and the means by which it is determined
- on whether any allowance should be backdated to the beginning of a financial year in the event of the scheme being amended
- as to whether annual adjustments of allowance levels may be made by reference to an index and, if so, for how long such a measure should run
- as to treating basic allowance and special responsibility allowance as amounts in respect of which such pensions are payable.



## **Corporate Parenting Committee**

***Membership:*** 12 Members

### *Functions*

- 119 This is a cross party advisory committee appointed by the Cabinet.
- 120 It has 12 members who are appointed on a politically proportionate basis and nominated by the political groups.
- 121 The Committee includes representative young people from the Children in Care Council to advise the Committee.

### *Purpose*

- 122 The purpose of the Corporate Parenting Committee in its role as an advisory committee to the Cabinet is to ensure that the Council effectively discharges its role as Corporate Parent for all children and young people in care and care leavers from 0- 25 years of age and holds partners to account for the discharge of their responsibilities.

### *Terms of Reference*

- 123 Act as advocates for cared for children and care leavers, ensuring that their needs are addressed through key plans, policies and strategies throughout the Council and its commissioned services.
- 124 Ensure key strategic plans and reports relating to children in care and care leavers including the Children's Improvement Plan, Corporate Parenting Strategy and Sufficiency Statement.
- 125 Oversee the implementation of Cheshire East's Corporate Parenting Strategy and action plan and monitor the quality and effectiveness of services to ensure they fulfil the council's responsibilities.
- 126 Monitor the quality of care delivered by Cheshire East's residential children's homes via the provision of regular reports including summary reports of Regulation 44 visits and Ofsted inspections.
- 127 Review the performance of the Council in relation to outcomes for children and young people in care via the scrutiny of both quarterly performance reports and the annual reports of the Cared for Children Service, the Independent Reviewing Service and the Virtual School.
- 128 Establish an environment whereby Elected Members and young people work together to address the needs and aspirations of Cheshire East's children and young people in care and empower children and young people to participate in decision making with adults.

- 129 Oversee, with the Children and Families Overview and Scrutiny Committee, the implementation of best practice principles in all aspects of service delivery, with the aim of producing positive outcomes for children and young people in care.
- 130 Support the work of foster carers and adopters in making a difference to the care and support they provide to children and young people in care and those adopted.
- 131 Make sure that staff and partners follow Cheshire East's pledge for cared for children and young people and the care leaver's charter.
- 132 Receive and scrutinise the Independent Review Officers' Annual Report.

### *Governance*

133 The Committee will:

- meet bi-monthly
- report to the Council's Cabinet on at least an annual basis
- report to the relevant Council's Scrutiny Committee annually
- include young people representatives from the Children in Care Council.

### *Administration*

- 134 Minutes and agendas will be distributed and published no later than 5 clear working days prior to the meeting.
- 135 The meetings will take place out of school hours to enable cared for children and young people to participate.

## **Cheshire East Statutory Health and Wellbeing Board**

### *Membership*

136 The Core membership of the CEHWB will comprise the following:

#### Voting members

- Three councillors from Cheshire East Council
- The Strategic Director of Adult Social Care and Health
- The Director of Children's Services
- A local Healthwatch representative
- Two representatives of NHS Eastern Cheshire CCG
- Two representatives of NHS South Cheshire CCG
- Independent NHS representative (nominated by the CCGs)

#### Non-voting members

- The Chief Executive of the Council
- The Director of Public Health
- A nominated representative of NHS England

137 The councillor membership of the CEHWB is nominated by the Leader of the Council. The Leader can be a member of the CEHWB as one of the three councillors who are voting members.

138 The Core Members will keep under review the Membership of the CEHWB and if appropriate will make recommendations to Council on any changes to the Core Membership.

139 The above Core Members through a majority vote have the authority to appoint individuals as Non-Voting Associate Members of the CEHWB. The length of their membership will be for up to one year and will be subject to re-selection at the next Annual General Meeting "AGM" of the CEHWB. Associate Members will assist the CEHWB in achieving the priorities agreed within the Joint Health and Wellbeing Strategy and may indeed be chairmen of sub structure forums where they are not actual Core Members of the CEHWB.

140 The above Core Members through a majority vote have the authority to recommend to Council that individuals be appointed as Voting Associate Members of the CEHWB. The length of their membership will be for up to one year and will be subject to re-selection at the next Annual General Meeting "AGM" of the CEHWB.

- 141 Each Core Member has the power to nominate a single named substitute. If a Substitute Member be required, advance notice of not less than 2 working days should be given to the Council whenever practicable. The Substitute Members shall have the same powers and responsibilities as the Core Members.

#### *Functions*

- 142 To work in partnership to make a positive difference to the health and wellbeing of the residents of Cheshire East through an evidence-based focus on improved outcomes and reducing health inequalities.
- 143 To prepare, approve and keep up to date the Joint Strategic Needs Assessments (JSNAs) and Joint Health and Wellbeing Strategies (JHWSs).
- 144 To lead integrated working between health and social care commissioners, including providing advice, assistance or other support to encourage arrangements under section 75 of the National Health Service Act 2006 (i.e. lead commissioning, pooled budgets and/or integrated provision) in connection with the provision of health and social care services.
- 145 To be a forum that enables member organisations of the Board to hold each other to account for their responsibilities for improving the health of the population
- 146 To assist in fostering good working relationships between commissioners of health-related services and the CEHWB itself.
- 147 To assist in fostering good working relationships between commissioners of health-related services (such as housing and many other local government services) and commissioners of health and social care services
- 148 To undertake any other functions that may be delegated to it by the Council pursuant to section 196(2) of the Health and Social Care Act 2012. Such delegated functions need not be confined to public health and social care.
- 149 To provide advice assistance and support for the purpose of encouraging the making of arrangements under section 75 of the National Health Service Act 2006 in connection with the provision of such services.

#### *Roles and Responsibilities of CEHWB members*

- 150 To work with the Council and CCGs effectively to ensure the delivery of the Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy.

- 151 To work within the CEHWB to build a collaborative partnership to key decision making that embeds health and wellbeing challenge, issue resolution and provides strategic system leadership.
- 152 To participate in CEHWB discussions to reflect the views of their partner organisations, being sufficiently briefed to be able to make recommendations about future policy developments and service delivery.
- 153 To champion the work of the CEHWB in their wider work and networks and in all individual community engagement activities.
- 154 To ensure that there are communication mechanisms in place within partner organisations to enable information about the CEHWB's priorities and recommendations to be effectively disseminated.
- 155 To share any changes to strategy, policy, and the system consequences of such on budgets and service delivery within their own partner organisations with the CEHWB to consider the wider system implications.

#### *Accountability*

- 156 The CEHWB carries no formal delegated authority from any of the individual statutory bodies.
- 157 Core Members of the CEHWB have responsibility and accountability for their individual duties and their role on the CEHWB.
- 158 The CEHWB will discharge its responsibilities by means of recommendations to the relevant partner organisations, which will act in accordance with their respective powers and duties.
- 159 The Council's Core Members will ensure that they keep Cabinet and wider Council advised of the work of the CEHWB.
- 160 The CEHWB may report and be accountable to Full Council and to both NHS Clinical Commissioning Groups (CCG's) Governing Bodies by ensuring access to meeting minutes and presenting papers as required.
- 161 The CEHWB will not exercise scrutiny duties around health or adult social care services directly. This will remain the role of the Cheshire East Health and Adult Social Care Overview and Scrutiny Committee and in respect of children's health, the Children and Families Overview and Scrutiny Committee. Decisions taken and work progressed by the CEHWB will be subject to scrutiny by the Health and Adult Social Care Overview and Scrutiny Committee.
- 162 The CEHWB will provide information to the public through publications, local media, and wider public activities by publishing the minutes of its meetings on the Council's website. The CEHWB is supported by an Engagement and Communications Network across HWB organisations to ensure this function can operate successfully.

### *Frequency of Meetings*

- 163 There will be no fewer than four public meetings per year (including an AGM), usually once every three months as a formal CEHWB.
- 164 Additional meetings of the CEHWB may be convened with agreement of the CEHWB's Chairman.

### *Agenda and Notice of Meetings*

- 165 Any agenda items or reports to be tabled at the meeting should be submitted to the Council's Democratic Services no later than seven working days in advance of the next meeting. Generally, no business will be conducted that is not on the agenda.
- 166 Any voting member of the Board may approach the Chairman of the Board to deal with an item of business which the voting member believes is urgent and under the circumstances requires a decision of the Board. The Chairman's ruling of whether the requested item is considered / tabled or not at the meeting will be recorded in the minutes of the meeting.
- 167 In accordance with the Access to Information legislation, Democratic Services will circulate and publish the agenda and reports prior to the next meeting. Exempt or Confidential Information shall be circulated to all board members the Board.

### *Annual General Meeting*

- 168 The CEHWB shall elect the Chairman and Vice Chairman at each AGM, the appointment will be by majority vote of all Core Members present at the meeting.
- 169 The CEHWB will approve the representative nominations by the partner organisations as Core Members.

### *Quorum*

- 170 Any full meeting of the CEHWB shall be quorate if there is representation of any four of the following statutory members: NHS Eastern Cheshire CCG, NHS South Cheshire CCG, Local Health Watch, a Councillor and an Officer of Cheshire East Council.
- 171 Failure to achieve a quorum within fifteen minutes of the scheduled start of the meeting, or should the meeting become inquorate after it has started, shall mean that the meeting will proceed as an informal meeting but that any decisions shall require appropriate ratification at the next quorate meeting.

### *Procedure at Meetings*

- 172 General meetings of the CEHWB are open to the public and in accordance with the Council's Committee Procedure Rules will include a Public Question Time Session. Papers, agendas and minutes will be published on the Cheshire East Health and Wellbeing website.
- 173 The Council's Committee Procedure Rules will apply in respect of formal meetings subject to the following:
- 173.1 The CEHWB will also hold development/informal sessions throughout the year where all members are expected to attend and partake as the agenda suggests
  - 173.2 Core Members are entitled to speak through the Chairman. Associate Members are entitled to speak at the invitation of the Chairman
  - 173.3 With the agreement of the CEHWB, subgroups can be set up to consider distinct areas of work. The subgroup will be responsible for arranging the frequency and venue of their meetings. The CEHWB will approve the membership of the subgroups
  - 173.4 Any subgroup recommendations will be made to the CEHWB who will consider them in accordance with these terms of reference and their relevance to the priorities within the Joint Health and Wellbeing Strategy and its delivery plan
  - 173.5 Whenever possible decisions will be reached by consensus or failing that a simple majority vote by those members entitled to vote.

### *Expenses*

- 174 The partnership organisations are responsible for meeting the expenses of their own representatives.
- 175 A modest CEHWB budget will be agreed annually to support engagement and communication and the business of the CEHWB.

### *Conflicts of Interest*

- 176 In accordance with the Council's Committee Procedure Rules, at the commencement of all meetings all CEHWB Members shall declare disclosable pecuniary or non-pecuniary interests and any conflicts of interest.
- 177 In the case of non pecuniary matters Members may remain for all or part of the meeting, participate and vote at the meeting on the item in question.
- 178 In the case of pecuniary matters Members must leave the meeting during consideration of that item.

### *Conduct of Members at Meetings*

- 179 CEHWB members will agree to adhere to the seven principles of Public Life outlined in the CEHWB [Code of Conduct](#) and the Code when carrying out their duties as a CEHWB member.

### *Review*

- 180 The above terms of reference will be reviewed every two years at the CEHWB AGM.
- 181 Any proposed amendments shall be referred to the Constitution Committee and Council.

DRAFT



## **JOINT ARRANGEMENTS**

### **Shared Services Joint Committee**

#### *Terms of Reference of the Joint Committee*

- 182 The Joint Committee's role is to oversee the management of those services which are provided on a Cheshire wide basis on behalf of Cheshire West and Chester Borough Council and Cheshire East Borough Council, to ensure effective delivery of such services and to provide strategic direction.
- 183 The Joint Committee is specifically responsible for:
- 183.1 Developing and agreeing the strategy for each of the services
  - 183.2 Agreeing the responsibilities of each Council to support the delivery of the approved Business Plan Service Delivery Statements and agreed strategy, including any specific responsibilities falling to the Discharging Council
  - 183.3 Ensuring that such responsibilities are clearly documented in a Business Plan (or similar)
  - 183.4 Ensuring that the services are provided within the policy and budget set by the Councils
  - 183.5 Ensuring the provision of adequate funds and other resources
  - 183.6 Approving the Business Plan and Service Delivery Statements for the Specified Functions, including targets for service quality, performance and efficiency
  - 183.7 Ensuring that there are robust plans for any disaggregation of services and that there is smooth transition to the separate arrangements
  - 183.8 Ensuring that the arrangements for the management of the Cheshire Shared Services enable each Council's statutory requirements to be met
  - 183.9 Ensuring that clear policies are in place and that these are complied with
  - 183.10 Agreeing the basis for apportioning cost between the two Councils and the amount to be apportioned
  - 183.11 Reviewing the performance of the services and initiating additional/remedial action where appropriate
  - 183.12 Approving business cases for proposed changes and overseeing the progress of the subsequent work

- 183.13 Ensuring that effective risk management arrangements are in place, that the services are subject to adequate and independent audit and that any audit recommendations are acted upon
- 183.14 Maintaining an up to date list of the respective Chief Officers and supporting them in the performance of their duties
- 183.15 Resolving issues that have been referred to the Joint Committee by Chief Officers
- 183.16 Providing an Annual Report to each of the two Councils.

*Constitution of the Joint Committee*

- 184 Each of the Councils shall appoint three Members (being elected members of that Council) as its nominated Members of the Joint Committee; the Members appointed shall have full voting rights.
- 185 Each Council may nominate one or more substitute Members to attend any meeting in place of an appointed Member from that Council, subject to notification being given to the Lawyer and Secretary to the Joint Committee before the start of the meeting. The Member appointed as a substitute shall have full voting rights where the Member for whom they are substituting does not attend. If a Council's nominated Members attend a meeting of the Joint Committee, any named substitute may also attend as an observer but shall not be entitled to vote.
- 186 Each Member of the Joint Committee shall comply with the Code or Conduct of their Council when acting as a Member of the Joint Committee.
- 187 Each of the Councils may remove any of its nominated Members or substitute Members of the Joint Committee and appoint a different Member or substitute to the Joint Committee by giving written notice to the Lawyer and Secretary to the Joint Committee.
- 188 Each Council shall have three votes. These shall be exercised by the nominated Members who are elected members of the Council. In the absence of a Council's nominated Member, a vote may be exercised by the named substitute who is an elected member of the Council.
- 189 Each Member of the Joint Committee shall serve upon the Joint Committee for as long as he or she is appointed to the Joint Committee by the relevant Council but a Member shall cease to be a member of the Joint Committee if he or she ceases to be a Member of the Council appointing him or her or if the relevant Council removes him or her as a Member of the Joint Committee.
- 190 Any casual vacancies howsoever arising shall be filled by the Council from which the vacancy arises by notice in writing sent to the Lawyer and Secretary to the Joint Committee.
- 191 Meetings of the Joint Committee shall be held at the offices of the Member appointed as the Chairman.

- 192 The Council hosting the first Meeting shall appoint one of its nominated members as Chairman and that member shall remain Chairman until the first meeting taking place after the elapse of one year from the time of his or her appointment unless he or she ceases to be a Member of the Joint Committee. On the expiry of the first Chairman's term of office, the Council which did not appoint the first Chairman shall appoint one of its nominated members as Chairman for a period of one year from the date of his or her appointment. The same procedure shall be followed for the appointment of Chairman in subsequent years.
- 193 The Council which has not appointed the Chairman of the Joint Committee In any year shall appoint one of its nominated Members as Vice Chairman.

### **Cheshire Police and Crime Panel**

#### *Terms of Reference*

- 194 The Terms of Reference for the [Cheshire Police and Crime Panel](#) can be accessed on its own website.

This page is left intentionally blank

## Part 5

### Responsibility for Functions – Officer Delegations

---

#### Scheme of Delegation

##### Introduction

- 1 This part of the Constitution sets out the ways in which the officers of the Council can make decisions and which decisions they have the power to make. It is called the "Scheme of Delegation."
- 2 This Scheme of Delegation is set out as follows:

Title	Contents
Introduction	Sets out what this Part of the Constitution (the "Scheme of Delegation") covers and relevant definitions
<a href="#">General Principles</a>	Sets out the general principles which apply to all decision making by officers
<a href="#">General Delegations to all Chief Officers</a>	Sets out the delegations which apply to all officers called "Chief Officers"
<a href="#">Delegations to the Chief Executive/Head of Paid Service</a>	Sets out the delegations which apply to this officer
<a href="#">Delegations to the Executive Director (People)</a>	Sets out the delegations which apply to this officer
<a href="#">Delegations to the Executive Director (Place)</a>	Sets out the delegations which apply to this officer
<a href="#">Delegations to the Chief Operating Officer</a>	Sets out the delegations which apply to this officer
<a href="#">Delegations to the s.151 Officer</a>	Sets out the delegations which apply to this officer
<a href="#">Monitoring Officer</a>	Sets out the delegations which apply to this officer
<a href="#">Proper Officer arrangements</a>	Sets out the legal requirements for "proper officers", what this means and a link to the <a href="#">Proper Officer Register</a>

- 3 “Officers” is the term used to refer to the people employed, retained or appointed by the Council to advise and support Councillors and implement their decisions. The term “officers” in this Constitution includes all the people who operate in this capacity including contractors, consultants, agency staff and volunteers.
- 4 The Council operates a “Cascade” principle of delegation to ensure that decisions are taken at the most appropriate level closest to those who will be affected. This means that the vast majority of the Council’s decisions and actions will fall into the category of operational day to day decisions taken by its officers.
- 5 In order to ensure the smooth functioning of the Council and the efficient delivery of services, Full Council and the Cabinet have delegated to officers all of the powers that they need to perform their roles.
- 6 Certain officers have specific legal duties to ensure that the Council acts within the law, uses its resources wisely and exercises its powers properly. These officers are known as “Statutory” or “Proper” Officers and some have specific legal titles in addition to their job titles. Sections 9 and 10 of this Part of the Constitution explain these roles.
- 7 The way the Council structures its services and its officer arrangements changes from time to time to reflect changes in service delivery and best practice. The current arrangements include a **Chief Executive/Head of Paid Service** (as the most senior officer of the Council) supported by five other senior roles which are set out below and which together are referred to as the “**Chief Officers**”:
  - 7.1 Chief Executive and Head of Paid Service
  - 7.2 Executive Director (People)
  - 7.3 Executive Director (Place)
  - 7.4 Chief Operating Officer
  - 7.5 Section 151 Officer
  - 7.6 Monitoring Officer
- 8 The Head of Paid Service, the Section 151 Officer and the Monitoring Officer are also called “statutory officers” (because every council is required by statute – the law – to have these posts).
- 9 It is possible (subject to any legal restrictions) for the roles of Section 151 officer and/or the Monitoring Officer to be combined with another of the Chief Officer posts (or with other officer posts in the Council) so the five roles in paragraph 7 might be delivered by fewer than five officers, depending on the officer arrangements in place at any time.
- 10 There are also a number of formal functions which the Council has to allocate to named officers called “Proper Officers”. There is a [Proper Officer Register](#) which sets out these details.

- 11 Click to see the [current organisational structure](#) of the Council, showing more detail about the roles and responsibilities of the Chief Officers and the officers supporting them to deliver all the Council's services.

### **General Principles Relating to Officer Delegation**

- 12 This scheme gives the power for the Chief Officers and Statutory Officers to take decisions in relation to all the functions in their areas of responsibility except where:
  - 12.1 a matter is prohibited by law from being delegated to an officer, and
  - 12.2 a matter has been specifically excluded from delegation by this scheme, by a decision of the Council, the Cabinet/Executive or a Committee or Sub-Committee.
- 13 The cascade principle under which this scheme operates means that any officer given powers under this scheme can further delegate those powers to other officers either:
  - 13.1 through a Local Scheme of Delegation (which sets out all the standing delegations given to specific officers in defined areas of the Council's service areas). This is a [full list of the Local Schemes of Delegation](#) and you can look at any of the schemes in detail, or
  - 13.2 through a Specific Delegation in relation to an individual decision which must be evidenced in writing using the agreed standard form, dated and signed by the officer delegating the power with a copy supplied to the Monitoring Officer – here is a [register of these Specific Delegations](#). A Specific Delegation does not need to be given where an officer is given delegated powers to action a particular decision by Council, Cabinet or a Committee or Sub Committee.
- 14 All Local Schemes of Delegation (and any changes to them) must be agreed by the Chief Operating Officer and the Monitoring Officer.
- 15 Where a function has been delegated to an officer (including where sub-delegated through the Cascade principle), the person or body making the delegation may at any time take back responsibility for the function and may therefore exercise the function (make the decision) despite the delegation.
- 16 In some circumstances the officer to whom a power has been delegated may consider a matter to be of such importance or sensitivity that their delegated authority should not be exercised. In these circumstances he or she may refer the matter back to the delegator for determination.
- 17 Any power delegated or cascaded under this Scheme can be exercised by the relevant Chief Officer or Statutory Officer and in all cases by the Chief Executive personally.

- 18 The powers of this Scheme are delegated to the officers referred to by title within this Scheme of Delegation. So the delegations apply to whoever holds that post title at any time – not to the individual person. The powers are automatically transferred to any successor officer, to whom the functions are allocated following any reorganisation of the Council's management arrangements, irrespective of a change in the title/name of the officer post.
- 19 Delegations relate to all provisions for the time being in force under any applicable legislation and cover executive, non-executive and local choice functions of the Council and all powers and duties incidental to that legislation.
- 20 Any delegation must be exercised:
  - 20.1 In compliance with all the Council's Procedure Rules, the Pay Policy Statement approved annually and the Officer Code of Conduct
  - 20.2 In accordance with the decision-making requirements set out in the Constitution including requirements for decision-records and access to information
  - 20.3 Having identified and managed appropriate strategic and operational risks within the officer's area of responsibility
  - 20.4 Within the approved budget and policy framework approved by the Council (or separate approval must be sought)
  - 20.5 Following any appropriate legislative, regulatory, consultation, equalities or procedural requirements that may be required.
- 22 An officer, in exercising delegated powers may consult the relevant portfolio holder or chairman of committee if he/she considers it appropriate to do so and shall consult other appropriate officers for professional advice including legal, financial and technical officers and shall have regard to any views and advice received.
- 23 Whenever legislation is amended or replaced by new provisions, then the relevant delegated authority in this scheme applies to those new provisions. Whenever new legislation relevant or related to the functions exercised by the Chief Officer is introduced, that Officer will have the delegated authority to exercise powers or otherwise take action under that legislation until such time as the Council, Cabinet, a committee or the Chief Executive decides to whom to allocate responsibility for the new legislation.



- 24 Chief Officers may appoint another officer as their deputy and such deputy shall have all the powers of a Chief Officer as set out in this Constitution. A deputy may be appointed in relation to all the areas of service delegated to the Chief Officer under this Constitution or in relation to a particular area of service only. A deputy may be appointed for a specific period of time (for example to cover the absence of a Chief Officer) or without time limitation. The appointment of a deputy shall not prevent the exercise by the Chief Officer of any delegation set out in this Constitution.
- 25 If there is any dispute or lack of clarity as to which Chief Officer has power to make decisions on specific areas of service, the Chief Executive shall have power to determine where the delegation should be exercised.

### **General Delegations to all Chief Officers**

- 26 The following delegations shall apply to all Chief Officers (and to any appointed deputies).

#### *Urgent action*

- 27 To act on behalf of the Council in cases of urgency in the discharge of any function of the Council for which his/her Directorate or Service has responsibility, other than those functions which by law can be discharged only by the Council or a specific Committee. This delegation is subject to the conditions that any urgent action:
- 27.1 shall be reported to the Cabinet, the appropriate Cabinet Member or the appropriate Committee
  - 27.2 shall take account of advice of the Monitoring Officer and the Section 151 Officer
  - 27.3 shall be exercised in consultation with the appropriate Cabinet Member or the Chairman of the appropriate Committee.

#### *Implementation of decisions*

- 28 To take all necessary actions (including the letting of contracts, undertaking statutory processes and incurring expenditure) to implement decisions of Cabinet and Council.

#### *General Operational*

- 29 To have overall responsibility for the operational management of the relevant area of service and for bringing forward such strategic plans and policies, and implementing all decisions, including the allocation of resources within approved estimates, as are necessary to exercise the functions for which the service is responsible.

### *Consultation*

- 30 To undertake and consider the outcome of statutory and non-statutory consultations on service provision.
- 31 To respond to Government Consultations and consultations from other bodies, in consultation with the relevant Portfolio Holder(s) or committee chairman.
- 32 To undertake all steps required to complete Government Statistical Returns.

### *Finance*

- 33 To manage the finance of their departments to ensure value for money and the development of budget policy options with a detailed assessment of financial implications.
- 34 To enter into contracts and incur expenditure.
- 35 To determine the level of fees or charges payable in respect of any goods or services supplied, work undertaken or the loan or use of plant, equipment or machinery.

### *Staffing*

- 36 To deal with the full range of employment and staff management issues, below Chief Officer level including but not limited to appointments, terms and conditions (other than those negotiated nationally) training, discipline, dismissal, performance, progression, promotion, shifts and working hours, grievance, grading, emoluments, expenses, allowances, sick pay, leave, equal opportunities and health and safety in accordance with approved policies and the Staff Employment Procedure Rules.
- 37 To implement changes to staffing structures subject to prior consultation with all appropriate parties affected by the decision, including any Trades Union, except where the restructure:
  - 37.1 involves the loss of one or more posts not currently vacant
  - 37.2 involves re-grading of posts or the grading of new posts
  - 37.3 involves changes to existing National or Local Agreements and policies
  - 37.4 cannot be achieved within the delegated powers in respect of budgets.
- 38 To enter into reciprocal arrangements for the authorisation and appointment of officers to facilitate cross-border co-operation in the discharge of delegated functions with any other local authority.

### *Land and assets*

- 39 To manage land, premises, vehicles, plant, equipment, machinery, stock, stores, supplies, materials, furniture appliances and uniforms necessary for the provision of services.
- 40 To administer the supply of goods and services to other public authorities and bodies under the Local Authorities (Goods and Services) Act 1970 and all other enabling legislation.
- 41 To make application for planning permission and any other necessary applications for other consents required for the development of land.

### *Legal authorisation and enforcement*

- 42 To authorise officers possessing such qualifications as may be required by law and where Chief Officers are satisfied that appropriate training has been undertaken, to:
  - 42.1 take samples, carry out inspections or surveys, enter land and premises and generally perform the functions of and/or act as a duly authorised, officer of the Council (howsoever described)
  - 42.2 issue certificates of authority or certify copies of documents
  - 42.3 enforce the requirements of legislation
  - 42.4 instruct the Monitoring Officer to consider whether or not legal proceedings to enforce the requirements of legislation are appropriate.
- 43 With the approval of the Monitoring Officer, to:
  - 43.1 authorise the issue and service of requisitions for information, any notice, order or direction
  - 43.2 approve or issue any licence which may be required or authorised by or under any legislation or byelaws (not otherwise mentioned in this scheme of delegation)
  - 43.3 authorise the institution of legal and quasi-legal proceedings and/or other action (including debt recovery) as is considered necessary to protect the interests of the Council
  - 43.4 sign certificates for contracts.
- 44 To exercise the role of authorising officer and designated person under the Regulation of Investigatory Powers Act 2000.

### *Safeguarding children and vulnerable adults*

- 45 To ensure that arrangements are in place to discharge the responsibilities of the Council within their functional responsibilities in respect of the need to safeguard and promote the welfare of children and of vulnerable adults.

### **Delegations to the Chief Executive/Head of Paid Service**

- 46 The Chief Executive is the most senior officer in the Council. It is his/her role to support the Councillors and to provide leadership for the Council.
- 47 The Chief Executive is empowered to operate all the services of the Council and except where powers, duties and functions are delegated to a councillor decision-making body or Cabinet member, to exercise all powers, duties and functions of the Council, including those delegated to other officers.
- 48 Every Council has to, by law, appoint one of its officers as the Head of Paid Service. The Chief Executive is also the Council's Head of Paid Service. His/her responsibility in this role is to make proposals to the Council about the manner in which the discharge of the Council's functions is co-ordinated and the numbers, grades and organisation of staff required and the proper management of those staff.
- 49 The Chief Executive is given delegated power to undertake the following roles and responsibilities and to take the following decisions subject to the terms of this Constitution:
- 49.1 To be the Council's principal officer representative and to promote its good image and reputation
  - 49.2 To lead and direct the strategic management of the Council
  - 49.3 To appoint other officers as Proper Officers for the purposes of any specific Council service area or function
  - 49.4 Unless another officer is appointed as Proper Officer, to act as Proper Officer for the Council for the purposes of all Council service areas and functions
  - 49.5 To maintain an up to date Proper Officer Register showing who is appointed to act as the Proper Officer for all Council service areas and functions
  - 49.6 To exercise any executive functions where the Council does not have a Leader and Deputy Leader in office
  - 49.7 To discharge emergency planning and civil protection functions;
  - 49.8 To take such steps (including the incurring of expenditure where necessary) as may be required in the event of any national or local emergency requiring immediate action by the Council

- 49.9 To sign settlement agreements for employees/ex-employees, in consultation with the Leader of the Council and Chairman of the Staffing Committee
- 49.10 Subject to paragraph 49.6 above, to approve the pay, terms and conditions of service and training of any employee except where an approval would be contrary to the provisions of the annual Senior Officer Pay Policy Statement which is reserved to full Council or where an approval falls within the responsibilities of the Staffing Committee or would be contrary to the employment policies of the Council
- 49.11 To make decisions affecting the remuneration of any existing post whose remuneration is or is proposed to be or would become £100,000 p.a. or more in consultation with the Leader and Chairman of the Staffing Committee
- 49.12 To undertake the communications, marketing and media functions of the Council with regard to policy and strategic direction (operational responsibility rests with the Chief Operating Officer).

### **Delegations to the Executive Director (People)**

- 50 The Executive Director (People) holds a number of statutory roles for the Council:
- 50.1 The Director of Children's Services (required by Section 18 of the Children Act 2004)
- 50.2 The Chief Education Officer (required by Section 532 of the Education Act 1996) and
- 50.3 The Director of Adult Services (required by Section 6 of the Local Authority Social Services Act 1970).
- 51 The Executive Director (People) is given delegated power to take any decisions in relation to the following areas of the Council's operations and services, subject to the terms of this Constitution:

### **Children and Families**

#### **Children's Social Care:**

- Cared for Children
- Children in Need and Child Protection
- Children's Safeguarding
- Children's Commissioning

#### **Education and 14-19 Skills:**

- Education and Infrastructure and Outcomes

- Education Participation and Pupil Support

#### **Children's Prevention and Support:**

- Preventative Services
- Special Education Needs and Disability

#### **Children's Development and Partnerships**

#### **Adult Social Care:**

- Adult Social Care Services
- Care4CE (internal care provision)
- Mental Health and Learning Disability Services
- Professional Social Work Standards
- Social Work Support
- Deprivation of Liberty Safeguards

#### **Public Health:**

- Public Health Commissioning
- Health Improvement
- Public Health Protection

#### **Adults Commissioning**

#### **Community and Partnerships:**

- Local Area Working and Partnerships
- Community Safety
- Regulatory Services and Environmental Health

#### **Delegations to the Executive Director (Place)**

52 The Executive Director (Place) is given delegated power to take any decisions in relation to the following areas of the Council's operations and services, subject to the terms of this Constitution.

#### **Planning and Sustainable Development:**

- Spatial Planning
- Neighbourhood Planning
- Development Management

- Regulation and Protection

#### **Infrastructure and Highways:**

- Strategic Infrastructure
- HS2
- Highways Contract Management
- Parking Services

#### **Growth and Regeneration:**

- Assets and Property
- HS2 Growth Strategy
- Regeneration
- Strategic Housing
- Energy and Waste

#### **Rural and Green Infrastructure**

- Tatton Park
- Public Rights of Way
- Countryside
- Visitor Economy
- Cultural Economy
- Rural Economy

#### **Client Commissioning (Alternative Service Delivery Vehicles)**

- Civicance Limited
- The Skills and Growth Company
- Engine of the North Limited
- Transport Service Solutions Limited
- Tatton Park Enterprise Limited

#### **Delegations to the Chief Operating Officer**

- 53 The Chief Operating Officer is given delegated power to take any decisions in relation to the following areas of the Council's operations and services, subject to the terms of this Constitution.

**Legal and Democratic Services:**

- Legal Service
- Governance and Democratic Services
- Audit and Compliance

**Finance and Performance:**

- Strategic and Corporate Finance
- Business Intelligence and Performance
- Programme Management Office

**Professional Services:**

- Facilities
- Service Finance/Accountancy Services
- Project Finance
- Procurement
- Business Solutions
- Collaboration and Shared Services

**ICT Services****Human Resources:**

- Operational HR
- Schools HR Consultancy
- Organisational Development and HR Strategy
- Workforce Strategy
- Health and Safety
- Occupational Health

**Customer Operations:**

- Libraries
- Revenues
- Benefits
- Online Services



- Customer Service Centre
- Emergency Planning

**Client Commissioning (Alternative Service Delivery Vehicles):**

- Everybody Sport and Recreation
- ANSA Environment Services Limited
- Orbitas Bereavement Services Limited

54 The Section 151 officer is:

- 54.1 The financial adviser to the Council, the Cabinet and Officers
- 54.2 The Authority's 'responsible financial officer' under all relevant legislation and
- 54.3 Responsible for the proper administration of the Council's financial affairs as specified in, and undertakes the duties required by, Section 151 of the Local Government Act 1972, Section 114 of the Local Government Finance Act 1988, the Local Government and Housing Act 1989, the Local Government Act 2003, and all other relevant legislation.

55 The section 151 officer shall have the following delegated powers and responsibilities:

- 55.1 To carry out the functions and responsibilities which are detailed in the Finance Procedure Rules
- 55.2 To secure effective treasury management, including taking all action necessary in relation to all debts, payment of accounts, loans (including guarantees and indemnities), grants, advances, investments, financing and banking generally
- 55.3 To take all action necessary to ensure the safeguarding of assets by maintaining and administering appropriate insurance and approving requests to postpone legal charges
- 55.4 To take all necessary action in respect of the Council's role in relation to the administration and operation of the Cheshire Pension Fund
- 55.5 To make recommendations to the Council on Council Tax requirements, on the Council tax base and to administer and manage generally all matters relating to Council Tax, Non Domestic Rates, Community Charge and General Rates including the awarding of discounts, relief, and exemptions and the levying, collection, recovery, and disbursement of all sums due to the Council in respect of the same in accordance with all governing Regulations, and

- 55.6 To negotiate, enter into arrangements and act generally on behalf of the Council in respect of continuing financial matters arising from arrangements and obligations existing between the former Cheshire County and six District Councils.

### **Delegations to the Monitoring Officer**

- 76 The Monitoring Officer is appointed in accordance with Section 5 of the Local Government and Housing Act 1989 and is responsible for supporting and advising the Council in relation to:
- 76.1 the lawfulness and fairness of the decision making of the Council
  - 76.2 the Council's compliance with its legal responsibilities and requirements and
  - 76.3 matters relating to the conduct of elected Councillors
- 77 The Monitoring Officer will provide advice to ensure that decisions are taken on proper authority, by due process, and in accordance with the budget and policy framework.
- 78 The Monitoring Officer shall, where necessary, and in consultation with the Head of Paid Service and the section 151 officer, report any proposal, decision or omission considered to be unlawful or to amount to maladministration to the Council or the Executive, as appropriate in accordance with Section 5 of the Local Government and Housing Act 1989.
- 79 The Monitoring Officer shall have the following delegated powers and responsibilities:-
- 80 To authorise the settlement of actual or potential uninsured claims or Local Government Ombudsman cases across all functions of the Council up to £5,000 (claims above this level shall be determined by the relevant Portfolio Holder)
  - 81 To prosecute, defend, make application, serve any notice or appear on behalf of the Council in any Court, Tribunal or hearing on any criminal, civil or other matter (including appeals).
  - 82 To institute legal proceedings for any offences under any local Byelaws or Orders in force within the Council's area
  - 83 To lodge objections to any proposal affecting the Council's interests.
  - 84 To determine applications for the display of the crest or logo of the Council.
  - 85 To take all action including the completion of agreements, the service of notices, giving of directions, obtaining or issuing orders, authorising the execution of powers of entry, and the institution and defence of legal proceedings necessary or desirable to protect and advance the interests of or discharge the roles, functions and responsibilities of the Authority.

- 86 To make discretionary payments under Land Compensation Act 1973 on the recommendation of the District Valuer.
- 87 In accordance with the Council's approved policy to monitor the integrity of the operation of the Regulation of Investigatory Powers Act 2000 by:
- 87.1 Ensuring compliance with all relevant legislation and with the Codes of Practice
- 87.2 Engagement with the Inspectors from the Office of the Surveillance Commissioner when they conduct their inspections, and, where necessary, oversight of the implementation of post-inspection action plans approved by the relevant oversight Commissioner
- 87.3 Monitoring authorisations and conducting a quarterly review of applications, authorisations and refusals, and reviewing renewals and cancellations.
- 88 To make Orders for the Temporary Closure of Highways and Regulation of Traffic.
- 89 To attest the affixing of the Council's seal to all documents approved for sealing.
- 90 To authorise appropriate Officers to administer formal cautions in respect of criminal offences.
- 91 To determine whether a particular claim for payment under the Members Allowances Scheme is appropriate.
- 92 To authorise appropriately qualified employees or persons acting on behalf of the Council.
- 93 To appear in, and conduct legal proceedings in, any Court or Tribunal on behalf of the Authority.
- 94 To prove debts owed to the Authority in bankruptcy and liquidation proceedings.
- 95 In consultation with the Chairman and Vice-Chairman of the Constitution Committee, to make such changes to the Council's Constitution as he/she deems to be necessary and which are in the Council's interests and not major in nature, including, but not limited to, changes:
- amounting to routine revisions
  - to provide appropriate clarity
  - to correct typographical and other drafting errors
  - to reflect new legislation
  - to correct inconsistencies in drafting
  - to reflect new officer structures and job titles, properly approved through Council processes.

## **Arrangements for Proper Officer functions**

- 96 Many legislative provisions require the appointment of a "Proper Officer" to undertake formal responsibilities on behalf of the Council.
- 97 The Chief Executive/Head of Paid Service shall be the Proper Officer of the Council for the purposes of the Local Government Act 1972, the Local Government Act 2000 and for all other statutory purposes unless:
- such designation is given by the Council to any other officer or
  - the Chief Executive/Head of Paid Service, exercising the powers given to him/her by this Constitution, appoints another officer of the Council to be the Proper Officer for a specific service area or function.
- 98 The Proper Officer shall maintain a [Proper Officer Register](#) which shall record all Proper Officer appointments.

## Chapter 3

### Procedure Rules

---

This part of the Constitution covers the following areas:

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

## **Part 1**

### **Rules of Procedure**

---

#### **1. Council meetings**

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

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

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

#### **Quorum**

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

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

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

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

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

## **Urgent Business**

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

## **Confirmation of Minutes**

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

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

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

## **Motions Moved Without Notice**

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

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

- 1.18 A Member of the Council may ask the Mayor, the appropriate Cabinet Member or the Chairman of a Committee any question about a matter which the Council, the Cabinet or the Committee has powers, duties or responsibilities. The response will be given within 10 working days by

written answer with a copy to all other Members (except where the response contains exempt or confidential information).

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



put and answered in accordance with this Procedure Rule, at the start of the consideration of that matter.

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

### **Notices of Motion**

- 1.33 A notice of motion must relate to matters for which the Council has responsibility or which affect its area.
- 1.34 The arrangements for submitting and dealing with notices of motion are set out in [Appendix 2](#).

### **Rules of Debate**

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

### **Rescission of Earlier Resolution**

- 1.36 Subject to paragraph 1.37, at a meeting of the Council, no motion or amendment shall be moved to rescind any resolution of the Council which was passed within the preceding 6 months or which is to the same effect as one which has been rejected within that period.
- 1.37 Such a motion may be moved if:
- it is recommended by the Cabinet or a Committee, or
  - notice of such motion has been given under Procedure Rule 12 and signed by at least 8 elected Members of the Council.

### **Voting**

- 1.38 Voting will be by a show of hands.
- 1.39 When a Member asks for a recorded vote to be taken, and 8 other Members support the request, the vote will be recorded to show whether each Member voted for or against the motion or abstained.
- 1.40 A recorded vote will not be taken if the vote has already begun to be taken by a show of hands.
- 1.41 Members must be in their designated seats for their vote to be counted. The Mayor may agree to waive this requirement before the vote is taken.
- 1.42 A Member may require, after a vote is completed, that the Minutes of the meeting record how he/she voted or abstained.
- 1.43 A Member may, immediately after the item of business is voted upon, request that a lost motion or amendment be recorded in the minutes.

- 1.44 Where there are equal votes cast for a motion or amendment the Mayor or the person presiding will have a second or casting vote.

### **Offices and Appointments**

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

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

- 1.47 The Chairmanships and vice-chairmanships of the Council's committees and sub-committees shall be allocated to the political groups each year at the Annual Meeting of Council. Nominations to chairmanships and vice-chairmanships shall be notified by the Council's Group Leaders or Group Whips in writing or by email to the Head of Governance and Democratic Services and shall thereafter be published on the Council's website. Such nominations shall be in accordance with the relevant numerical allocations made by Council in relation to the body in question.
- 1.48 A Member appointed as Chairman or Vice-Chairman must be a member of the relevant Committee or Sub-Committee.
- 1.49 Where a vacancy occurs in the office of Chairman or Vice-Chairman, the relevant Group Leader or Whip shall nominate a replacement in accordance with the provisions of paragraph 1.47.
- 1.50 Where both the Chairman and Vice-Chairman are absent from a meeting of the relevant body, a Chairman will be appointed from those Members of the body present, provided the meeting is quorate and subject to any restrictions on the eligibility of Cabinet Members for appointment.
- 1.51 A description of the [Role and Responsibilities of a Chairman](#) of a meeting is available.

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

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

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

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

### **Co-option**

- 2.2 A committee or sub-committee may co-opt any person as a Member.
- 2.3 An overview and scrutiny committee or sub-committee may co-opt persons to advise and/or assist in the scrutiny of particular areas of the Council's functions.
- 2.4 Co-optees must not be elected Members of the Council. Save as provided in paragraphs 3.1 and 3.2 of the Overview and Scrutiny Procedure Rules, co-optees shall not be entitled to vote at any meeting.

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

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

### **Substitutions**

- 2.6 A Political Group may appoint a substitute member to a committee or sub-committee in accordance with the procedure set out in [Appendix 5](#).

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

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

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

- 2.8 Meetings of Committees and Sub-Committees will be set out in the calendar of meetings approved by the Council. There will be a presumption against alterations to the date, time and venue for meetings.
- 2.9 A meeting of a decision-making body scheduled in the Calendar of Meetings may be cancelled or changed by the Chairman following consultation with the whole membership of the body provided that such cancellation or change takes place at least five clear working days before the scheduled date of the meeting to enable sufficient public notice to be given.

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

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

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

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

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

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

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

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

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

## **Voting**

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

## **Offices and Appointments**

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

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

- 2.29 Where a motion has been referred under Procedure Rule 12 from the Council to a Committee or Sub-Committee for consideration and report, the mover of the motion has the right to attend the meeting and to explain the motion.
- 2.30 The mover of the motion will be advised of the date and time of the meeting at which the matter is to be considered and he/she will be sent a copy of the relevant papers.

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

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

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

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

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

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

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

- 2.35 Notwithstanding their rights as a member of the public, a Member may:
- 2.35.1 attend any meeting of a Committee or Sub-Committee to which he/she has not been appointed, for the purposes of performing his/her duties as a Councillor, subject to rule 2.35.2
  - 2.35.2 when exempt or private and confidential business is transacted, the Member seeking to attend a meeting on the basis set out in paragraph 2.35.1 must have the prior agreement of the Monitoring Officer and the Chairman of the Meeting on the basis that the Member has a "need to know" about the exempt or private and confidential business to be transacted.
- 2.36 Where a Member has permission to attend a meeting under paragraph 2.35 above, he/she will be given, when he/she arrives at the meeting, a copy of the agenda and relevant papers.
- 2.37 The Member has no right to vote, but may speak with the consent of the Chairman of the meeting.
- 2.38 At meetings of the Strategic Planning Board and Planning Committees, Members' speaking rights are subject to the protocol on public speaking entitled '[Public Speaking Rights at Strategic Planning Board and Planning Committees](#)'.

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

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

DRAFT

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

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

- 3.1 At the Annual Meeting of Council, the Leader will present to the Council a written report containing the following information about executive functions in relation to the coming year:
  - 3.1.1 the names, addresses and wards of the people appointed to the Cabinet by the Leader
  - 3.1.2 the extent of any authority delegated to Cabinet Members individually, including details of the limitation on their authority
  - 3.1.3 the terms of reference and constitution of such Cabinet committees as the Leader appoints and the names of Cabinet Members appointed to them
  - 3.1.4 the nature and extent of any delegation of executive functions to area committees, any other authority or any joint arrangements, and the names of those Cabinet Members appointed to any joint committee for the coming year
  - 3.1.5 the nature and extent of any delegation to officers with details of any limitation on that delegation, and the title of the officer to whom the delegation is made (where this is not already covered in the Council's Constitution).
- 3.2 Where the Cabinet, a committee of the Cabinet, or an individual Member of the Cabinet is responsible for an executive function, they may delegate further to a committee of the Cabinet, an area committee, joint arrangements, or an officer.
- 3.3 Even where executive functions have been delegated, that does not prevent the discharge of delegated functions by the person or body who delegated them.

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

- 3.4 Those responsible for discharging executive functions will ensure that they are acting within the law and this Constitution.
- 3.5 The functions in question are set out in Chapter 3 of this Constitution. This also sets out the body or individual responsible for taking decisions in respect of executive functions.



- 3.6 The Cabinet, and any individual member or committee thereof, must ensure, and be satisfied, that they have appropriate and adequate legal, financial and other relevant professional advice from officers before taking a decision on any matter before them. Advice from the Council's Monitoring Officer and Section 151 Officer should always be obtained where there is doubt about vires, procedure or probity.

### **Conflicts of Interest**

- 3.7 Where the Leader or any Cabinet Member has a conflict of interest, s/he will follow the requirements of the Council's Code of Conduct for Members.
- 3.8 If all (or a majority) of the Members of the Cabinet present have a conflict of interest then consideration will be given to applying to the Audit and Governance Committee for a dispensation from the provisions of the Code.
- 3.9 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 paragraph 3.8 shall be considered.

### **Meetings of the Cabinet**

- 3.10 The Cabinet will meet as indicated in the Council's programme of meetings. The Cabinet or the Leader may agree to change the date of any programmed meeting, to cancel a meeting or to arrange additional meetings as it/he/she sees fit.
- 3.11 The Cabinet may meet in public or in private, subject to legal requirements and the Access to Information Procedure Rules contained in the Constitution.
- 3.12 The Leader will preside at meetings of the Cabinet. If the Leader is absent then the Deputy Leader will preside. Where both the Leader and Deputy Leader are absent, the Cabinet Members present shall appoint one of their number to be the chairman of that meeting.
- 3.13 All Members of the Cabinet shall be entitled to attend meetings of the Cabinet unless the Cabinet determine otherwise.
- 3.14 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.

### **Quorum at Cabinet Meetings**

- 3.15 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.

## **Attending and speaking at Cabinet Meetings**

- 3.16 The Chairman and Spokesperson(s) of the Council's overview and scrutiny committees shall be entitled, at any formal public meeting of the Cabinet, to speak to any matter on the agenda for that meeting.
- 3.17 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.
- 3.18 At every formal public meeting of the Cabinet there shall be a period of 20 minutes for questions to be put to Cabinet members by members of the Council. Notice of these questions is not required in advance of the meeting. The following rules shall apply:
- 3.18.1 Questions must relate to the powers, duties or responsibilities of the Cabinet.
- 3.18.2 Questions put to Cabinet members must relate to their portfolio responsibilities.
- 3.18.3 The Leader will determine how Cabinet question time should be allocated where there are a number of members wishing to ask questions.
- 3.18.4 Questions will be brief, clear and focussed.
- 3.18.5 Questions which the Leader deems to be:
- inappropriate, frivolous, derogatory or vexatious;
  - related to a Council employment or staffing matter or
  - defamatory.
- will not be allowed.
- 3.18.6 Questions will not be allowed which repeat, or which are substantially the same as questions asked at a meeting of Council or Cabinet within the preceding 6 months.
- 3.18.7 Where any question might be disallowed under the agreed provisions, the Leader, as chairman of the Cabinet, will have absolute discretion to determine whether to do so.
- 3.18.8 Questions will be asked and answered without discussion. In replying, the Cabinet member responding will use their reasonable endeavours to address the matters raised in the question. The Cabinet member responding may decline to answer any question or may: reply direct, reply by reference to a publication, or reply by written answer.

- 3.18.9 Following each answer, the Leader may permit the questioner to ask a concise and focussed supplementary question which relates to the subject matter of the initial question and answer.
- 3.18.10 Where a question relates to a matter which appears on the agenda of the Cabinet meeting in question, the Leader may allow the question to be asked at the beginning of consideration of that item.
- 3.19 The Cabinet may invite any person to its meetings to discuss matters of mutual interest or concern or to advise. Such persons may only be given access to confidential and/or exempt information on terms to be decided by the Monitoring Officer so as to ensure that the Council's obligations under the Local Government Acts in respect of Access of Information and Data Protection are observed.

### **Business at Cabinet Meetings**

- 3.20 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.
- 3.21 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.
- 3.22 The Cabinet is obliged to consider matters referred to it by an overview and scrutiny committee, or by the Full Council, for consideration under the Overview and Scrutiny Procedure Rules.
- 3.23 The Cabinet will, at each formal meeting, confirm the record of decisions taken at its previous meeting as a correct record.
- 3.24 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.
- 3.25 In taking decisions, the Cabinet must satisfy itself that it has before it adequate and appropriate advice from the relevant service, and from legal and financial advisers who shall, where appropriate, be present at any meeting where a decision is being taken and that that advice is taken into consideration in determining the matter. Where there is any doubt about vires, procedure or probity then advice must be obtained from the Monitoring Officer and the Section 151 Officer.

- 3.26 Meetings of the Cabinet will be programmed into the Council diary. The Cabinet can agree to change the date of any programmed meeting, to cancel a meeting or to arrange additional meetings as it sees fit.
- 3.27 The order of business at Cabinet meetings is a matter for the Cabinet to determine.
- 3.28 Any Member of the Cabinet may require the Monitoring Officer to place an item on the Agenda for a stipulated meeting of the Cabinet.
- 3.29 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.
- 3.30 The Head of the Paid Service, the Monitoring Officer and/or the Section 151 Officer can include an item for consideration on the Agenda of a Cabinet Meeting. In pursuance of their statutory duties they can require that a special meeting of the Cabinet be convened.
- 3.31 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.
- 3.32 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.
- 3.33 Subject to 3 clear working days' notice being provided to the Head of Governance and Democratic Services, questions can be submitted by members of the public at meetings of the Cabinet, in accordance with Council Procedure Rule No. 41 and [Appendix 7](#) of the Procedure Rules.
- 3.34 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.

- 3.35 A written record of all Cabinet decisions will be kept by the Head of Governance and Democratic Services and these will be made available publicly as soon as practicable after the decision has been taken (excluding the disclosure of confidential and exempt information and in accordance with the Overview and Scrutiny Procedure Rules). In recording decisions of the Cabinet, the Head of Governance and Democratic Services will set out the decision, the reasons for the decision and alternative options considered as required under the Access to Information Procedure Rules in the Constitution.

### **Voting at Cabinet Meetings**

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

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

- 3.37 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.
- 3.38 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.

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

- 3.39 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 Chapter 3 of this Constitution.

### **Motion under Procedure Rule 11**

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

## **Resolving Disputes**

- 3.41 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.

## **Reserves/substitute members**

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

## **Urgent Decisions – Executive Matters**

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

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

- 3.44 The Leader will ensure that the requirements of the Access to Information Procedure Rules are met in relation to the publication of Key Decisions.
- 3.45 Those decisions which are Key Decisions are defined in Chapter 2 Part 1 paragraph 11 of this Constitution.
- 3.46 Where the Cabinet as a body is making Key Decisions, that meeting shall be held in public in accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. The requirements of these Regulations also apply to any body, Portfolio Holder or Officer to whom the relevant executive powers have been delegated.
- 3.47 When the Cabinet or a Portfolio holder exercising an executive function under delegated powers receives a report or background information which he/she intends to take into consideration when making a Key Decision (and the report or papers are not exempt or confidential) that decision shall not be taken until the report has been made available for inspection by the public for five clear working days following receipt of the report by the decision taker. A copy of such report must be supplied as soon as reasonably practicable to the Chairman of the relevant overview and scrutiny committee or, in his/her absence, the Vice-Chairman of the Committee. The report must also list any background papers.

- 3.48 Where the inclusion of a matter in the Forward Plan is impracticable (28 clear days' notice being required for private decisions) and the matter would be a Key Decision, that decision shall only be made:
- (a) where the Monitoring Officer has notified the Chairman of the relevant overview and scrutiny committee, or in his/her absence the Vice-Chairman of the committee, of the matter about which the decision is to be made;
  - (b) where the Monitoring Officer has made available for public inspection a copy of the notice given under (a) above, and
  - (c) where a period of five clear working days has elapsed since the Monitoring Officer made available the notice referred to in (b) above.
- 3.49 Where the date by which a Key Decision must be made makes compliance with the requirements under 54.5 above impracticable, the decision shall only be made where the decision maker has obtained agreement from:
- (a) the Chairman or, in his/her absence, the Vice-Chairman of the relevant overview and scrutiny committee, or
  - (b) if there is no Chairman or Vice-Chairman of the relevant overview and scrutiny committee, or if neither is able to act, the Mayor or, in his/her absence, the Deputy Mayor
- that the making of the decision is urgent and cannot reasonably be deferred. Such decisions when made are not subject to the provisions relating to call-in. All Members will be sent electronic notification of the agreement reached that compliance with the requirements of Rule 54.5 above was impractical.
- 3.50 The Leader shall submit a report to the Full Council containing details of each Key Decision taken during the preceding three months under 54.6 above and agreed as urgent. The report will include particulars of each such Key Decision and a summary of the matters in respect of which each decision was made.
- 3.51 Where an executive decision which was not classified as being a Key Decision has been made and the relevant overview and scrutiny committee is of the opinion that the decision should have been so classified, that Committee may require the Cabinet to submit a report to the Full Council within such reasonable period as the Committee may specify, containing the following details:
- (i) the decision and the reasons for it
  - (ii) the decision maker, and
  - (iii) if the Cabinet is of the opinion that the decision is not a Key Decision, the reasons for this view.

## **General Provisions**

### **Records of Attendance**

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

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

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

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

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

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

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

- 4.4 No Member shall, without the consent of the Chairman of the appropriate body, disclose to any person any decision or proceedings of that body except:
- 4.4.1 when a report on the matter has been circulated to the Council by that body
  - 4.4.2 when the decision has become public knowledge, or
  - 4.4.3 when the matter comes within the powers of that body and a final decision has been made upon it

provided that this paragraph shall not authorise any disclosure which would contravene paragraphs 4.2 or 4.3.



### *Prohibited Disclosure*

- 4.5 The press and public shall be excluded during the consideration of any item of business which would be likely to disclose information which:
- 4.5.1 has been furnished to the Council by a Government Department on terms which forbid disclosure, or
  - 4.5.2 would be prohibited by law or by an order of the Court.

### *Disorderly Conduct*

#### Motion to end Disorderly Conduct

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

#### Persistent Misconduct

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

### *General Disturbance*

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

### *Disturbance by Members of the Public*

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

## **Inspection of Documents**

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

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

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

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

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

- 4.12 Subject to paragraphs 3.43 and 4.13 the Minutes of the Council, Committees or Sub-Committees, and Cabinet Decision Records shall be open for inspection by any Member of the Council.

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

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

### **Sealing of Documents**

*Authority*

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

*Attestation*

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

*Signature of Documents*

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

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

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

## **Suspension of Procedure Rules**

### *Motion Required*

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

### *Notice of Motion*

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

## **Interpretation of Procedure Rules**

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

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

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

## **Definition of 'Clear Working Days'**

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

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

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

## Petitions

- 4.24 Petitions regarding matters affecting the area or the functions of the Council or relating to consultation exercises or pursuant to specific legislation may be accepted at the start of an Ordinary Council meeting. Petitions will not be considered at the Annual Meeting of Council or at Extraordinary Meetings of Council unless the Extraordinary Council Meeting is convened to consider the subject matter of the petition.
- 4.25 Petitions must be 'signed' (in person or by name if electronic) by at least 10 petitioners and contain the name and contact details of the 'petition organiser'.
- 4.26 For a Petition to be reported to and debated at a meeting of the Council, it must contain at least 3000 signatories or petitioners (reduced to 1500 signatories or petitioners where the petition relates to a local issue, affecting no more than 2 electoral wards within the authority's area). The Petitions Officer will request the appropriate Chief Officer to prepare a report. This report together with the Petition will be presented to full Council for debate. Council may then refer the Petition to the appropriate decision making body for further consideration.
- 4.27 Petitions that are considered by the Monitoring Officer to be vexatious, frivolous, abusive, defamatory or otherwise inappropriate will not be accepted.
- 4.28 Petitions to hold an officer to account may be considered at a meeting of an Overview and Scrutiny Committee, where an officer, identified either by name or by post title, will be required to answer questions on the conduct of a particular matter. The petition must contain at least 2000 signatories/petitioners (reduced to 1000 signatories/petitioners where the petition relates to a local issue, affecting no more than 2 electoral wards within the authority's area). Such Petitions must relate to the Chief Executive, a Director or a Head of Service of the authority. Any petition that raises issues of competence or misconduct will be referred to the Chief Executive (or to the Head of Human Resources in respect of the Chief Executive) and will be considered under the authority's Disciplinary Procedures, and not under this Petitions Procedure Rule.
- 4.29 Where a petition organiser is not satisfied with the outcome of the authority's consideration of his/her petition, he/she may appeal to an Overview and Scrutiny Committee by notifying the Petitions Officer of his/her intention to appeal within 20 working days of being notified of the authority's decision on the petition.
- 4.30 Further information on submitting a petition can be found in the [Petitions Scheme](#)

## **APPENDIX 1**

### **Motions Which May Be Moved Without Notice**

- 1 Appointment of a Chairman of the meeting at which the motion is made.
- 2 Motions relating to the accuracy of the minutes of the Council, a Committee or Sub-Committee.
- 3 That an item of business specified in the summons should have precedence.
- 4 Reference to the Council, a Committee, Sub-Committee, or the Cabinet.
- 5 Appointment of or appointment to Committees, Sub-Committees, or the Cabinet occasioned by an item mentioned in the summons to the meeting.
- 6 Receipt of Records of Decisions and Minutes of Committees and Sub-Committees
- 7 Adoption of recommendations of the Cabinet, Committees and Sub-Committees and any consequent resolutions.
- 8 That leave is given to withdraw a motion.
- 9 Receipt of reports of officers and any consequent resolutions.
- 10 Extending the time limit for speeches.
- 11 Amendment to motions.
- 12 That the Council proceed to the next business.
- 13 That the question be now put.
- 14 That the debate be now adjourned.
- 15 That the Council do now adjourn.
- 16 Authorising the sealing of documents.
- 17 Suspending Procedure Rules, in accordance with Procedure Rule 64.
- 18 Motion under Section 100A(4) of the Local Government Act 1972 to exclude the press and public.
- 19 That a Member named under Procedure Rule 57 should not be heard further or should leave the meeting.
- 20 Giving consent of the Council where consent of the Council is required by these Procedure Rules.

## **APPENDIX 2**

### **Notices of Motion**

#### **1 Procedure before the Meeting**

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

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

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

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

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

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

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

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

A Notice of Motion will be regarded as withdrawn if:

- prior to the Council meeting, an indication to this effect is given in writing to at least one of the above-named officers by the Member who submitted the Notice, or
- at the Council meeting, oral notice to this effect is given by the Member who submitted the Notice, or
- the Notice of Motion is not moved and seconded at the meeting of Council.

## **Procedure at the Meeting**

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

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

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

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

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

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

## **APPENDIX 3**

### **Rules of Debate**

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

No motion or amendment shall be discussed unless it has been proposed and seconded. Where required by the Chairman, motions or amendments shall be put in writing and handed to the Chairman before they are further discussed or put to the meeting. The Chairman may, at his/her discretion, allow a motion or amendment to be put which is not in writing, provided that the Chairman has concluded that the wording of the motion or amendment is understood by all members of the body concerned. This requirement does not apply to motions submitted under paragraph 1.35.

#### **2 Seconders' Speech**

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

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

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

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

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

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

#### **5 When a Member may speak again**

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

- (a) to speak once on an amendment moved by another Member
- (b) if the motion has been amended since he/she last spoke, to move a further amendment



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

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

## **6 Amendments to Motions**

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

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

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

## **7 Number of Amendments**

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

## **8 Status of Amendments**

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

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

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

## **10 Withdrawal of Motion**

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

## **11 Right of Reply**

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

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

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

- (a) to amend the motion
- (b) to adjourn the meeting
- (c) to adjourn the debate
- (d) to proceed to the next business
- (e) to suspend Procedure Rules
- (f) to refer a matter to the Council, Cabinet, a Committee or Sub-Committee for consideration or reconsideration
- (g) that the question be now put
- (h) that a Member be not further heard
- (i) by the Chairman under paragraphs 4.15-4.17, that a Member do leave the meeting
- (j) a motion under Section 100A(4) of the Local Government Act 1972 to exclude the public.

### **13 Closure Motions**

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

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

### **14 Points of Order**

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

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

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

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

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

## **APPENDIX 4**

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

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

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

#### **Urgent Decisions: Council (Paragraph 1.52)**

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

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

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

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

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

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

### **Urgent Decisions: Cabinet / Executive Matters (Paragraph 3.43)**

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

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

In addition the following provisions shall apply:

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

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

DRAFT

## **APPENDIX 5**

### **Substitution Arrangements**

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

## **APPENDIX 6**

### **Agenda Items Submitted By Members**

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



## APPENDIX 7

### Public Speaking and Questions

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

- 9 In addition to the general provisions for public speaking set out in paragraph 2.32 and this Appendix, the following specific provisions apply to meetings of the [Public Rights of Way Committee](#) in relation to individual applications on the agenda:
- 9.1 For each application on the agenda, a total of 6 minutes is allocated for public speaking, with 3 minutes being allocated for objectors and 3 minutes being allocated for supporters. If there is more than one person wishing to speak as an objector or supporter, the 3 minutes shall be divided equally among them or they may appoint one of their number to speak for all.
  - 9.2 No member of the public shall speak on a matter before the Chairman has introduced the report. Members of the public may not participate in the debate or ask questions of Officers or Members.
  - 9.3 At the Chairman's discretion, Members of the Committee may, through the Chairman, ask questions of a speaker for clarification but should not enter into a discussion with them.
  - 9.4 Any member of the public wishing to address the Committee must give notice of their intention, in writing, to the Head of Governance and Democratic Services by 12 noon one clear working day before the meeting.
  - 9.5 These provisions may be varied at the discretion of the Chairman.

## **APPENDIX 8**

### **Model Agendas for Council Meetings**

#### *Agenda for Annual Council Meeting*

##### Standard Item

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

#### *Agenda for Ordinary Council Meetings*

##### Standard Item

- Prayers
- Apologies for Absence
- Declarations of Interest
- Approval of Minutes of previous meeting
- Mayor's Announcements
- Public Speaking Time/Open Session
- Recommendations from Cabinet
- Leader's Announcements
- Recommendation from Committees
- Notices of Motion
- Questions from Members

## Part 2

### Access to Documents and Information

---

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

#### Public access to meetings

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

#### Notice of meetings

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

### **Public access to agenda and reports before the meeting**

- 5 The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least 5 clear working days before the meeting, except that where a meeting is convened at shorter notice, the copies of the agenda and reports shall be open to inspection from the time the meeting is convened.
- 6 Where an item is added to the agenda, and the report is open to the public, copies of any report for the meeting relating to the item, and the revised agenda shall be available for inspection from the time the item is added to the agenda.
- 7 Where copies of the agenda and reports open to the public are not made available for inspection in this way, an item of business will not be considered unless, by reason of special circumstances, which shall be specified in the minutes, the Chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency.

### **Public access to copies**

- 8 The Council will supply copies of:
  - 8.1 any agenda and reports which are open to public inspection
  - 8.2 any further statements or particulars necessary to indicate the nature of the items in the agenda, and
  - 8.3 if the Proper Officer thinks fit, copies of any other documents supplied to Members in connection with an item to any person on payment of a charge for postage, copying and any other costs.
- 9 Copies of the agendas of Cabinet meetings will be circulated to all Members.
- 10 The Council will make available for the use of members of the public present at meetings, a reasonable number of copies of the agenda and of those reports which are open to the public.

### **Public access to minutes etc. after the meeting**

- 11 The Council will make available for inspection copies of the following for six years after a meeting:
  - 11.1 the minutes of the meeting excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information (as defined in paragraphs 9 and 10)
  - 11.2 a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record

11.3 the agenda for the meeting, and

11.4 reports relating to items when the meeting was open to the public.

### **Public access to background papers**

#### *List of Background Papers*

12 The author of a report will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

12.1 disclose any facts or matters on which the report or an important part of the report is based; and

12.2 have been relied on to a material extent in preparing the report

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

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

### **Public inspection**

14 A copy of each of the documents listed will be available for inspection at the same time as the report is available for public inspection.

15 The Council will make available for public inspection for six years after the date of the meeting one copy of each of the documents on the list of background papers.

### **Exclusion of public access to reports**

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

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

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

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

### **Confidential information – requirement to exclude public access**

- 20 The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.
- 21 Confidential information means:
- 21.1 information given to the Council by a Government Department on terms which forbid its public disclosure, or
  - 21.2 information the disclosure of which to the public is prohibited by or under another Act or by Court.

### **Exempt information – discretion to exclude public access to meetings**

- 22 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed provided:
- 22.1 the meeting resolves so to exclude the public, and that resolution identifies the proceedings or part of the proceedings to which it applies
  - 22.2 that resolution states, by reference to the descriptions in Schedule 12A to the Local Government Act 1972 (paragraph 10.4 below), the description of the exempt information giving rise to the exclusion of the public, and
  - 22.3 that resolution states, by reference to reasons given in a relevant report or otherwise, in all the circumstances of the case, that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 23 In these circumstances, public access to reports, background papers and minutes will also be excluded.
- 24 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.
- 25 Exempt information means information falling within the following categories (subject to any condition):

Category	Condition
1. Information relating to any individual.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

Category	Condition
2. Information which is likely to reveal the identity of an individual.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
<p>3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).</p> <p>“Financial or business affairs” includes contemplated, as well as past or current, activities</p>	<p>Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p> <p>Information within paragraph 3 is not exempt if it must be registered under</p> <ul style="list-style-type: none"> <li>(a) the Companies Act 2006;</li> <li>(b) the Friendly Societies Act 1974;</li> <li>(c) the Friendly Societies Act 1992;</li> <li>(d) the Co-operative and Community Benefit Societies Act 2014;</li> <li>(e) the Building Societies Act 1986; or</li> <li>(f) the Charities Act 2011.</li> </ul>
<p>4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or officer-holders under the authority.</p> <p>“Labour relations matter” are as specified in paragraphs (a) to (g) of section 218(1) of the Trade Unions and Labour Relations (Consolidation) Act 1992, i.e. matters which may be the subject of a trade dispute within the meaning of that Act or any dispute about any such matter</p>	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
<p>6. Information which reveals that the authority proposes –</p> <ul style="list-style-type: none"> <li>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</li> <li>(b) to make an order or direction under any enactment</li> </ul>	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information



Category	Condition
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
<b>EXCEPT THAT</b> Information falling within any of paragraphs 1-7 is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission under regulation 3 of the Town and Country Planning General Regulations 1992.	
7A. Information which is subject to any obligation of confidentiality.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
7B. Information which relates in any way to matters concerning national security.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
7C. Information presented to a Panel or Sub-committee of the Audit and Governance Committee, set up to consider any matter under regarding a failure to comply with Code of Conduct.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
(Section 7C was created to allow complaints submitted under the Standards Committee (England) Regulations 2008 to be discussed in private. Although these Regulations have been repealed the subsequent changes to the Access to Information provisions remain in the constitution)	

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

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

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

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

### **Public access to cabinet meetings**

- 28 The Cabinet has decided that all of its meetings and its Committees are to be held in public whether or not a Key Decision is to be made and the preceding rules 1 – 10 therefore apply.
- 29 However if a Key Decision is to be made Rules 12 to 16 below also apply:
- 30 If the Cabinet or its Committees meet to discuss a key decision that is due to be taken collectively and
- 30.1 an Officer (other than a political adviser) is present at the discussion
  - 30.2 the discussion is within 28 days of the date by which, according to the Forward Plan, the decision is to be made
- then Rules 1 – 11 must be complied with unless:
- 30.3 Rule 14 (general exception), or
  - 30.4 Rule 15 (special urgency) applies, or
  - 30.5 the principal purpose of the meeting is for the Officer to brief the decision maker on matters connected with the making of the executive decision.

### **Procedure before taking key decisions**

- 31 Subject to Rule 14 (general exception) and Rule 15 (special urgency), a Key Decision may not be taken unless:
- 31.1 a notice (called here a Forward Plan) has been published in connection with the matter in question
  - 31.2 at least 5 clear days have elapsed since the publication of the Forward Plan
  - 31.3 where the decision is to be taken at a meeting of the Cabinet or its Committees, notice of the meeting has been given in accordance with Rule 3, and

- 31.4 where a decision is to be taken at a meeting of the Cabinet or its Committees, and the Cabinet believes that the matter will be considered in private, at least 28 clear days' notice has been given in accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

## **The forward plan of key decisions**

### *Period of Forward Plan*

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

### *Content of Forward Plan*

- 33 The Forward Plan will contain matters which the Leader has reason to believe will be subject of a Key Decision to be taken by the Cabinet, a Committee of the Cabinet, Officers, Area Committees or under joint arrangements in the course of the discharge of an executive function during the period covered by the plan. The Forward Plan must be published at least 28 clear days before the start of the period covered and made available to the relevant overview and scrutiny committees. It will describe the following particulars in so far as the information is available or might reasonably be obtained:
- 33.1 the matter in respect of which a decision is to be made
  - 33.2 where the decision taker is an individual, his/her name and title, if any and where the decision taker is a body, its name and details of membership
  - 33.3 the date on which, or the period within which, the decision will be taken
  - 33.4 the identity of the principal groups whom the decision taker proposes to consult before taking the decision
  - 33.5 the means by which any such consultation is proposed to be undertaken
  - 33.6 the steps any person might take who wishes to make representations to the Cabinet or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken
  - 33.7 a list of the documents submitted to the decision taker for consideration in relation to the matter, and

33.8 where the decision is to be taken in private the reasons for this and the process for making representations in accordance with Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 .

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

#### *General Exception*

- 35 If a matter which is likely to be a Key Decision has not been included in the Forward Plan, then subject to Rule 15 (special urgency), the decision may still be taken if:

- 35.1 the decision must be taken by such a date that it is impracticable to defer the decision;
- 35.2 the Proper Officer has informed the Chairman of a relevant overview and scrutiny committee, or if there is no such person, each member of that committee in writing, by notice, of the matter to which the decision is to be made;
- 35.3 the Proper Officer has made copies of that notice available to the public at the offices of the Council; and
- 35.4 at least 5 clear days have elapsed since the Proper Officer complied with (b) and (c).

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

#### *Special urgency*

- 37 If by virtue of the date by which a decision must be taken Rule 14 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chairman of the body making the decision, obtains the agreement of the Chairman of a relevant overview and scrutiny committee that the taking of the decision cannot be reasonably deferred and the decision is urgent. If there is no Chairman of a relevant overview and scrutiny committee, or if the Chairman of the relevant overview and scrutiny committee is unable to act, then the agreement of the Mayor of the Council, or in his/her absence the Deputy Mayor will suffice.

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

## **Reports to Council**

### **39 When an overview and scrutiny committee can require a report**

Where an executive decision has been made and was not treated as a Key Decision and a relevant overview and scrutiny committee thinks that it should have been treated as a Key Decision the overview and scrutiny committee may require the Cabinet to submit a report to the Council within such reasonable time as the overview and scrutiny committee specifies. The power to require a report rests with the Committee but is also delegated to the Chief Executive who shall require such a report on behalf of the Committee when so requested by the Chairman of the Committee or any 5 Members. Alternatively, the requirement may be raised by resolution passed at a meeting of the relevant overview and scrutiny committee.

### **40 The Cabinet's report to Council**

The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the resolution of the overview and scrutiny committee, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual or body making the decision, and if the leader is of the opinion that it was not a key decision, the reasons for that opinion.

### **41 Quarterly reports on special urgency decisions**

In any event the Leader will submit quarterly reports to the Council on the executive decisions taken in the circumstances set out in Rule 15 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken

## **Public access to cabinet decisions – record of decisions**

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

## **Decisions by individual members of the cabinet or officers**

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

- 44 Provision of copies of reports to overview and scrutiny committees. On giving such a report to an individual decision maker, the person who prepared the report will give a copy of it to the chairman of every relevant overview and scrutiny committee as soon as reasonably practicable, and make it publicly available at the same time.
- 45 Public access to record of individual decision. As soon as reasonably practicable after any executive decision has been made by an individual member of the Cabinet or a Key Decision has been taken by an officer, he/she will prepare, or instruct the Proper Officer to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The provisions of Rules 6 and 7 (inspection of documents after meetings) will also apply to the making of Key Decisions by Officers. This does not require the disclosure of exempt or confidential information, or advice from a political adviser or assistant.

### **Member access to exempt or confidential documents**

- 46 This section deals with Member access to documents which contain confidential or exempt information, including agenda papers, background documents and minutes.
- 47 Members of a committee or decision-making body of the Council or of the executive are automatically provided with, and entitled to receive, copies of confidential or exempt reports of that body.
- 48 In addition, the following categories of Member shall automatically receive copies of confidential or exempt executive reports:
  - 48.1 Group Leaders
  - 48.2 Local Ward Members for the Ward affected, in accordance with the [Ward Member Protocol](#)
  - 48.3 Relevant overview and scrutiny committee Chairmen and Vice-Chairmen
  - 48.4 Members visiting the meeting in question (with the agreement of the Monitoring Officer and Chairman of the meeting) who would receive the papers upon arrival

- 49 Subject to the provisions above, and to paragraph 19.5, any Member of the Council may, upon request, receive a copy of a confidential or exempt report or agenda, or inspect an associated background document, on any matter except where the report or document contains information relating to either of the following categories:
- 49.1 Staffing information, where the identity of individual officers would be revealed
  - 49.2 Information relating to vulnerable children and adults
- 50 Any Member wishing to receive or inspect a report or document containing information of the categories referred to in paragraph 19.4 must demonstrate a 'need to know' in accordance with the following process:
- 50.1 The Member will submit to the Director of Legal Services, or to the Head of Governance and Democratic Services in writing, information in support of their claim to have a "need to know"
  - 50.2 The claim will be submitted to the relevant Chairman (or Vice Chairman, in his/her absence) of the non-executive committee or sub-committee in question, or to the Portfolio Holder (or the Leader, in his/her absence), in respect of an executive decision, for determination
  - 50.3 The determination as to whether or not a "need to know" has been demonstrated will be based on officer advice and will include legal advice
  - 50.4 Once a determination has been made, this will be communicated to the Member who has made the claim.
- 51 All Members of the Council shall have access to all minutes and records of decisions, subject to the provisions of paragraphs 19.4 and 19.5.

#### **Nature of additional rights**

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

#### **Audio recording of meetings**

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

This page has been left intentionally blank



## Part 3

### Budget and Policy Framework Rules

---

#### The Framework for Executive Decisions

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

#### Process for developing the framework and budget

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

- 5.4 The Cabinet will submit those firm proposals to the Council together with a report that will set out the comments made by consultees and, in particular the views of the Overview and Scrutiny Committees and the Cabinet's response to those views
- 5.5 Once Cabinet has approved the firm proposals they will be referred at the earliest opportunity to Council for decision
- 5.6 In reaching a decision, the Council may adopt the Cabinet's proposals, amend them, refer them back to the Cabinet for further consideration, or substitute its own "in principle proposals" in their place
- 5.7 If it accepts the recommendation of the Cabinet without amendment, the Council may make a decision, which has immediate effect. Otherwise, it may only make an in-principle decision
- 5.8 The decision will be published and, if an in-principle decision has been made, a written copy shall be given to the Leader as soon as possible for the Cabinet to consider
- 5.9 An in-principle decision will automatically become effective 5 working days from the day following the date of written notification to the Leader of the Council's decision, unless the Leader informs the Chief Executive in writing within those 5 days that the Leader objects to the decision becoming effective and provides reasons why in writing
- 5.10 Where notification of an objection is received under (i) above, a meeting of Council will be called to be held within 28 days of the objection being received by the Chief Executive, to reconsider the decision that is the subject of the objection. In reconsidering the decision the Council must take into account the objection of the Cabinet and reasons for it and any revised proposals submitted by the Cabinet and the Cabinet's reasons for those revised proposals. The Council may either:
- approve the Cabinet's recommendation; or
  - approve a different decision which does not accord with the recommendation of the Cabinet
- 5.11 The decision shall then be published and implemented immediately.
- 6 In approving its budget each year, the Council may specify in addition to such matters dealt within the Finance Procedure Rules, the extent to which the Cabinet can agree virements within the budget and the degree to which in-year changes can be agreed by Cabinet to the Policy Framework. Any other changes to the policy and budgetary framework are reserved to the Council.

- 7 Where a new plan or strategy is required to be produced as part of the Policy Framework, either by Council of its own motion, or following a recommendation to Council by an Overview or Scrutiny Committee, Cabinet shall develop the plan or strategy in accordance with the process set out within paragraph 4.

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

- 8 Subject to the provisions of paragraphs 13-14 (virement), the Cabinet, or any decision-making arm of the Cabinet, may only take decisions that are in line with the budget and Policy Framework. If it wishes to make a decision which is contrary to the Policy Framework, or contrary to or not wholly in accordance with the budget approved by full Council, then that decision may only be taken by the Council, subject to the provisions of paragraphs 10-12 below.
- 9 If the Cabinet, or any decision-making arm of the Cabinet, wants to make a decision, advice shall be taken first from the Monitoring Officer and/or the Section 151 Officer as to whether the decision would be contrary to the Policy Framework, or contrary to or not wholly in accordance with the budget. If the advice of any of those Officers is that the decision would not be in line with the existing budget and/or Policy Framework, then the decision must be referred to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in paragraphs 10-12 (urgent decisions outside the budget or Policy Framework) shall apply.

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

- 10 The Cabinet or an individual member of the Cabinet may take a decision, which is contrary to the Council's Policy Framework or contrary to or not wholly in accordance with the budget approved by full Council, in exceptional circumstances and if the decision is a matter of urgency. However, the decision may only be taken:
  - 10.1 if it is not practical to convene a quorate meeting of the full Council, and
  - 10.2 if the Chairman of a relevant overview and scrutiny committee agrees that the decision is a matter of urgency.
- 11 The reasons why it is not practical to convene a quorate meeting of full Council and the consent of the Chairman of the relevant overview and scrutiny committee to the decision being taken as a matter of urgency must be noted on the record of the decision. In the absence of the Chairman of the relevant overview and scrutiny committee the consent of the Vice Chairman or, in the absence of both, the Mayor, will be sufficient.
- 12 Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

## **Virement**

- 13 The Council has set virement limits within which decision-makers can exercise discretion in approving or otherwise financial transfers within the Budget. The limits are set out in the table below.
- 14 Where the Cabinet or an individual is discharging executive functions to implement Council policy, then any decision to spend or make savings shall not exceed those budgets allocated to each budget head for which they have responsibility. However, the Cabinet or those individuals shall be entitled to vire across budget heads provided there is compliance with the financial limits in the table below and the Finance Procedure Rules.

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

- 15 The responsibility for agreeing the budget and policy framework lies with the Council, and decisions of the Cabinet or an individual member of the Cabinet must be in line with it. Changes (including modifications, revisions, variations, withdrawal or revocation) to Policy Framework plans or strategies must ordinarily be approved by the Council. However the Council may, at the time when the plan or strategy is approved, authorise the Cabinet, or a body or individual exercising Cabinet functions, to make such changes, provided that those changes will:
  - 15.1 result in the closure or discontinuing of a service, in whole or in part to meet a budgetary constraint, or
  - 15.2 ensure compliance with the law, ministerial direction or Government guidance, or
  - 15.3 in relation to the Policy Framework in respect of a policy which would normally be agreed annually by the Council following consultation, determine matters where the existing policy document is silent on the matter under consideration.

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

- 16 Where an overview and scrutiny committee is of the opinion that a decision of the Cabinet, or any decision-making arm of the Cabinet, is, or if made would be, contrary to the Policy Framework, or contrary to or not wholly in accordance with the Council's budget, then it shall seek advice from the Monitoring Officer and Section 151 Officer.
- 17 In respect of functions which are the responsibility of the executive, and where the decision has already been made and implemented, the Monitoring Officer/Section 151 Officer, shall report to the Cabinet on the advice that has been given to the overview and scrutiny committee and shall copy that report to each member of the Council. The Cabinet must consider the report of the relevant Officer and decide what action to take in respect of the report. Where the advice concluded that there was a departure from the Budget or Policy Framework, the Cabinet must report to Council on the action it intends taking.

- 18 Where there was no such departure, the Cabinet must report to the overview and scrutiny committee on any action to be taken.
- 19 If the decision has yet to be made or, has been made but not yet implemented, and the advice of the relevant Officer is that the decision is or would be contrary to the Policy Framework or contrary to or not wholly in accordance with the budget, the overview and scrutiny committee may refer the matter to the Council. In such cases, no further action may be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council shall meet within 28 days of the request by the overview and scrutiny committee or sub-committee. At the meeting the Council will receive a report of the decision or proposals and the advice of the relevant Officer. If the Cabinet has prepared a report on the matter, this will also be submitted to the Council. The Council may either:
- 19.1 endorse the decision or proposal of the Cabinet, or its decision-making arm, as falling within the existing budget and Policy Framework of the Council. In this case, no further action is required other than the decision of Council be minuted and circulated to all Councillors; or
  - 19.2 amend the Council's Finance Procedure Rules or the policy concerned to encompass the decision or proposal and agree to the decision with immediate effect. In this case, no further action is required other than the decision of Council be minuted and circulated to all Councillors; or
  - 19.3 where the Council accepts that the decision or proposal is contrary to the Policy Framework or contrary to or not wholly in accordance with the budget, and does not amend the existing framework or budget to accommodate it, require the Cabinet to reconsider the matter in accordance with the advice of the relevant Officer(s).

### **The Policy Framework**

- 20 The Council's Policy Framework comprises:
- Children and Young People's Plan
  - Crime and Disorder Reduction Strategy
  - Education Development Plan
  - Local Transport Plan
  - Local Development Framework
  - Youth Justice Plan
  - Licensing Policy
  - Gambling Statement of Principles

- Food Law Enforcement Service Plan
- Housing Investment Programme

## **Financial Limits**

- 21 The next section of these Budget and Policy Framework Rules is a table setting out the financial limits contained in various parts of this Constitution. The purpose of this table is to assist readers in identifying relevant financial limits and their location in the Constitution. The table itself is not an operative part of the Constitution – it sets out what the various financial limits are and signposts where they can be found in the document.

DRAFT

No	Reference in current Constitution <sup>13</sup>	Reference in draft Constitution <sup>14</sup>	Issue	Financial Limit
	<b>Part 2, Chapter 12 Decision Making</b>	<b>Chapter 2</b>		
1.	Chapter 12, para 4,	Chapter 2, Part 1	Level of Key Decisions	Threshold for an executive decision being likely to be a "key decision" is £1m
	<b>Part 3 Executive Functions</b>	<b>Chapter 2</b>		
2.	Executive Functions – Scope of, and limitations to, Portfolio holder Decision Making	Chapter 2, Part 3, paragraph 48.3	Portfolio Holder decision making	Individual Portfolio Holders are empowered to make all executive decision in respect of their own portfolio area of responsibility except decisions involving spending over £1m
	<b>Part 3 Staffing Committee TOR's</b>	<b>Chapter 2</b>		
3.	Staffing Committee Terms of Reference, para 5.3	Chapter 2, Part 4, paragraph 47	Remuneration of officers	Staffing Committee to make recommendations to Council in relation to decisions affecting remuneration of any new post whose remuneration is or is proposed to be or would become more than £100,000 unless the remuneration for the post is already included within the Council's annually approved Pay Policy Statement
4.	Staffing Committee Terms of Reference, para 5.4	Chapter 2, Part 4, paragraph 48	Severance packages	Staffing Committee to make decision in relation to proposed severance packages with a value of £100,000 or more

<sup>13</sup> To be deleted once draft Constitution is completed

<sup>14</sup> To be updated as the full Constitution is completed

No	Reference in current Constitution <sup>13</sup>	Reference in draft Constitution <sup>14</sup>	Issue	Financial Limit
	<b>Part 3, Officer Scheme of Delegation</b>	<b>Chapter 2</b>		
5.	Scheme of Delegation to senior Officers, paragraph 1.21	To be added to Chapter 2, Part 5 if agreed.	Payment of Grants	<p>Within approved grant policy:</p> <ul style="list-style-type: none"> <li>(a) Grants of up to £50,000 can be made by officers in consultation with relevant portfolio holders;</li> <li>(b) Grants of between £50,000 and £100,000 require Portfolio Holder(s) Approval;</li> <li>(c) Grants in excess of £100,000 require Cabinet Approval.</li> </ul> <p>All grants which do not fall within existing approved grant policy require Cabinet Approval.</p>
6.	Scheme of Delegation, Chief Executive, para 2.14	Chapter 2, Part 5, paragraph 49.11	Remuneration level for existing posts	Chief Executive can make decisions affecting the remuneration of any existing post whose remuneration is or is proposed to be or would become £100,000 p.a. or more in consultation with the Leader and Chairman of the Staffing Committee subject to council approval if outside agreed Pay Policy Statement.
7.	Scheme of Delegation, Chief Operating Officer, para 3.24	To be added to local scheme of delegations	Acceptance of land for Road Improvements	COO To accept land for road improvements by dedication subject to the total consideration not exceeding £100,000
8.	Scheme of Delegation, Chief Operating Officer, para 3.71	To be added to s151 Officer delegation and Portfolio Holder delegation	Writing off of debts	The decision to write off individual debts of up to £5,000 is delegated to the CFO. The decision to write of individual debts of between £5,000 and £25,000 is delegated to the CFO in consultation with the Finance Portfolio Holder. The decision to write of individual debts in excess of £25,000 lies with the Finance Portfolio Holder.
9.	Scheme of Delegation, Chief Operating Officer, para 3.84	To be added to Head of Paid Service	Approval of retirement/redundancy	The COO can apply early retirement/redundancy scheme without agreement of the relevant Portfolio Holder up to a



No	Reference in current Constitution <sup>13</sup>	Reference in draft Constitution <sup>14</sup>	Issue	Financial Limit
		delegation and COO delegation	schemes	value of £100,000 (including pension strain).
10.	Scheme of Delegation, Chief Operating Officer, para 4.7	To be added to Executive Director Place delegation	Approval of acquisition of land	Executive Director Place is to authorise the acquisition of an interest in Land in consultation with the COO and after having notified the Portfolio Holder up to £500,000
11.	Scheme of Delegation, Chief Operating Officer, para 4.7	To be added to Executive Director Place delegation	Approval of acquisition of land	Executive Director Place to authorise the acquisition of an interest in Land in consultation with the COO and with the approval of the Portfolio Holder between £500,000 and £1m
12.	Scheme of Delegation, Chief Operating Officer, para 4.18	To be added to Chief Operating Officer delegation	Management of Farms estate	The Chief Operating Officer has delegated authority to manage the Farms estate, serve all statutory notices, to negotiate and approve all matters and grant all consents required in order to do so provided that investment in improvements to farms will not exceed £50,000
13.	Scheme of Delegation – Director of Adult Social Care and Independent Living – Para 6.21(d)	To be added to Director Adult Social Care and Independent Living delegation	Writing off debt by the Director Adult Social Care and Independent Living	Director Adult Social Care and Independent Living can write-off debt where it is felt that the individual would be at risk in consultation with the Finance Portfolio Holder and the Adult Social Care Portfolio Holder.
14.	Scheme of Delegation, MO, para 9.6	Monitoring Officer delegation, para 9.4.1	Settlement of claims	The Monitoring Officer can authorise settlement of up to £25,000 in respect of potential uninsured claims, borehole claims, and Local Government Ombudsman cases (which after settlement shall be reported to Cabinet)
15.	Scheme of Delegation, MO, para 9.6	To be added to Monitoring Officer delegation	Settlement of claims	Authorise settlement in respect of potential uninsured claims or Local Government Ombudsman cases above £25,000 and below £100,000 in consultation with the Finance Portfolio Holder and the Chief Operating Officer, (which after settlement shall be reported to Cabinet)
16.	Scheme of Delegation, MO, para 9.6	To be added to Monitoring Officer	Settlement of claims	Claims in respect of potential uninsured claims or Local Government Ombudsman cases in excess of £100,000

No	Reference in current Constitution <sup>13</sup>	Reference in draft Constitution <sup>14</sup>	Issue	Financial Limit
		delegation		require Cabinet approval
<b>Council Procedure Rules</b>				
17.	Procedure Rules, General Provisions – Appendix 4, Urgent Decisions taken outside of meetings	Part 3, Appendix 4	Urgent Decisions	For the purposes of this urgency provision, the limit placed on the decision-making powers of individual Portfolio Holders in relation to decisions involving expenditure or savings of £1M or more would not apply. Urgency is defined as: "...in the case of: civil emergency; natural or man-made disaster; matter of serious public health; matters regarding safeguarding of people; or where the Council is at risk of serious reputational damage; loss or claims; or any other matters where the CE in his/her access the CFO has declared that an urgent decision is required".
<b>Finance Procedure Rules</b>				
18.	Financial Management A32	Section A, paragraph 38	Virements	Approval Limits for Virements: Head of Service is up to £100,000 (in respect of Revenue).
19	Financial Management A32	Section A, paragraph 38	Virements	Approval Limits for Virements by Members of the Corporate Leadership Team are as follows: (a) £100,000 - £500,000 – Relevant Executive Director (Revenue) (b) £100,000-£1,000,000 – Relevant Executive Director (Capital)
20	Financial Management A32	Section A, paragraph 38	Virements	Approval Limits for Virements: Approval by Executive Directors in consultation with Finance and Assets Portfolio Holder and relevant Portfolio Holder: (a) £500,000 - £1m (Revenue)

No	Reference in current Constitution <sup>13</sup>	Reference in draft Constitution <sup>14</sup>	Issue	Financial Limit
				(b) £1m - £5m (Capital)
21.	Financial Management A32	Section A, paragraph 38	Virements	Approval limits for Virements (where within the budget and policy framework): Approval by Cabinet: (a) £1m+ (Revenue) (b) £5m+ (Capital)
22.	Financial Management A32	Section A, paragraph 38	Virements	Approval limits for Virements (where outside the budget and policy framework): Approval by Council: (a) £1m+ (Revenue) (b) £5m+ (Capital)
23.	Financial Management A36	Section A, paragraphs 40, 41 and 45	Supplementary capital and revenue estimates	Approval limits for supplementary capital and revenue estimates: Executive Director up to £500,000
24.	Financial Management A36	Section A, paragraphs 40, 41 and 45	Supplementary capital and revenue estimates	Approval limits for supplementary capital and revenue estimates: Executive Director in consultation with Portfolio Holder for Finance and Assets £500,000 - £1m
25.	Financial Management A36	Section A, paragraphs 40, 41 and 45	Supplementary capital and revenue estimates	Approval limits for supplementary capital and revenue estimates: Council with recommendation from Cabinet where over £1m
26.	Financial Planning C47	Section C, paragraph 52	Write off of losses and disposal of equipment	Chief Operating Officer may authorise the write off of losses up to £5,000, or disposals, of obsolete or surplus equipment, materials, vehicles or stores up to a disposal value of £5,000. If this threshold is exceeded, approval must be sought from the Finance Portfolio Holder.

No	Reference in current Constitution <sup>13</sup>	Reference in draft Constitution <sup>14</sup>	Issue	Financial Limit
27.	Financial Planning D24	Section D, paragraph 27	Purchase of goods and services	If a requisition for the purchase of goods or services exceeds £10,000 in value Contract Procedure rules Part 2.1 apply (these relate to competition law and the number of bids which should be sought etc)
28.	Financial Planning E18	Section E, paragraph 29	Payment of Grants	<p>Within approved grant policy:</p> <ul style="list-style-type: none"> <li>(a) Grants, contributions and donations of up to £50,000 can be made by officers in consultation with relevant portfolio holders;</li> <li>(b) Grants contributions and donations of between £50,000 and £100,000 require Portfolio Holder(s) Approval;</li> <li>(c) Grants contributions and donations in excess of £100,000 require Cabinet Approval.</li> </ul> <p>All grants contributions and donations which do not fall within existing approved grant policy require Cabinet Approval.</p>
<b>Contract Procedure Rule</b>				
29	Definitions	Definitions	Link to EU Thresholds	Request for Quotations £10,000 to EU Threshold which is at the following link: <a href="https://www.ojeu.eu/thresholds.aspx">https://www.ojeu.eu/thresholds.aspx</a>
30.	Part 2 – Below EU Threshold 2.1.1	Section C, paragraph 1.1	Tender process	3 quotes are advisable but not mandatory (local firms being preferable) for contracts with a value of up to £10,000
31.	Part 2 – Below EU Threshold 2.2.1	Section C, paragraph 1.2	Tender process	Minimum of three quotes shall be obtained, subject to a procurement risk assessment being carried out for contracts with a total value of £10,000 to £25,000 All quotations should be sent to Procurement to ensure compliance with the Government Transparency Code.
32.	Part 2 – Below EU Threshold	Section C, paragraph 1.3	Tender process	Minimum of three quotations sought via e-tendering portal for contracts with a total value of £25,000 to EU Threshold.

No	Reference in current Constitution <sup>13</sup>	Reference in draft Constitution <sup>14</sup>	Issue	Financial Limit
	2.2.1			Procurement must carry out a procurement risk assessment and will determine the route to market.
33.	Part 5 – Contracts and Post Competition Requirements 5.1.3	Section F, paragraphs 2, and 3,1	Execution of Contracts	Contracts must be executed under seal where the contract exceeds £1,000,000.
34.	Part 5 – Contracts and Post Competition Requirements 6.1	Section F, paragraph 1.	Waiver of Contract Procedure Rules	Waiver of the Contract Procedure Rules must be approved by the Chief Finance Officer and Director of Legal Services

This page has been left intentionally blank

## Part 4

### Finance Procedure Rules

---

#### Foreword

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

The Rules are not intended to cover every eventuality, but the spirit of the Rules must always be followed. Where there is any uncertainty in matters of interpretation, advice should be sought from the Chief Operating Officer before decisions or actions are taken.

DRAFT



## **Section A. Financial Management**

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

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

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

- 2 The roles and responsibilities of:
  - The full Council
  - The Cabinet
  - The committee of the Cabinet
  - The statutory officers
  - The Corporate Leadership Team
- 3 Other financial accountabilities:
  - Virement
  - Supplementary estimates
  - Treatment of year end balances
  - Accounting policies
  - Accounting records and returns
  - The Annual Statement of Accounts

### **The Full Council**

- 4 The responsibilities of the full Council are set out in Chapter 2 of the Constitution. In respect of financial matters, this includes approving the Policy Framework and Budget within which the Cabinet operates. The Council has established an Executive Monitoring Board which provides oversight and assurance for the Council on all project based activity with a strong focus on areas of major change the most significant risk and/or high financial values (including those of any strategic partners the Council is working with).
- 5 The Budget comprises the allocation of financial resources to different services and projects, proposed contingency funds, the Council Tax base and Council Tax rate, and decisions relating to the control of the Council's borrowing requirement, the control of capital expenditure and the setting of virement limits.

## **The Cabinet**

- 6 The Cabinet's responsibilities, in respect of financial matters include:
  - 6.1 developing and reviewing the Council's plans and policies
  - 6.2 advising on budget setting
  - 6.3 ensuring proper arrangements exist for the effective and efficient management of the Council's executive affairs
  - 6.4 monitoring and auditing the lawful, proper and efficient conduct of the Council's financial affairs, including the extent to which budgets and financial policies are being met and any appropriate remedial action
  - 6.5 ensuring officers exercising delegated powers on behalf of the Cabinet discharge their responsibilities efficiently and effectively.

### *Cabinet Members*

- 7 Individual Cabinet Members or Portfolio Holders have specific decision making powers which are set out in Part 2 of the Council's Constitution. Cabinet Members responsibilities in respect of financial matters include:
  - 7.1 the proper administration of the Council's services
  - 7.2 ensuring adequate staffing, premises and other resources to secure agreed standard and target outcomes within the scope of their portfolio
  - 7.3 the efficient use and day to day maintenance of Council premises
  - 7.4 ensuring budget control and financial monitoring within the scope of their portfolio
  - 7.5 submitting to the Cabinet, annual estimates of expenditure and income in respect of services within their portfolio
  - 7.6 making recommendations to the Cabinet in respect of strategic policy concerning matters within their portfolio.
- 8 Cabinet Members must consult with relevant officers before exercising their delegated decision making powers. In doing so, the individual Member must take account of legal and financial liabilities and risk management issues that may arise from the decision and that they have authority to incur the financial consequences of that decision.

## **Committees**

### *Overview and Scrutiny Committees*

- 9 Overview and Scrutiny Committees are responsible for discharging the Council's functions under Section 9F to 9FI of the Local Government Act 2000, including:
  - 9.1 scrutinising Cabinet decisions before or after they have been implemented
  - 9.2 establishing task and finish reviews as they see fit.

### **Audit and Governance Committee**

- 10 The Audit and Governance Committee has right of access to all the information necessary to effectively discharge its responsibilities and can consult directly with internal and external auditors.
- 11 The committee is responsible for:
  - 11.1 overseeing the Council's role and responsibilities in respect of Corporate Governance and Audit
  - 11.2 supporting the Council's audit function, both internal and external
  - 11.3 supporting the Chief Financial Officer in relation to the performance of their duties
  - 11.4 approving any Council Statement of Accounts as may be required by the relevant Account and Audit Regulations
  - 11.5 reviewing and approving the Annual Governance Statement
  - 11.6 ensuring the Council's Risk Management arrangements are operating effectively
  - 11.7 ensuring the Council has in place appropriate policies and mechanisms to safeguard resources
  - 11.8 promoting and maintaining high standards of ethical behaviour by developing, maintaining and monitoring Codes of Conduct for Members of the Council.

## **Statutory Officers**

### *Chief Officers*

- 12 Chief Officers are the Chief Executive or any Director of the Council to whom there has been specific delegation in writing by the Council or the Chief Executive.
- 13 In accordance with the management structure of the Council, Chief Officers will be referred to as follows:
  - 13.1 Tier 1: Chief Executive (Head of Paid Service) Tier 2: Direct reports to Tier 1
  - 13.2 Tier 3: Direct reports to Tier 2.

### *Head of Paid Service (Chief Executive)*

- 14 The Chief Executive is the Head of the Council's Paid Service. The responsibilities of the Chief Executive are set out in full in Part 3 of the Council's Constitution, they include:
  - 14.1 leading and directing the strategic management of the Council
  - 14.2 ensuring the effective pursuit and achievement of the Council's objectives
  - 14.3 ensuring the Council's activities are carried out with maximum effectiveness and efficiency.
- 15 The Chief Executive must report to and provide information for the Cabinet, the full Council, the Overview and Scrutiny Committees and other committees.

### *Monitoring Officer (Director of Legal Services)*

- 16 The Director of Legal Services is the Council's Monitoring Officer pursuant to Section 5 and 5A of the Local Government and Housing Act 1989 (as amended) and is responsible for exercising the functions of that role. This includes reporting, in consultation with the Chief Executive and Chief Operating Officer to the full Council (or to the Executive in relation to an Executive function), if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to a finding of maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered by Cabinet.
- 17 The Director of Legal Services must ensure that Cabinet decisions and the reasons for them are made public. He or she must also ensure that Council Members are aware of decisions made by the Cabinet and of those made by officers who have delegated responsibility.

- 18 The Director of Legal Services is responsible for advising all Members and officers about who has authority to take a particular decision.
- 19 The Director of Legal Services is responsible for advising the Cabinet or full Council about whether a decision is likely to be considered contrary or not wholly in accordance with the Policy Framework.
- 20 The Director of Legal Services (together with the Chief Operating Officer) is responsible for advising the Cabinet or full Council about whether a decision is likely to be considered contrary to or not wholly in accordance with the budget. Actions that may be 'contrary to the budget' include:
  - 20.1 initiating a new policy which may have financial implications that cannot be contained within existing budgets
  - 20.2 committing expenditure in future years that exceeds Medium Term Financial Plan assumptions
  - 20.3 agreeing budget transfers that exceed approved virement limits
  - 20.4 causing the total expenditure financed from Council tax, grants and corporately held reserves to increase, or to increase by more than a significant amount ("Significant" to be defined by the Chief Operating Officer or their representative).
- 21 The Director of Legal Services is responsible for maintaining an up-to-date Constitution.

*Responsible Financial Officer (Section 151 Officer)*

- 22 The Chief Operating Officer is the financial adviser to the Council, the Cabinet and officers and is the Council's 'responsible financial officer' under the Accounts and Audit Regulations. He or she is responsible for the proper administration of the Council's affairs as specified in, and undertaking the duties required by, Section 151 of the Local Government Act 1972, Section 114 of the Local Government Finance Act 1988, the Local Government and Housing Act 1989, the Local Government Act 2003 and all other relevant legislation.
- 23 The Chief Operating Officer is responsible generally, for discharging, on behalf of Cheshire East Council, the responsibilities set out in the CIPFA Statement on the Role of the Chief Financial Officer in Local Government, including:
  - 23.1 in conjunction with the other Corporate Leadership Team, the proper administration of the Council's financial affairs
  - 23.2 setting and monitoring compliance with financial management standards

- 23.3 advising on the corporate financial position and on the key financial controls necessary to secure sound financial management
  - 23.4 providing financial information
  - 23.5 preparing the revenue budget and capital programme
  - 23.6 treasury management.
- 24 Section 114 of the Local Government Finance Act 1988 includes a requirement for the Chief Operating Officer to report to the full Council, Cabinet and external auditor if the Council or one of its officers:
- 24.1 has made, or is about to make, a decision which involves incurring unlawful expenditure
  - 24.2 has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficiency to the Council
  - 24.3 is about to make an unlawful entry in the Council's accounts.
- 25 Section 114 of the 1988 Act also requires:
- 25.1 the Chief Operating Officer to nominate a properly qualified Member of staff to deputise should he or she be unable to perform the duties under section 114 personally. The designated deputy for this purpose is the Head of Finance and Performance
  - 25.2 the Authority to provide the Chief Operating Officer with sufficient staff, accommodation and other resources – including legal advice where this is necessary – to carry out the duties under section 114.

#### *Money Laundering Reporting Officer*

- 26 The Chief Operating Officer is appointed as the Council's Money Laundering Reporting Officer and will maintain and advise on Anti-Money Laundering procedures.
- 27 They will be responsible for notifying the Serious Organised Crime Agency (SOCA) of any suspected cases of money laundering committed within the accounts of the Council as soon as possible and fulfil other duties as defined by legislation or regulation related to the post. Simultaneously, the Portfolio Holder for Finance and Communications will be kept informed of any notifications to SOCA and of any issues arising from them.

### *Corporate Leadership Team*

- 28 The officer management arrangements for the Council are overseen by a Corporate Leadership Team comprising the Chief Executive, Chief Operating Officer, Executive Director of People, Strategic Director of Adult Services, Executive Director of Place, and Director of Legal Services. Each member of the Corporate Leadership Team is accountable to the Chief Executive for leading the Services within his or her area of responsibility and ensuring that the Services are managed in accordance with the objectives, plans, policies, programmes, budgets and processes of the Council.
- 29 Within these arrangements, powers are delegated to Corporate Leadership Team members, who will establish, operate and keep under review Local Schemes of Delegation, to cascade powers and responsibilities to Heads of Service and other subordinate officers. Every such sub-delegation will be recorded in writing within a Local Scheme of Delegation. The sub-delegation of functions shall not in any way diminish the overall responsibility and accountability of the delegator.
- 30 Corporate Leadership Team members are responsible for financial management within their directorates. They shall manage the development of budget policy options with a detailed assessment of financial implications within the budget process and resource framework agreed by the Council.

### *Schemes of Financial Delegation*

- 31 Corporate Leadership Team members will establish, operate and keep under review Local Schemes of Delegation, in consultation with the Chief Operating Officer, to ensure that:
- 31.1 the day to day financial management of services within their directorate is carried out in a secure, efficient and effective manner, and in accordance with the Finance Procedure Rules and associated relevant guidance
  - 31.2 expenditure is contained within the service's overall approved budget and that individual budget heads are not overspent, by monitoring the budget and taking appropriate and timely corrective action where significant variances are forecast and if necessary, seeking specific in year approval for the transfer of resources between budgets
  - 31.3 regular reports in an approved format are made to Cabinet on projected expenditure against budget and performance against service outcome targets set out in the business plan
  - 31.4 prior approval is sought at the appropriate level for new proposals that create financial commitments in future years, change existing policies, initiate new policies or materially extend or reduce the council's services

- 31.5 resources are only used for the purposes for which they were intended
  - 31.6 compliance with the scheme of virement set out at paragraphs 33-38 below
  - 31.7 risks are appropriately assessed, reviewed and managed
  - 31.8 all members of staff are fully trained, aware of and comply with the requirements of Financial Procedure Rules, including the Contract Procedure Rules
  - 31.9 all allegations of suspected fraud, corruption and financial irregularity are promptly reported to the Chief Operating Officer and Director of Legal Services , and that any local investigations are undertaken thoroughly, consistently and impartially.
- 32 Schemes of Financial Delegation will set out all financial responsibilities and approval limits as delegated by the Corporate Leadership Team to Heads of Service, and any sub-delegations within services. Authorised Officers are those officers given specific delegated authority by their Head of Service as documented in that service's Scheme of Financial Delegation. The financial limits specified in the Scheme of Financial Delegation will be used to control access to financial systems and on- line transaction approvals.

## **Managing Expenditure**

### *Scheme of Virement*

- 33 A virement constitutes the movement of existing approved budgets from one area to another and is not an increase in overall budgets through the addition of new monies.
- 34 The Scheme of Virement is intended to enable the Cabinet, Corporate Leadership Team and their staff to manage budgets with a degree of flexibility within the overall policy framework determined by the full Council, and therefore to optimise the use of resources.
- 35 The full Council is responsible for agreeing limits for virement of expenditure between budget headings.
- 36 Corporate Leadership Team are responsible for agreeing in-year virements within delegated limits, in consultation with the Chief Operating Officer where required.
- 37 Key controls for the scheme of virement are:
  - 37.1 It is administered by the Chief Operating Officer within guidelines set by the full Council. Any departure from this scheme requires the approval of the full Council



- 37.2 The overall budget is agreed by the Cabinet and approved by the full Council. Corporate Leadership Team and budget managers are therefore authorised to incur expenditure in accordance with the estimates that make up the budget. Income received cannot be used to defray expenditure.
- 37.3 For the purposes of this scheme, a budget head is considered to be a division of service as identified in the approved Budget Report, or, as a minimum, at an equivalent level to the standard service subdivision as defined by CIPFA's Service Expenditure Analysis
- 37.4 Virement does not create additional overall budget liability
- 37.5 No virements are permitted from ring fenced budgets
- 37.6 Some revenue virements are essentially of an administrative nature, for example, implementation of restructuring and reorganisation proposals that have already received the appropriate level of officer and member approval; routine changes to the structure of the chart of accounts; changes to notional accounting budgets which are required for reporting purposes but which do not impact on the Councils cash expenditure. Where the virement is of an administrative nature, Member approval is not required and approval limits will be based on the Scheme of Delegation. Administrative virements that exceed these limits will be approved by the Chief Operating Officer
- 37.7 Corporate Leadership Team are expected to exercise their discretion in managing their budgets responsibly and prudently. For example, they should aim to avoid supporting recurring expenditure from one-off sources of savings or additional income, or creating future commitments, including full-year effects of decisions made part way through a year, for which they have not identified future resources. Corporate Leadership Team must plan to fund such commitments from within their own budgets.

38 Approval limits for virements are as follows:

Approval Level	Virement Amount/Percentage
Head of Service	Up to £100,000 (Revenue)
Corporate Leadership Team (Relevant Executive Director)	From £100,000 to £500,000 between net Service budgets (Revenue) within their area of responsibility. From £100,000 to £1,000,000 funded from underspends within the approved Service budget (Capital)
Corporate Leadership Team (Relevant Executive Director) in consultation with Finance & Communications Portfolio Holder and relevant Portfolio Holder	£100,000 and up to £250,000 (Revenue/Capital)  £500,000 - £1m (Revenue)  £1m - £5m (Capital)
Cabinet (where virement is within budget and policy framework)	£1m+ (Revenue) £5m+ (Capital)
Council (where virement is outside the budget and policy framework)	£1m+ (Revenue) £5m+ (Capital)

### Supplementary Revenue Estimates

39 Where services wish to undertake an activity not originally identified in the budget or incur additional revenue expenditure on an existing activity where this is fully funded (for example through additional specific grant allocations), approval must be sought for a supplementary revenue estimate in accordance with paragraph 40 below. The Chief Operating Officer must be consulted to establish that the funding identified can be legitimately linked to the expenditure in question.

- 40 Approval limits for fully funded supplementary revenue estimates are as follows:

<b>Approval Level</b>	<b>Supplementary Estimate Amount</b>
Corporate Leadership Team (Relevant Executive Director)	Up to £100,000
Corporate Leadership Team (Relevant Executive Director) in consultation with the Portfolio Holder for Finance and Communications	£100,000 and up to £250,000
Portfolio Holders and (Relevant Executive Director) in consultation with the Portfolio Holder for Finance and Communications	Between £250,000 and up to £500,000
Cabinet	Between £500,000 and up to £1,000,000
Council with recommendation from Cabinet	£1,000,000 and over

- 41 Approval limits for supplementary revenue estimates which are to be funded from earmarked reserves or contingencies are as follows:

<b>Approval Level</b>	<b>Supplementary Estimate Amount</b>
Chief Operating Officer	From earmarked reserves - Up to £250,000 From contingencies – Up to £500,000
Chief Operating Officer in consultation with the Portfolio Holder for Finance and Communications	From earmarked reserves - Between £250,000 and £500,000 From contingencies – Between £500,000 and £1,000,000
Cabinet	From earmarked reserves - Between £500,000 and £1,000,000 From contingencies – Over £1,000,000.
Council with recommendation from Cabinet	From earmarked reserves - £1,000,000 and over

- 42 Supplementary revenue estimates which are to be funded wholly or in part from general reserves or general purpose funding (i.e. Council tax or non-ring fenced grant) must be approved by Council regardless of Value.

## Supplementary Capital Estimates

- 43 Supplementary capital estimates which are fully funded from external resources (e.g., specific grant; developer's contributions) must be approved in accordance with paragraph 44 below.
- 44 Capital budget increases funded wholly or in part from additional Council resources such as capital reserves, borrowing and capital receipts, **regardless of value**, must be approved by Council. Council approval is also required where there are significant revenue implications for future year's budgets.
- 45 Approval limits for supplementary capital estimates are as follows:

Approval Level	Supplementary Estimate Amount
Corporate Leadership Team	Up to £100,000
Corporate Leadership Team in consultation with the Portfolio Holder for Finance and Communications	£100,000 and up to £250,000
Portfolio Holders and Corporate Leadership Team in consultation Portfolio Holder for Finance and Communications	Between £250,000 and up to £500,000
Cabinet	Between £500,000 and up to £1,000,000
Council with recommendation from Cabinet	£1,000,000 and over

## Treatment of Year End Balances

- 46 The full Council is responsible for agreeing procedures for carrying forward under- and overspendings on budget headings.
- 47 A budget head is considered to be a division of service as identified in the approved Budget Report, or, as a minimum, at an equivalent level to the standard service subdivision as defined by CIPFA's Service Expenditure Analysis.
- 48 Any residual overspending on a Service budget may be carried forward as the first call on the following year's budget.

- 49 Any revenue underspending at the year-end may be carried forward, subject to the agreement of the Cabinet, and on the advice of the Portfolio Holder for Finance and Communications. All carry forward proposals must be supported by an appropriate business case demonstrating that the underspend was planned and that the resources carried forward will be earmarked for a specific and appropriate purpose. Corporate Leadership Team should include provisional indications of likely carry forward requests in their reports on the mid-year and three-quarter review of performance. Before approval is sought for a carry forward, Corporate Leadership Team should ensure that there are no unfunded overspends within their directorate. It is extremely unlikely that proposed carry forwards for a service will be approved if there are unfunded overspends elsewhere within the directorate.
- 50 Capital block provisions are allocations within which the full starts value of approved schemes must be contained. Any uncommitted sum at the year-end may, be carried forward subject to consideration by the Portfolio Holder for Finance and Communications. Any uncommitted sum which is not justified on this basis will be returned to Council balances. Equally, any overspending will be carried forward as the first call on the following year's provision.

### **Accounting Policies**

- 51 The Chief Operating Officer is responsible for selecting appropriate accounting policies and ensuring that they are applied consistently; exercising oversight of financial and accounting records and systems; and preparing and publishing reports containing statements on the overall finances of the Council including the annual statement of accounts.
- 52 The key controls for accounting policies are:
- 52.1 systems of internal control are in place to ensure that financial transactions are lawful
  - 52.2 suitable accounting policies are selected and applied consistently
  - 52.3 accurate and complete accounting records are maintained
  - 52.4 financial statements are prepared which present fairly the financial position of the Council and its expenditure and income.

- 53 The Chief Operating Officer is responsible for:
- 53.1 selecting suitable accounting policies and ensuring that they are applied consistently
  - 53.2 exercising supervision over financial and accounting records and systems
  - 53.3 preparing and publishing reports containing the statements on the overall finances of the Council including the Council's Annual Report and Accounts.
- 54 Corporate Leadership Team are responsible for ensuring that staff in their directorates are aware of and adhere to the accounting policies, procedures and guidelines set by the Chief Operating Officer .

### **Accounting Records and Returns**

- 55 The Chief Operating Officer is responsible for determining the accounting procedures and records for the Council.
- 56 All accounting procedures will be approved by the Chief Operating Officer
- 57 All accounts and accounting records will be compiled by the Chief Operating Officer or under his/her direction. The form and content of records maintained in other directorates will be approved by the Chief Operating Officer.
- 58 The key controls for accounting policies are:
- 58.1 calculation, checking and recording of sums due to or from the Council will be separated as completely as possible from their collection or payment
  - 58.2 officers responsible for examining and checking cash transaction accounts will not process any of these transactions themselves
  - 58.3 reconciliation procedures are carried out to ensure transactions are correctly recorded
  - 58.4 procedures are in place to enable accounting records to be reconstituted in the event of systems failure
  - 58.5 prime documents are retained in accordance with legislative and other requirements.

## **The Annual Statement of Accounts**

- 59 The Chief Operating Officer is responsible for ensuring that the annual statement of accounts is prepared in accordance with the *Code of Practice on Local Council Accounting in the United Kingdom* (CIPFA/LASAAC) and signing them in accordance with the Accounts and Audit Regulation 2015. Approval of the statutory accounts has been delegated by Council to the Audit and Governance Committee.

DRAFT

This page is left intentionally blank



## Section B. Financial Planning

### Why is this important?

- 1 The full Council is responsible for agreeing the Council's Policy Framework and Budget, which will be proposed by the Cabinet. In terms of financial planning, the key elements are:
  - 1.1 The **Business Plan** – this sets out:
    - 1.1.1 what the Council wants to achieve in the short and medium term
    - 1.1.2 how services will change in the light of priorities, performance, resources, workforce planning needs and consideration of risks.
    - 1.1.3 investment required to deliver change
    - 1.1.4 how much services will cost in overall terms and to service users
    - 1.1.5 how much Council Tax will be levied
  - 1.2 The **Budget** – this is the financial expression of the Council's Business Plan. It sets out the allocation of resources to services and projects, the level of contingency funding, the Council Tax base and Council Tax rate, borrowing limits and capital financing requirements
  - 1.3 The **Capital Programme** – Capital expenditure involves acquiring or enhancing fixed assets with a long-term value to the Council, such as land, buildings, and major items of plant, equipment or vehicles. Capital assets shape the way services are delivered in the long term and create financial commitments for the future in the form of financing costs and revenue running costs
  - 1.4 The **Treasury Management Strategy** – which sets out the arrangements for the management of the Council's borrowing, lending, cash flows and investments.
  - 1.5 **Specific Service Plans and Strategies** which have a financial implication.

### Policy Framework

- 2 The full Council is required by law, to agree a Policy Framework. The Policy Framework is defined in Chapter 2 Part 2 of the Council's Constitution.
- 3 The full Council is also responsible for approving procedures for agreeing variations to approved budgets, plans and strategies forming the Policy Framework.

- 4 The full Council is responsible for setting the level at which the Cabinet may reallocate budget funds from one service to another. The Cabinet is responsible for taking in-year decisions on resources and priorities in order to deliver the Policy Framework within the financial limits set by the Council.

### **Strategic Planning Framework**

- 5 Each year the Council produces a Business Plan, including an approved budget, capital programme, treasury management strategy asset management strategy and reserves strategy detailing the financial and service scenario over a three year planning horizon and the policy and expenditure changes required to respond to this scenario.
- 6 The Chief Operating Officer will advise the Council on the financial environment, financial policies (including the appropriate levels of reserves and contingencies, prudential borrowing and treasury management) and the policy and expenditure options to assist in the determination of its Budget. The Corporate Leadership Team and Heads of Service will support this process by assessing and advising on the service scenario and policy and expenditure options for revenue and capital, in their area of responsibility, in a form determined by the Chief Operating Officer.
- 7 The Cabinet, advised by the Chief Operating Officer, Corporate Leadership Team and Heads of Service, will develop a budget package including financing options, policy and expenditure options and capital programme. This will be subject to scrutiny by the Overview and Scrutiny Committee before the Cabinet finalises its recommendations to Council. The final Budget policy and Council Tax will be determined by Council.

### **Budgeting**

#### *Format of the Budget*

- 8 The format of the budget determines the level of detail to which financial control and management will be exercised. The format shapes how the rules around virement operate, the operation of cash limits and sets the level at which funds may be reallocated within budgets.
- 9 The general format of the budget will be approved by the full Council and proposed by the Cabinet on the advice of the Chief Operating Officer. The draft budget will include allocation to different services and projects, proposed taxation levels and contingency funds.

*Revenue Budget Preparation, Monitoring and Control Revenue expenditure*

- 10 Revenue expenditure is broadly defined as any expenditure incurred on the day to day running of the Council. Examples of revenue expenditure include salaries, energy costs, and consumable supplies and materials.

*Preparation*

- 11 The Chief Operating Officer is responsible for ensuring that a revenue budget is prepared on an annual basis and a general revenue plan on a three-yearly basis for consideration by the Cabinet, before submission to the full Council. The full Council may amend the budget or ask the Cabinet to reconsider it before approving it in accordance with the Constitution.
- 12 The Cabinet is responsible for issuing guidance on the general content of the budget in consultation with the Chief Operating Officer as soon as possible following approval by the full Council.
- 13 It is the responsibility of Corporate Leadership Team to ensure that budget estimates reflecting agreed service plans are submitted to the Cabinet and that these estimates are prepared in line with any guidance or directions that may be issued by the Cabinet.
- 14 The Cabinet will then submit a 'final budget' to the full Council for approval.
- 15 The Chief Operating Officer is responsible for reporting to the full Council on the robustness of estimates contained within the budget proposed by the Cabinet and the adequacy of reserves allowed for in the budget proposals.
- 16 The Council shall not approve amendments to either revenue or capital budgets without first having considered the advice of the Cabinet and the Chief Operating Officer on the financial implications arising.

*Monitoring and Control*

- 17 The Chief Operating Officer is responsible for providing appropriate financial information to enable budgets to be monitored effectively. He or she must monitor and control expenditure against budget allocations at a corporate level and report to the Cabinet on the overall position on a regular basis.

- 18 It is the responsibility of Corporate Leadership Team to control income and expenditure within their area and to monitor performance, taking account of financial information and guidance provided by the Chief Operating Officer. They must report on variances within their own areas. They must also take any action necessary to avoid exceeding their budget allocation and alert the Chief Operating Officer to any potential overspending or under-achievement of income budgets in a timely manner.
- 19 The Chief Operating Officer is responsible for the following:
- 19.1 Establishing an appropriate framework of budgetary management and control which ensures that:
    - 19.1.1 budget management is exercised within annual cash limits unless the full Council agrees otherwise
    - 19.1.2 timely information on receipts and payments is made available, which is sufficiently detailed to enable officers to fulfil their budgetary responsibilities
    - 19.1.3 expenditure is committed only against an approved budget head
    - 19.1.4 all officers responsible for committing expenditure comply with relevant guidance, and Finance and Contract Procedure Rules
    - 19.1.5 each cost centre has a single named manager, determined by the relevant Head of Service. As a general principle, budget responsibility should be aligned as closely as possible to the decision-making processes that commits expenditure
    - 19.1.6 significant variances from approved budgets are investigated and reported by budget managers regularly
  - 19.2 Administering the Council's scheme of virement
  - 19.3 Submitting reports to the Cabinet and to the full Council, in consultation with the relevant Director or Head of Service, where they are unable to balance expenditure and resources within existing approved budgets under their control
  - 19.4 Preparing and submitting reports on the Council's projected income and expenditure compared with the budget on a regular basis.

- 20 Corporate Leadership Team are responsible for the following:
- 20.1 maintaining budgetary control within their Services, in adherence to the principles paragraph 18, and ensuring that all income and expenditure is properly recorded and accounted for
  - 20.2 ensuring that an accountable budget manager is identified for each item of income and expenditure under their control. As a general principle, budget responsibility should be aligned as closely as possible to the decision-making that commits expenditure
  - 20.3 ensuring that spending remains within the service's overall approved budget, and that individual budget heads are not overspent, by monitoring the budget and taking appropriate and timely corrective action where significant variations from the approved budget are forecast
  - 20.4 ensuring that a monitoring process is in place to review performance levels/levels of service in conjunction with the budget and is operating effectively
  - 20.5 preparing and submitting to the Cabinet regular reports on the service's projected expenditure compared with its budget, in consultation with the Chief Operating Officer
  - 20.6 ensuring prior approval by the full Council or Cabinet (as appropriate) for new proposals, of whatever amount, that:
    - 20.6.1 create financial commitments in future years
    - 20.6.2 change existing policies, initiate new policies or cease existing policies or materially extend or reduce the Council's services.
  - 20.7 ensuring compliance with the scheme of virement
  - 20.8 agreeing with the appropriate Director or Corporate Leadership Team member any budget proposal, (including a virement proposal) which impacts their respective service areas, after having consulted with the Chief Operating Officer and the Finance & Communications Portfolio Holder
  - 20.9 ensuring Schemes of Financial Delegation are maintained for all within their area of responsibility
  - 20.10 ensuring best value is obtained.

### *Determination, Monitoring and Control of Affordable Borrowing*

- 21 Under the Local Government Act 2003 the Council is required by regulation to have regard to the Chartered Institute of Public Finance and Accountancy's (CIPFA) Prudential Code for Capital Finance in Local Authorities. The key objectives of the Prudential Code are to ensure that within a clear framework, the capital investment plans of local authorities are affordable, prudent and sustainable. A further objective is to ensure that treasury management supports prudence, affordability and sustainability.
- 22 The Council is responsible for approving prior to the commencement of the financial year the prudential indicators for the forthcoming financial year and at least the two subsequent financial years required by the Code. The indicators required as a minimum are:

#### *For the three year period:*

- 22.1 Estimates of the ratio of financing costs to net revenue stream
- 22.2 Estimates of capital expenditure
- 22.3 Estimates of the Council Tax that would result from the totality of the estimated capital expenditure
- 22.4 Estimate of capital financing requirement (underlying need to borrow for a capital purpose)
- 22.5 Authorised limit for external debt
- 22.6 Operational boundary for external debt

#### *After the year end actual values are to be calculated for:*

- 22.7 Ratio of financing costs to net revenue stream
- 22.8 Capital expenditure
- 22.9 Capital financing requirement
- 22.10 External debt

- 23 The Chief Operating Officer is responsible for:
- 23.1 establishing procedures to both monitor performance against all forward looking prudential indicators and for ensuring that net external borrowing does not exceed the capital financing requirement.
  - 23.2 reporting to Council any significant deviations from expectations.

- 23.3 ensuring that regular monitoring is undertaken in year against the key measures of affordability and sustainability, by reviewing estimates of financing costs to revenue and the capital financing requirement.
- 23.4 reporting to Council, setting out management action, where there is significant variation in the estimates used to calculate these prudential indicators, for example caused by major overruns of expenditure on projects or not achieving in-year capital receipts.

#### *Resource Allocation*

- 24 The Chief Operating Officer is responsible for developing and maintaining a resource allocation process that ensures due consideration of the Council's Policy Framework.
- 25 The Chief Operating Officer is responsible for:
  - 25.1 advising on methods available for the funding of resources, such as grants from central government and borrowing requirements
  - 25.2 Assisting in the allocation of resources to budget managers.
- 26 Corporate Leadership Team are responsible for:
  - 26.1 working within budget limits and to utilise resources allocated, and further allocate resources, in the most efficient, effective and economic way
  - 26.2 identifying opportunities to minimise or eliminate resource requirements or consumption without having a detrimental effect on service delivery.

#### *Capital Expenditure*

- 27 Capital expenditure is broadly defined as expenditure on the acquisition of a tangible asset, or expenditure which enhances (rather than merely maintains), the value of an existing asset and/or extends the useful life of an asset and increasing usability, provided that the asset yields benefits to the Council and the services it provides is for a period of more than one year.

#### *Capital Approvals*

- 28 Capital approvals referred to in these Finance Procedure Rules relate to the total cost or "starts value" of each provision or scheme rather than the anticipated expenditure in each year. Individual items estimated to cost £250,000 and above will be treated as separate schemes or provisions. The Council has established a Project Gateway process to provide a strong quality assurance model for major Projects and Programmes which underpins these rules.

- 29 A Business Case, in a format agreed by the Chief Operating Officer, must be prepared for all capital proposals, including the replacement of individual vehicles or items of equipment, before being submitted for inclusion in the Capital Programme or before approval is sought from Members in year. The Business Case format will be proportionate to the value and level of risk. Where there is a greater risk further detail in the Business Case may also be required, in a format agreed by the Chief Operating Officer. Officers must comply with the Project Gateway Process as determined by the Chief Operating Officer which is subject to review by the Executive Monitoring Board.
- 30 A Business Case, must also be prepared for all revenue proposals with a significant financial impact, risk profile or policy change, as defined by the Chief Operating Officer. The template, in a form agreed by the Chief Operating Officer, must include an assessment of the Service consequences, risk and impact on users, and include any differential impact on particular groups or localities. The Project Gateway process applies to these proposals in the same way as set out in paragraph 29 above.

#### *Capital Block Provisions*

- 31 As part of the annual policy and planning process, schemes in the capital programme which have not reached an advanced state will be periodically reviewed.
- 32 Services are expected to develop reserve capital schemes which can be brought forward in the event of changes in the approved programme, subject to approval via the normal routes.
- 33 Block provisions may be approved within the Capital Programme for individual schemes costing less than £250,000. A detailed breakdown of the expenditure proposed must be submitted as part of the policy and planning process.
- 34 Where possible, all capital schemes contained within the block provision should be approved through the annual capital programme setting process, within the timetable set out by the Chief Operating Officer and approved by Council in February. Any subsequent further breakdown of block approvals must follow the appropriate approval route, with completion of a delegated decision template where necessary.

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

- 35 Any 'in year' approval sought for capital schemes, must be supported by a completed, detailed Business Case template, in the format prescribed by the Chief Operating Officer, which has been considered by the Technical Enabler Group prior to submission through the appropriate decision making route.



- 36 Once the Capital Programme has been approved, Project managers must produce a more detailed Business Case and appropriate Project Initiation Document (PID) as required outlining in more detail how the Project or Programme will be delivered which must be approved by the relevant SRO at a Project Board Where project outcomes or costs alter significantly from those set out in the original Business Case a revised and updated Business Case must be completed and submitted to the relevant Project Board. This process is subject to Executive Monitoring Board oversight and assurance. In the event that the Executive Monitoring Board reviews a particular Project and considers that it is not being managed effectively or has become unviable the Portfolio Holder for Finance and Communications is authorised, in consultation with the Leader of the Council, the Portfolio Holder for Corporate Policy and Legal Services and the relevant Portfolio holder for the Project to recommend remedial action or, in exceptional circumstances, the abandonment of the Project or Programme through the appropriate decision making route.
- 37 The capital programme will distinguish between committed expenditure from schemes already approved, recurring programmes and new proposals, both medium and longer term.
- 38 Where budget provision is included for feasibility work and option development in the capital programme and subsequently the scheme does not progress the expenditure incurred will be charged to revenue.
- 39 Wherever possible, expenditure in respect of Highways improvements funded by developers and Rechargeable works should be included in the Capital Programme. Where this is not possible Heads of Service may approve capital expenditure in respect of:
- 39.1 highway improvements fully funded by developers under Section 278 of the Highways Act 1980, provided that a formal agreement has been completed with the developer
  - 39.2 other rechargeable reinstatement work
  - 39.3 urgent work to repair, replace or reinstate vehicles, buildings or equipment, where the work is to be fully funded from insurance monies following consultation with the Head of Finance and Performance.
- 40 In addition, Heads of Service may authorise essential design work required in advance of the start of the financial year on capital schemes which are in the programme approved by Council in February.
- 41 Council will approve the reprofiling of spend on approved capital schemes across financial years. Council will approve the carry forward of slippage/accelerated spend into future financial years.

### *Capital Receipts*

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

### *Leasing and Rental Agreements*

- 44 Leasing or renting agreements must not be entered into unless the service has established that they do not constitute a charge against the Council's prudential borrowing limits. Advice must be obtained from the Chief Operating Officer on general leasing arrangements and on whether the lease is a finance or operating lease. Chief Operating Officer approval must be obtained for all agreements which may involve a leasing charge.
- 45 Leases relating to land or property also require the approval of the Chief Operating Officer. Only the Director of Legal Services or his/her authorised deputies, or persons specifically authorised by the Service Scheme of Financial Delegation, may sign such agreements.

### *Maintenance of Reserves*

- 46 It is the responsibility of the Chief Operating Officer to advise the Cabinet and/or the full Council on prudent levels of reserves for the Council.
- 47 The key controls are:
  - 47.1 Professional standards as set out in the Code of Practice on Local Authority Accounting in the United Kingdom: and agreed accounting policies.
  - 47.2 Clear agreement of the purpose for which reserves are held and the type of expenditure which they may be used to fund.
  - 47.3 Clear processes for the authorisation of Appropriations to and from reserves.
- 48 The Chief Operating Officer is responsible for:
  - 48.1 Advising the Cabinet and/or the full Council on prudent levels of reserves for the Council, having due regard to any advice that may be offered by the Council's external auditor in this matter.
- 49 Corporate Leadership Team are responsible for:
  - 49.1 Ensuring that resources are used only for the purposes for which they were intended.

## *Reporting*

- 50 Heads of Service are responsible for preparing regular reports on overall financial and non-financial performance and progress against service plan targets, and for submitting these to the Cabinet, and the Overview and Scrutiny Committee after consulting the Chief Operating Officer in accordance with procedures agreed from time to time. These reports must include specific reference to the implementation of policy changes and new developments agreed as part of the budget setting process and other specific requirements as notified in the reporting guidance. Capital Project Managers will report periodically to their relevant Cabinet Member on the progress and forecast of all capital expenditure and income against the approved programme.
- 51 These regular reports are also to include specific reference to Service performance against the expected non-financial outcomes in the form of key performance targets. Heads of Service are expected to achieve value for money in the delivery of services and the reports should demonstrate how this has been achieved together with an analysis of how key policy and expenditure proposals have been implemented.
- 52 The key reporting stages are:
  - 52.1 Approval of the service plan, including budget statement and performance targets
  - 52.2 Approval of the Business Case, which will be in a form prescribed by the Chief Operating Officer before it can be included in the Capital Programme
  - 52.3 Quarterly reviews of revenue and capital expenditure
  - 52.4 Final outturn reports for both revenue and capital expenditure, including full post-implementation review, on all major capital schemes completed during the year. This will also include a report on the use of block provisions
  - 52.5 Summary quarterly reviews and outturn position statements of both capital and revenue expenditure will also be reported to Council through its relevant subordinate bodies.
- 53 In addition, the reports will be specifically required to give details in respect of the following:
  - 53.1 Potential overspends and proposed remedial action, including any impact on balances and future year's budgets which may need to be factored in to future financial scenario planning
  - 53.2 Amendments to approved budgets (virements, supplementary capital estimates etc.) where Member approval is required.

This page has been left intentionally blank

## **Section C. Risk management and Control of Resources**

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

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

### **Risk Management and Insurance**

- 2 The Cabinet is responsible for advising Council on an appropriate risk management policy statement and strategy, including risk appetite/tolerance levels, and for reviewing the effectiveness of risk management. The Cabinet is also responsible for ensuring that proper insurance exists where appropriate.
- 3 The Corporate Manager Governance and Audit is responsible for preparing the Council's risk management policy statement and for promoting it throughout the Council.

#### *Insurance*

- 4 The Chief Operating Officer will maintain and administer the Council's insurances. The Chief Operating Officer is responsible for authorising the settlement or repudiation of insurance claims and associated costs acting on advice from the Council's solicitors, insurers, and claim handlers.
- 5 Corporate Leadership Team and Heads of Service are responsible for informing the Chief Operating Officer immediately of:
  - 4.1 any insurance claims received
  - 4.2 any events which may result in an insurance claim against the Council
  - 4.3 the terms of any indemnity which the Council is required to give prior to entering into any contracts etc.
  - 4.4 any new risks which might require to be insured, together with any changed circumstances affecting existing risks.  
Consideration should be given to new projects, new ways of working, changes in legislation requiring new ways of delivery etc., where the insurance impact is often overlooked.
- 6 No new insurances may be taken out without prior consultation with the Chief Operating Officer.
- 7 Corporate Leadership Team must ensure that there is co-operation with the Insurance Team in providing the correct documentation and that the correct retention of documents is observed.

- 8 Service budgets will be charged with the cost of legal penalties or losses incurred by the Council as a result of any failure to comply with the requirements of the Civil Procedure Rules and these Finance and Contract Procedure Rules relating to claims.

### *Risk Management*

- 9 The Council's approach to Risk Management is that it should be embedded throughout the organisation at both a strategic and an operational level, through integration into existing systems and processes.
- 10 The Corporate Manager Governance and Audit develops the strategy and supporting framework on behalf of the Corporate Leadership Team. The Audit and Governance Committee scrutinise the risk management process ensuring the Council's risks are managed effectively and that strategic decisions are informed by, and influence the Corporate Risk Register.
- 11 Corporate Leadership Team are responsible for ensuring the Risk Management Strategy is implemented and that the full risk management cycle operates within their Service.
- 12 The full cycle consists of:
  - 12.1 Identification of risks, both negative and positive, in relation to the objectives of the Council.
  - 12.2 Evaluation of risks scored for likelihood and impact, both gross (before any controls) and net (with existing controls)
  - 12.3 Treatment of the risk either by: avoidance, mitigation, transfer or to consciously accept the risk.
  - 12.4 Actions and risks monitored and reviewed on a regular basis.
  - 12.5 The Council's Risk Register will be maintained and co-ordinated by the Corporate Manager Governance and Audit.
- 13 There are two levels to the Risk Register:
  - 13.1 **Corporate** – those risks that impact on the organisation's overall objectives either because of their frequency of occurrence or the significance of the impact.
  - 13.2 **Service** – those risks that impact on the service objectives. There should be a movement of risks both upwards and downwards throughout the levels and treatment addressed at the most appropriate level of the organisation.
- 14 Heads of Service are responsible for ensuring risk management is carried out at both an operational and strategic level in accordance with the agreed guidance and procedures.

- 15 Service strategic risk assessments will be carried out annually to inform the service plan. These risk assessments will form the basis of the Service element of the Council's risk register.
- 16 Heads of Service will take account of, and address, corporate risks where appropriate and inform the Corporate Manager Governance and Audit of any service risks that should be considered significant enough to raise to the corporate level.
- 17 Service risk registers, and associated actions, will be monitored and reviewed on a regular basis (at least quarterly) as part of the performance management process.
- 18 The Corporate Risk Register will be reported to the Corporate Leadership Team and to the Audit and Governance Committee in accordance with the budget reporting cycle.

#### *Business Continuity*

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

#### *Internal Controls*

- 20 Internal Control refers to the systems of control devised by management to help ensure the Council's objectives are achieved in a manner that promotes economical, efficient and effective use of resources and that the Council's assets and interests are safeguarded.
- 21 The Chief Operating Officer is responsible for advising on effective systems of internal control. These arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice. They should ensure that public funds are properly safeguarded and used economically, efficiently, and in accordance with the statutory and other authorities that govern their use.
- 22 It is the responsibility of Corporate Leadership Team to establish sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve continuous improvement, economy, efficiency and effectiveness and for achieving their financial performance targets.

## **Audit Requirements**

### *Internal Audit*

- 23 The requirement for an internal audit function for local authorities is implied by section 151 of the Local Government Act 1972, which requires that authorities “make arrangements for the proper administration of their financial affairs”. The Accounts and Audit Regulations 2015 more specifically require that a “relevant authority must ensure that it has a sound system of internal control which facilitates the effective exercise of its functions and the achievement of its aims and objectives; ensures that the financial and operational management of the authority is effective; and includes effective arrangements for the management of risk.
- 24 The Public Sector Internal Audit Standards define internal auditing as “an independent, objective assurance and consulting activity designed to add value and improve an organisation’s operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.”
- 25 The Council’s Internal Audit function delivers this function within the Council and provides assurance to the Section 151 officer and the Audit and Governance Committee, with regard to the effectiveness of the Council’s internal control environment.
- 26 The Council must, on an annual basis, produce an Annual Governance Statement. This statement must provide a description of the system of internal control within the Council, a description of any work undertaken to assess the effectiveness of the internal control framework, and any significant internal control weaknesses.
- 27 To contribute to the production of the Annual Governance Statement, the Corporate Manager Governance and Audit, is responsible for planning and delivering a programme of independent review of the Council’s activities, the scope of the programme being based on the Council’s objectives and an assessment of the risk which may affect the achievement of these objectives.
- 28 The Corporate Manager Governance and Audit is also responsible for reporting to those charged with Governance and currently satisfies this requirement by presenting an annual report to the Audit and Governance Committee, summarising the audit plans for the coming year and a commentary on audit activity which is completed or in progress. A mid-year report setting out progress against the annual audit plan is taken to the Audit and Governance Committee. In addition any matters of material importance in relation to audit matters are also reported to the Cabinet and Audit and Governance Committee.



- 29 Audit staff will have, in accordance with the Accounts and Audit Regulations, and with strict accountability for confidentiality, and safeguarding records and information, full, free and unrestricted access to any and all of the Council's premises, personnel, assets, records and third party fund transactions pertinent to carrying out any engagement, including those of the Council's alternative service delivery vehicles. These rights of access should be documented in the management agreement.
- 30 With regards to organisations participating in partnering arrangements, Internal Audit staff shall have such access to the premises, personnel assets and records of the partner as is necessary for the purposes of the partnering arrangement, as detailed in Procedure Rule E.15. Partners will be required to grant reasonable access when requested and details of such access should be agreed with the partner and set down in the Partnering Agreement. Where the right of access has not been specified in existing arrangements then appropriate discussions with partners should take place.

#### *External Audit*

- 31 The basic duties of the external auditor are governed by section 15 of the Local Government Finance Act 1982, as amended by section 5 of the Audit Commission Act 1998.
- 32 The Local Audit and Accountability Act 2014 established new arrangements for the audit and accountability of relevant authorities. Under these new arrangements the Council has opted for its external auditors to be appointed by the Public Sector Audit Appointments Limited (PSAA), an independent company established by the LGA for this purpose.
- 33 The Council may, from time to time, be subject to audit, inspection or investigation by external bodies such as HM Revenue and Customs, who have statutory rights of access.

#### *Preventing Fraud and Corruption*

- 34 The Chief Operating Officer is responsible for the development and maintenance of an anti-fraud and anti-corruption policy.
- 35 The Council has an approved Anti Fraud and Corruption Policy which places responsibility for preventing fraudulent activity with all Members, Managers and individual Members of staff. Any matters which involve, or are thought to involve, any fraud or other significant irregularity involving Council assets or those of a third party fund, must be notified immediately to the Corporate Manager Governance and Audit Manager, in conjunction with other officers detailed in the Council's Anti Fraud and Corruption Strategy.

- 36 In line with the Anti Fraud and Corruption Strategy the Monitoring Officer will, in consultation with the appropriate Corporate Leadership Team member and Corporate Manager Governance and Audit, decide whether any matter under investigation should be recommended for referral to the Police or the appropriate enforcement agency. The Council's External Auditor also has powers to independently investigate fraud and corruption.

## **Assets**

- 37 In the context of these Rules, assets are defined as the resources, other than people, that the Council uses to deliver its service functions. Assets include buildings, land and infrastructure; furniture; equipment; plant; stores and "intellectual property" such as computer software, data and information of all kinds.
- 38 Corporate Leadership Team and Heads of Service are responsible for the care, control and proper and economical use of all assets used in connection with the operation and delivery of their Services. Proper records should be maintained for these assets, together with appropriate arrangements for their management and security. Information Assets should be recognised in line with the Council's guidance and recorded in the Information Asset Register.
- 39 Heads of Service are responsible for ensuring that assets are used only for official purposes and that all appropriate rights, licenses and insurances are obtained.
- 40 Heads of Service are responsible for ensuring that all computer software used is properly licensed.
- 41 Corporate Leadership Team are expected to have policies in place for:
- 41.1 the effective disposal of surplus assets
  - 41.2 asset replacement programme
  - 41.3 compilation of and regular review of Asset inventories.

## **Property**

- 42 The Council's Asset Management Strategy sets out the vision, core values and objectives that form the context for the preparation of the Corporate Asset Management Plan and Service Asset Management Plans.
- 43 The Council has adopted a Corporate Landlord approach to the ownership and management of its property assets. The Corporate Landlord approach means that the ownership of property assets and the responsibility for their management and maintenance is transferred from service directorates to the Corporate Landlord, which is a centralised corporate function.

- 44 In this way the Corporate Landlord approach:
- 44.1 enables the Council to utilise its assets to deliver better, more efficient services to our communities.
  - 44.2 unlocks the value of assets, seeks efficiencies through joint arrangements with our public sector partners and maximises private sector investment.
  - 44.3 ensures the provision of a consistent, corporate and strategic approach to the management of the Council's property portfolio, consolidating resources, eliminating duplication, improving efficiency, procurement and the establishment of corporate property standards
  - 44.4 supports the delivery of the Council's Corporate Plan.
- 45 Individual services are occupiers of land and property for the purposes of delivering their functions. There are specific responsibilities that fall to both Corporate Landlord and occupiers depending on the nature of the asset and service. The occupier's priority is to plan and deliver their operational service. The Corporate Landlord's priority is to ensure the service is adequately accommodated and to maintain and manage the property asset.
- 46 The Corporate Landlord's responsibility extends to the acquisition, development and disposal of land and property. This means that the Corporate Landlord is responsible for asset review, feasibility and options appraisal across all services.
- 47 All property acquisitions, lettings and disposals must first be discussed with the Executive Director Place. Separate rules apply to specific processes, such as the use of capital receipts from property sales to pay for new schemes, and guidance should be sought from the Chief Operating Officer and the Executive Director Place where this arises.

## **Inventories**

- 48 Heads of Service must ensure that proper arrangements are made to maintain inventories of all valuable and transportable items, including vehicles, furniture, computer and other equipment (including software), visual aids, expensive tools and sports equipment.
- 49 The inventory must be updated for all acquisitions and disposals and checked at least annually. Items acquired under leasing arrangements must be separately identified for disclosure in the published final accounts.

## **Stocks**

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

## **Cash**

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

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

- 52 The Chief Operating Officer may authorise the write off of losses up to £5,000, or disposals, of obsolete or surplus equipment, materials, vehicles or stores up to a disposal value of £5,000. Where the sum exceeds £5,000 approval must be sought from the Portfolio Holder for Finance and Communications. Any write off which arises as a result of theft or fraud must be notified to the Corporate Manager Governance and Audit immediately.

## **Treasury Management**

- 53 The Council has adopted CIPFA's Code of Practice for Treasury Management in Local Authorities.
- 54 The full Council is responsible for approving the treasury management policy statement setting out the matters detailed in paragraph 15 of CIPFA's Code of Practice for Treasury Management in Local Authorities. The policy statement is proposed to the full Council by the Cabinet. The Chief Operating Officer has delegated responsibility for implementing and monitoring the statement.
- 55 All money in the hands of the Council is controlled by the Chief Operating Officer as designated for the purposes of section 151 of the Local Government Act 1972, referred to in the code as the finance director.
- 56 The Chief Operating Officer is responsible for proposing to the Cabinet a treasury management strategy for the coming financial year at or before the start of each financial year.

- 57 All Cabinet decisions on borrowing, investment or financing shall be delegated to the Chief Operating Officer, who is required to act in accordance with CIPFA's Code of Practice for Treasury Management in Local Authorities.
- 58 The Chief Operating Officer is responsible for reporting to the Cabinet not less than four times in each financial year on the activities of the treasury management operation and on the exercise of his or her delegated treasury management powers. One such report will comprise an annual report on treasury management for presentation by 30 September of the succeeding financial year.

### **Banking**

- 59 It is the responsibility of the Chief Operating Officer to operate such bank accounts as are considered necessary. Opening or closing any bank account shall require the approval of the Chief Operating Officer.

### **Investments and Borrowings**

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

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

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

## **Staffing**

### *Salaries and Wages*

- 62 Corporate Leadership Team and Heads of Service are responsible, in consultation with the Head of Strategic Human Resources, for providing accurate and appropriate information and instructions to the Employee Service Centre to enable the calculation and prompt payment of salaries, expenses and pensions, including details of appointments, promotions, regradings, resignations, dismissals, retirements and absences from duty. Human Resources will advise the Employee Service Centre of relevant changes in respect of employee's pensions. The Employee Service Centre manager will make arrangements for payment to the appropriate bodies, of all statutory, including taxation, and other payroll deductions.
- 63 Time sheets and other pay documents which are used to generate payment of salaries, wages or other employee-related expenses must be on official forms or via authorised electronic inputs. Heads of Service are responsible for ensuring that they are certified by an authorised officer and that they are submitted to the Employee Service Centre in accordance with the specified timetable. This includes on-line input entered locally. The names and specimen signatures of authorised officers must be secured by Corporate Leadership Team and Heads of Service and included in the service Scheme of Financial Delegation notified to the Chief Operating Officer.
- 64 The Head of Strategic Human Resources will implement national and local pay agreements as soon as possible after their notification from the appropriate body. Arrangements for funding such awards will be determined each year as part of the budgetary process.

### *Early Retirement/Severance*

- 65 Where Heads of Service wish to bring forward proposals under the Council's policies on severance and early retirement, they must be accompanied by a full cost and affordability assessment, in a form agreed by the Chief Executive, the Chief Operating Officer and the Head of Strategic Human Resources. The Portfolio Holder and Portfolio Holder for Finance and Communications shall be consulted for proposals relating to SM1 and above.
- 66 The Chief Executive or Chief Operating Officer must approve all requests up to £100,000 including pension strain. All requests in excess of £100,000 including pension strain must be approved by the Staffing Committee.

- 67 Heads of Service will generally be required to meet the costs of severance and early retirement from within their approved budget, subject to phasing over an agreed period. A corporate budget may also be established for this purpose and access to this budget will be subject to the agreement of the Chief Operating Officer and the Head of Strategic Human Resources.

#### *Travelling and Subsistence*

- 68 Heads of Service are responsible for instructing the Head of Strategic Human Resources and for providing appropriate and accurate information to enable the prompt and accurate payment of travelling, subsistence and other expenses to authorised employees in accordance with the terms of employment agreed by the Council.
- 69 Heads of Service are responsible for ensuring that Council employees who use their cars for official business are properly insured to indemnify the Council against any loss and for ensuring that payments are only made in respect of journeys which are necessary and actually undertaken. Heads of Service should ensure that the most economical available means of transport is used, including pool cars, hire cars and car sharing.
- 70 All claims for reimbursement must be made using appropriate official claim forms, always using electronic processing where available.
- 71 Further guidance is available via the Centranet>Working for us>Pay and Expenses.

#### *Code of Conduct*

- 72 The Code of Conduct for Employees applies to, and will be followed by all officers. It covers standards, disclosure of information, political neutrality, relationships, appointments and other employment matters, outside commitments, personal interests, equality issues, separation of roles during tendering, gifts and hospitality, use of financial resources and sponsorship.
- 73 Where an outside organisation wishes to sponsor or is asked to sponsor a Council activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts and hospitality applies, as detailed in the Code of Conduct for Employees.
- 74 Further guidance is available via the Centranet>Working for us>Performance and Conduct.

#### *Third Party Funds*

- 75 A third party fund is defined as any fund financed other than by the Council, controlled wholly or partly by a member of the Council's staff in connection with the clients, establishments or activities of the Council such as School Funds, Amenity Funds or Criminal Injuries Compensation Payments for children in care.

- 76 Officers maintaining Third Party Funds are responsible for informing the Corporate Manager Governance and Audit of their nature and purpose.
- 77 Money or goods belonging to the Third Party Fund must be kept completely separate from other money or goods belonging to the Council. Similarly, completely separate records must be kept of the money or goods involved.
- 78 An independent auditor must be appointed who has suitable qualities though not necessarily professionally qualified, to audit the Third Party Fund on an annual basis. The Corporate Manager Governance and Audit will advise on such appointments. Annual Statements of Account and Audit Certificates must be formally presented to a Management Committee or other appropriate governing body.
- 79 Corporate Leadership Team are responsible for ensuring that any Third Party Funds controlled by Council staff are:
- 79.1 formally declared to the Corporate Manager Governance and Audit as part of a register kept by the Service/Service
  - 79.2 maintained separately and correctly in accordance with these Finance Procedure Rules, and
  - 79.3 subject to the same standards of stewardship and probity as Council funds.
- 80 The Returning Officer will be responsible for maintaining complete and accurate records and for reconciliation with regard to elections accounts.

#### *Retention of Records*

- 81 The Council, in common with other public and private organisations, has certain statutory obligations it has to meet for the retention of its records. It also has to fulfil the requirements of HM Revenue and Customs, other legislative requirements and the external auditors in respect of its financial records.
- 82 All records held should have an appropriate retention period assigned to them, which meet the statutory obligations to retain financial records, but also takes into account legislative requirements such as the Limitation Act and Data Protection Act; Freedom of Information requirements; and the business needs of the Service.
- 83 The majority of financial records must be kept for 6 years from the end of the tax year to which they relate. Some records however, may need to be kept for longer periods e.g. if required to defend future insurance claims. It is possible others can be destroyed within shorter periods. Guidance on the appropriate retention period is given in the Council's Retention Policy and its Information Asset Register.



## **Section D – Financial Systems and Procedures**

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

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

### **Income and Expenditure**

#### *Banking Arrangements*

- 2 The Council will approve the terms under which banking services, including overdraft facilities, are provided.
- 3 All bank accounts must be titled impersonally in the name of Cheshire East Borough Council.
- 4 Subject to any directions given by the Council, all arrangements with the Council's bankers must be made solely through the Chief Operating Officer. No bank accounts may be opened or arrangements made with any other bank except by agreement with the Chief Operating Officer.
- 5 Bank transfers from the General Fund and subsidiary accounts must be authorised by the Chief Operating Officer, or those officers authorised to sign through the agreed Scheme of Financial Delegation or in accordance with the Treasury Management Practice Statements.
- 6 Cheques drawn must bear the mechanically impressed signature of the Chief Operating Officer or be signed by the Chief Operating Officer or other officer authorised to sign through the agreed Scheme of Financial Delegation.

### **Income**

#### *Generating Income*

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

#### *Charging for Income*

- 9 Corporate Leadership Team, in consultation with the relevant Portfolio Holder, shall determine the level of fees or charges payable in respect of any chargeable goods or services supplied, work undertaken or the loan or use of plant, equipment or machinery.

- 10 Charges must be reviewed annually in the light of all relevant information, to the service area, including consideration of appropriate inflation factors.

#### *Collection of Income*

- 11 The Council operates a Sundry Debt Collection policy to secure invoiced sundry debt income for the provision of services. All debt owing to the Council must be collected promptly, effectively, efficiently and economically, while ensuring fair treatment of those that owe money, including consideration of any financial difficulties.
- 12 Council officers must comply with guidelines issued by the Chief Operating Officer for the safe and efficient collection and recording of all money due to the Council.
- 13 Corporate Leadership Team are responsible for ensuring that accounts for income due to the Council, including grant claims, reimbursements and third party contributions, are raised immediately and accurately in a form approved by the Chief Operating Officer . These must include VAT where appropriate.
- 14 The cost of collection should be taken into account when raising accounts. Corporate Leadership Team must ensure that the method of collection is the most cost effective relative to the value of the transaction.
- 15 Payment shall be collected before the service or goods are provided unless explicitly agreed or stated otherwise in the fees and charges register.
- 16 Corporate Leadership Team are responsible for ensuring that all income received is receipted, where required, recorded correctly against the appropriate budgets, and in the case of cash and cheques, banked with the minimum of delay. The frequency of banking should follow guidelines provided by the Chief Operating Officer Services should avoid incurring disproportionate banking charges on relatively low value transactions, taking into account local security arrangements.
- 17 Corporate Leadership Team are responsible for monitoring income collection and ensuring appropriate recovery action is taken. A summary of the position on the level of outstanding debt and collection issues should be included in quarterly financial updates and the final outturn report. Full provision for income still outstanding six months after the due date should be made in Service accounts. This should not however preclude pursuit of the debt.
- 18 The Chief Operating Officer will monitor compliance with paragraphs 16 and 17 and may, in circumstances where avoidable adverse cash flow has resulted, determine an appropriate interest charge against Service budgets.

- 19 Credit notes must be authorised by appropriate officers nominated in the local Scheme of Financial Delegation.
- 20 Any receipts, tickets or other documents used as receipts should be in a format agreed by the Chief Operating Officer. All controlled stationery issued to a Head of Service must be recorded in a register, which is held by a single officer within each Service.

### *Bad Debts*

- 21 Bad debts may be written off by Authorised Officers as contained in the Scheme of Financial delegation in consultation with the Chief Operating Officer, Director of Legal Services, the Portfolio Holder for Finance and Communications and the relevant Portfolio Holder.
- 22 Corporate Leadership Team are responsible for ensuring that an adequate provision for bad debt is made in the Council's accounts at year end and that contributions to this provision are included in budgetary projections and outturn reports.
- 23 Ordering and paying for work, goods and services General Principles
- 24 Corporate Leadership Team and Heads of Service are responsible for providing all appropriate information and instructions to Transactional Services to allow for prompt and accurate payment for goods and services provided and for the analysis of expenditure.
- 25 Except for purchases by visa purchase card, all purchases must be supported by an official requisition and purchase order unless previously agreed with the Procurement Manager. All purchases must have regard to these Finance Procedure Rules.
- 26 All requisition and purchase orders must be authorised in accordance with the relevant service Scheme of Financial Delegation to ensure that funds are available to pay for the purchase.
- 27 Where a requisition for the purchase of goods or services exceeds £10,000 in value Contract Procedure Rules, ~~Part 2.4~~ Section C, applies.
- 28 All official purchase orders must include, as a minimum, the order number, the price agreed with the supplier, description of the goods or services to be provided, the delivery address, the address where invoices must be received and a link to the standard terms and conditions for the goods and services to be provided.
- 29 Heads of Service must ensure that there is adequate separation of duties in the raising and authorisation of requisitions, authorising of purchase orders, receipt of goods and authorisation of payments to creditors.
- 30 Heads of Service must ensure robust processes to continually maintain computer records and accesses, and Schemes of Financial Delegation so that electronic workflows associated with core financial systems are not compromised.

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

#### *Payment of Invoices*

- 34 All invoices must be sent directly by the creditor to the address stated on the official purchase order to enable prompt payment.
- 35 All invoices, as a minimum, must include the official purchase order number, the description of the goods or services provided, the quantity delivered, the delivery address, the date of the invoices and/ or date of delivery of the goods or services, the address and VAT registration number of the supplier and the price and VAT at the prevailing rate.
- 36 Invoices received without a valid purchase order number will be returned to the creditor as unauthorised for payment.
- 37 The Council's standard payment terms are 30 days from receipt of a correct invoice by BACS (Bankers Automated Clearing System). Alternative terms may not be negotiated or agreed with suppliers without the explicit approval of the Procurement Manager. Heads of Service are responsible for notifying suppliers of these terms and for ensuring that they are observed by all those involved in the purchasing and payment processing.
- 38 Payment will only be made for goods and services which have been formally receipted in accordance with receipting procedures set out by the Chief Operating Officer.
- 39 All purchasing activity must be carried out in accordance with the Council's Procurement Strategy & Contract Procedure Rules and any advice or guidance that may be issued from time to time by the Procurement Manager regarding the efficient and effective use of the Council's core financial and e-procurement systems and processes. Invoices received for payment must comply with the Council's best practice processes.

### *Non-invoice payments*

- 40 Where Heads of Service wish to initiate a payment to a third party without a supporting invoice, an official request for payment must be submitted in a form approved by the Procurement Manager.
- 41 Any such requests must be authorised by an officer designated with an appropriate approval limit in the relevant service Scheme of Financial Delegation. They are responsible for ensuring that all payment details provided are accurate and that supporting records and documentation are available to substantiate the payment, including an official VAT receipt to allow for the reclaim of any VAT element.
- 42 Appropriately authorised requests for payment will be processed and paid by BACS. Cheques will only be used in exceptional cases and by prior agreement.
- 43 Non-invoice payments should be requested on an exceptional basis only. Where payments of this type need to be made on regular basis Heads of Service must consider, in conjunction with the Procurement Manager, other alternative options which may be more appropriate. For the full list of exceptional payment types check the guidance available via the Centranet>Tasks and Tools>Buying Products and Services>Procurement>Payment Methods
- 44 Payments or reimbursements in respect of salaries and wages, travelling expenses or other employment allowances must be processed through the Payroll system and not treated as a non-invoice payment.

### *Purchase Cards*

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

### *Imprest Accounts*

- 47 Imprest accounts may only be used as alternatives to purchase orders and VISA purchase cards by prior consent and in accordance with specific guidance and instructions issued by the Procurement Manager.
- 48 Heads of Service are responsible for ensuring that where local arrangements are in place:
  - 48.1 Local Schemes of Financial Delegation set out clearly the responsibilities and approval limits of individual officers in respect of these arrangements; and that these are reviewed and updated regularly

- 48.2 They are operated in accordance with guidance issued and that appropriate management supervision and compliance monitoring is undertaken
  - 48.3 Adequate records are maintained to allow for the verification and reconciliation of all payments made to the Council's general ledger and bank accounts, and to allow for the proper treatment of VAT
  - 48.4 Arrangements are being operated for legitimate Council business only.
- 49 Local arrangements may not be used in any circumstances to circumvent either the Council's Corporate Procurement Strategy & Contract Procedure Rules or agreed approval and authorisation procedures, nor must they be used for any payments in respect of salaries and wages, travelling or other employment expenses, or payments for work carried out under the Construction Industry Tax Deduction Scheme.

#### *Payment to Members*

- 50 The Chief Operating Officer is responsible for paying all allowances to Members.
- 51 The Chief Operating Officer will make payments to any Members entitled to claim allowances on receipt of the proper form, completed and certified in accordance with the approved scheme for allowances.

#### *Taxation*

- 52 It is the responsibility of the Chief Operating Officer, in conjunction with Transactional Services to:
  - 52.1 complete all Inland Revenue returns regarding PAYE
  - 52.2 complete a monthly return of VAT inputs and outputs to HM Revenue and Customs
  - 52.3 provide details to HM Revenue and Customs regarding the construction industry tax deduction scheme
  - 52.4 maintain up-to-date guidance for Council employees on taxation issues.
- 53 It is the responsibility of Corporate Leadership Team to:
  - 53.1 ensure that the correct VAT liability is attached to all income due and that all VAT recoverable on purchases complies with HM Revenue and Customs regulations
  - 53.2 ensure that, where construction and maintenance works are undertaken, the contractor fulfils the necessary construction industry tax deduction requirements

- 53.3 ensure that all persons employed by the Council are added to the Council's payroll and tax deducted from any payments, except where the individuals are bona fide self-employed or are employed by a recognised staff agency
- 53.4 follow the guidance on taxation issued by the Chief Operating Officer.

#### *Trading Accounts and Business Units*

- 54 As a general rule, separate trading accounts are required when services are provided to either internal or external clients, on a basis other than a straightforward recharge of full cost. It is the responsibility of the Chief Operating Officer to advise on the establishment and operation of trading accounts and business units.
- 55 It is the responsibility of Corporate Leadership Team to:
  - 55.1 consult with the Chief Operating Officer and Director of Legal Service where a business unit wishes to enter into a contract with a third party where the contract expiry date exceeds the remaining life of their main contract with the Council. In general, such contracts should not be entered into unless they can be terminated within the main contract period without penalty
  - 55.2 observe all statutory requirements in relation to business units, including the maintenance of a separate revenue account to which all relevant income is credited and all relevant expenditure, including overhead costs, is charged, and to produce an annual report in support of the final accounts
  - 55.3 ensure that the same accounting principles are applied in relation to trading accounts as for other services or business units
  - 55.4 ensure that each business unit prepares an annual business plan.

### *Alternative Service Delivery Vehicles*

- 56 The Council has moved to a commissioning model and the creation of a series of alternative service delivery vehicles (ASDV's) forms an essential part of this strategy.
- 57 A framework has been developed to enable the Council to set up a series of new delivery vehicles in a way which enables the risks to be managed thoroughly and effectively. The aim of the framework is to ensure that all vehicles are given the best chance of succeeding, whilst safeguarding the interests of local tax payers.
- 58 The framework covers the approach to the key issues including:
- 58.1 Strategic – The formation of new vehicles will drive the Council's Plan. The strategic direction and agreed priorities of new vehicles and the Council will align with each other.
  - 58.2 Financial – The creation of several new vehicles will ensure that the overall financial position of the Council is improved. Where ever possible, new vehicles will offer more for less and reduce their call on funding from the Council.
  - 58.3 Innovation – New vehicles will contribute to the economic growth and prosperity of Cheshire East. They will promote a culture of enterprise and help create local jobs.
  - 58.4 Governance and Control – The decision making process undertaken by new vehicles will be accountable to the Council and protect the public of Cheshire East.
  - 58.5 Performance – New vehicles will deliver or improve on the standards of service specified by the Council. Where ever possible vehicles will promote self reliance and focus on meeting need over want.
  - 58.6 Staff – Staff employed by new vehicles will be motivated and encouraged to be entrepreneurial.
  - 58.7 Competition and Procurement – New vehicles will be competitive and offer improved Value for Money for the public.
- 59 The complete framework document is available on the Cheshire East website.
- 60 The wholly owned companies currently operate within the Financial Procedure Rules of Cheshire East Council, it is within the responsibility of the companies to determine if this approach is to be continued.



## **Section E. External Arrangements**

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

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

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

- 2 The Council is involved in a wide range of different 'Partnership' arrangements involving joint/external funding. The main reasons for this are:
  - 2.1 The ability to provide new and better ways of delivering services.
  - 2.2 The ability to access new resources
  - 2.3 The desire to find new ways to share risk
  - 2.4 The ability to forge new relationships
- 3 The Cabinet will agree periodically a policy in respect of joint/external funding, which will establish the general framework within which proposals and bids should be developed. Any financial impact falling on the Council through such an arrangement should be met through existing budgetary resources without any overspending resulting from the Council's involvement.
- 4 Any partnership arrangement which involves the creation of, or participation in, separate legal entities such as joint ventures, trusts or limited companies requires the prior agreement of the Chief Operating Officer and the Director of Legal Services. Officers should also consider the need for a business case and compliance with the Project Gateway Process. Cabinet approval will also be required where any agreement requires the Council to act as guarantor for a third party or accountable body. The creation of any new ASDVs will be in accordance with the ASDV Framework.

### *Definitions*

- 5 Legally a partnership is an arrangement entered into under the Partnership Act, and is heavily regulated as to the liabilities of partners. However, the majority of the partnerships entered into by the Council are more correctly called partnership arrangements and are, at their simplest, where the Council agrees to work with one or more external agencies to deliver common aims and objectives. These partner agencies could potentially be from a government department, any public, private, community or voluntary sector body or related party.

- 6 The nature and scope of Partnership arrangements can be very different. To define their roles in terms of these Rules the definitions listed below have been used. These definitions apply to all partnerships, whether the Council is contributing financially or not, including the use of fully funded grants or grants that have been earmarked for a specific purpose or are time limited.
- 7 The Rules set out in this section deal with the approach to Partnerships. Detailed guidance can be obtained within the “Partnerships Protocol”.

#### *Public/Public Partnerships*

- 8 Officers should consider whether the partnership is such that it establishes or implements a co-operation between the parties with the aim of ensuring that the public services they have to perform are provided with a view to achieving objectives they have in common as otherwise it may be that the Public Contracts Regulations 2015 apply and a call for partners should be advertised in accordance with the Contract Procedure Rules. Certain arrangements set out under paragraph 13 below are subject to public procurement legislation. Further advice should be sought from the CPU or Legal Services.
- 9 Defined as above as involvement with another public sector body or bodies or with the voluntary/not for profit sector. Within this category it is important to recognise that the Council can have a different role, outlined below, depending on the exact nature of the Partnership.

#### *Contributing Partner*

- 10 Where the Council is contributing funding or other resources, to a wider partnership involving a partner or group of partners and where the ‘Accountable Body’ role is undertaken by another partner.

#### *Lead Authority or Lead Partner*

- 11 Where the Council leads on behalf of the Partnership or consortium and is responsible for the wider management of the Partnership.

#### *Accountable Body*

- 12 The Council may, in certain circumstances, need to act as the ‘Accountable Body’; even when the Council will not directly incur expenditure on behalf of the Partnership. The role assumes the responsibility for ‘looking after another parties monies’ and will require the putting in place of appropriate and robust financial accounting and monitoring systems with the aim of safeguarding resources and minimising any risks and potential liabilities falling to the Council.

### *Public/Private Partnerships*

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

### *Key Controls*

- 14 The key controls to be considered before the funding of partnerships or other joint projects is agreed consist of:
  - 14.1 ensuring that the key conditions of funding and any statutory requirements are complied with and that the responsibilities of the accountable body are clearly understood.
  - 14.2 ensuring that funds are acquired only to meet the priorities, aims and objectives approved by the Council, and to add value to the services provided to the local community.
  - 14.3 ensuring any finance (including any match funding), staffing, legal and audit requirements are given due consideration prior to entering into long term arrangements and that revenue budgets reflect these requirements.
- 15 These arrangements should be documented in the form of a Business Case in the format prescribed by the Chief Operating Officer and be subject to the same Project Gateway process as all other Council proposals.
- 16 Further guidance can be found in the Partnerships Protocol.

### *Responsibilities of Officers*

#### Chief Officers

- 17 Chief Officers are responsible for ensuring that all funding notified by external bodies is received and properly recorded in the Council's accounts and that appropriate standards of probity, stewardship and best value are secured. This will include ensuring that all appropriate claims and returns are promptly and accurately submitted.
- 18 Chief Officers are responsible for developing a policy framework for partnership working and joint funding, identifying key principles to ensure probity and value for money and obtaining the appropriate Member approval. The annual policy submission should identify any potential future partnerships and a risk assessment of the potential impact on services and budgets that may arise.

## Heads of Service

- 19 Before entering into any Partnership agreement involving joint funding, Heads of Service must consult the Director of Legal Services and the Chief Operating Officer, who will advise on the appropriate form of agreement or contract taking into account the nature and scale of the proposed arrangement and the extent of the legal and financial commitment involved. As a measure of good practice and as a minimum requirement, Heads of Service need to consider and apply all the following points, which are not exhaustive, to the agreement:
  - 19.1 the overall purpose and objectives of the arrangement, including appropriate performance standards and output measures
  - 19.2 the constitutional and representational arrangements including procedures for decision making and the extent to which Cabinet powers and financial authority are to be delegated to individual officers
  - 19.3 the period of the agreement, exit strategies, notice and termination arrangements including redundancy costs and other potential liabilities on termination
  - 19.4 roles and responsibilities of the various parties including arrangements for banking, taxation and VAT matters, employment contracts, insurances and ownership of assets
  - 19.5 auditing and reporting requirements and the applicability of these Finance Procedure Rules, other Council Regulations and Codes of Conduct
  - 19.6 financial and non-financial contributions to be made by the respective parties and, where the arrangement is to extend beyond one year, the method for calculating and collecting payments in future years
  - 19.7 the named contact officer or project manager who will be responsible (within specified limits) for the Council's rights and obligations under the terms of the agreement and accountable for overall outcomes
  - 19.8 A clear exit strategy, for example, in terms of any residual ongoing costs
  - 19.9 Default procedures to be applied where the terms of the agreement are broken

19.10 Arrangements for Internal Audit staff to have sufficient access to partner's premises, assets and records as is necessary for the purposes of the partnership:

19.10.1 As a measure of best practice, all partnership agreements should be subject to a complete review at least every four years.

19.10.2 Add to partnership section of contracts register held by the CPU

### *Approval Routes*

20 The Council's gross contributions to Partnerships may include capital and revenue expenditure, cash flow costs, support in kind (including staff time) and the cost of preparing and submitting bids. It is particularly important to identify support in kind, both to ensure that all such costs are recovered, where grant conditions allow, and to enable service and corporate managers to plan effectively. Capital funding must also meet the specific capital appraisal requirements as set out in Section B of these Rules.

21 Following the officer consultation process and prior to entering into any agreement, appropriate Member approval, based on the Council's gross contribution over the life of the partnership,\* should be sought by the Head of Service as listed below:

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

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

### *Additional Funding Allocations or Policy Variations*

23 Partnerships often attract additional funding over and above their original levels of funding. If additional funding is made available which will result in the aggregate value remaining within the original approval limit then no further approval is required. Conversely if the additional funding increases the aggregate value to more than the original approval limit, then further approval is required in line with the routes identified in E.18 above. Where the additional funding constitutes a variation from the policy originally agreed by the Cabinet, then further approval from the Cabinet is required.

24 If the contribution is to come from Council sources it will constitute a virement and Section B applies. Where the additional funding comes from an external source then approval for a fully funded supplementary estimate is required and Section B applies.

### *Bidding for grant funding*

- 25 In some circumstances there may be specific grant funds available, where these are aligned with the Council's priorities, accessed through some form of bidding process. Officers must seek the appropriate Member approval prior to any bid being submitted. Approval for 'in principle' Supplementary Revenue or Capital Estimates should be sought at the same time. Officers must ensure that they understand and are aware of the grant conditions attaching to any funding and consider whether the Council's processes and procedures are sufficient to comply with these conditions or whether more detailed processes need to be followed.

### *Reporting Requirements*

- 26 Where the Council participates in any partnership or external funding arrangement either as a contributor or as an Accountable Body, an annual report must be presented to the appropriate Cabinet Member, outlining how sums have been used and the key outcomes and achievements. The report should also review the affordability and continued relevance of the arrangement to Service policies and objectives and seek appropriate Business Plan approval.
- 27 Notwithstanding any statutory reporting requirement, the Head of Service will be required to provide, regular reports on progress and outcomes, financial and non-financial, for each significant partnership to the relevant Cabinet Member. Partnership projects should comply with the same regular reporting processes as other Council projects.

### *Support to Other Organisations*

- 28 The Cabinet Member for Finance and Communications will on a periodical basis, agree a policy setting down the approach to be taken to the allocation of grants, donations and other contributions to outside bodies, in consultation with the Chief Operating Officer and Head of Legal Services.
- 29 Grants, donations and contributions will be paid by the Council in accordance with the policies determined under Finance Procedure Rule P.291 above, subject to there being adequate provision in service budgets and the appropriate approvals being sought.

<b>Approval level</b>	<b>Amount</b>
Officers	Up to and including £50,000 (where grant is within approved grant policy)
Portfolio Holder	Between £50,000 and £100,000 (where grant is within approved grant policy)
Cabinet	All Grants of £100,000 or more. All grants which do not fall within existing approved grant policy require Cabinet approval.

- 30 The Grant Funding Protocol sets out further guidance on grant funding, consideration of state aid implications, the process for allocation and any conditions that should apply to any grant funding.
- 31 Heads of Service will report on the outcomes achieved through the provision of support to outside bodies on an annual basis to the appropriate Member Group and Cabinet Member, with interim reporting on an exception basis or where the sums involved are significant.
- 32 The rules in this section (p.291 - 295) and the Grant Funding Protocol shall not apply to grant funding arrangements relating to Capital Funding for School Places applied for by the Council on behalf of Academies, Foundation, Voluntary Aided and Free schools as these arrangements are delegated in the Constitution to the Executive Director People in accordance with the Council's educational functions under the Education Acts.

## Annexe 1

### Glossary of Terms/Definitions

**Appropriation** – Amounts transferred between the Revenue account and revenue or capital reserves.

**Bad Debt** – A debt becomes bad if it has not been collected within 6 months. Full provision for all bad debts has to be made within the revenue account, but the debt is still pursued until it is either recovered or written off as unrecoverable.

**Balances (Revenue Account)** – The accumulated surplus of income over expenditure. Members may agree that Balances be used to reduce future Council Tax precepts although a minimum level, consistent with prudence and best practice will be maintained. Amounts in excess of that required for day-to-day cash management and to finance working capital can be invested to generate interest income to the Council.

**Block Provisions** – Annual capital allocations made to cover minor schemes with starts values of less than £250,000.

**Business Case Template** – This is a proforma to be completed for all Capital schemes and all significant Revenue proposals. It will provide details on the expected outcomes falling from the proposed investment and identify how the proposal will meet corporate objectives.

**Capital Approval** – The capital programme provision as amended by any supplementary estimates or virements.

**Capital Expenditure** – Expenditure on the purchase, construction or replacement of capital (fixed) assets or expenditure which adds to the life or value of an existing fixed asset.

**Capital Programme** – The Council's plan of capital projects and spending over future years. Included in this category are the purchase of land and buildings, the erection of new buildings and works, Highway Improvement schemes and design fees, and the acquisition of vehicles and major items of equipment.

**Capital Project / Scheme** – These terms mean the same thing and are used interchangeably within these Rules. A project/scheme may be separately identified in the capital programme or be an item within a block provision.

**Capital Receipts** – Income received from the sale of capital assets and available, subject to rules laid down by the Government, to finance new capital expenditure or to repay debt.

**Carry-forward** – An increase or reduction in a Service's new financial year budget, stemming from either an under or overspend in the previous year.



All carry-forwards (except for Schools) need the approval of the Cabinet upon the presentation of a business case.

**Chief Officers** – Chief officers are the Chief Executive or any Director of the Council to whom there has been specific delegation in writing by the Council or the Chief Executive. Chief officers must operate efficient systems of financial control.

**Contingencies** – Sums set aside to meet either:

- the potential costs of activities expected to occur during the year over and above those costs included in Service budgets (pay and price contingency); or
- items which are difficult to predict in terms of financial impact or timing (contingency for uncertain items).

**Contract** – An agreement to supply goods, services or works for a price. A contract is normally in writing however a contractual arrangement may, inadvertently be entered into orally.

**Contractor** – Any person or organisation awarded a Contract. This includes any consultant appointed by the Council to advise on any project.

**Corporate Procurement Unit (CPU) /Procurement** – The corporate procurement unit is the department responsible for procurement activity within the Council.

**Council Fund** – The Council's main revenue fund to which all revenue receipts are credited, and from which revenue liabilities are discharged. The movement on the fund in the year represents the excess of income over expenditure within the Consolidated Revenue Account. The level of balances held is based on the Council's assessment of the level of risk and uncertainty and the potential call on such reserves.

**Debt Write-Off** – Realising the cost of debt which is considered to be "bad" (unrecoverable) by writing it off against the revenue account or bad debt provision.

**Earmarked Reserves** – These reserves represent monies set aside that can only be used for a specific use or purpose.

**Financial Schemes of Delegation** – Financial Schemes of Delegation are the documents that set out, for each Service, all specific financial authorisations and approval limits as delegated by the Heads of Service to Authorised Officers within their Service. Heads of Service are responsible for maintaining up to date and accurate Financial Schemes of Delegation.

**Financial Year** – The Council's accounting period covers the 12 months from April 1 to March 31.

**Forward Plan** – As defined in the Constitution.

**Internal Control** – A procedural system designed to manage risk to an acceptable level whereby different staff members perform different parts of a task, so that no one person is entirely responsible for processing a transaction from start to finish.

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

**Leases** – Agreements covering the hire/rental of equipment or buildings, generally for a specified period of time and at a specified rate. There are two types of leases:

**Operating Leases** – Where the risks and rewards of ownership remain with the lessor.

**Finance Leases** – Most of the risks and rewards associated with ownership are transferred to the lessee (responsibility for maintenance, insurance etc. will fall to the Council)

**Option Appraisal/Business Case** – This is required for all Capital schemes and all significant revenue proposals and takes the form of a Business Case Template. This will be used to assess whether the scheme is affordable and deliverable. Consequences to the Service are considered and evaluated and it will also provide a basis for monitoring and reporting progress. In the case of revenue proposals it will also take into account the risk and impact on users.

**Policy and Expenditure Planning** – The Council's annual cycle of planning for the medium and short-term future, aimed at achieving optimal allocation of available resources.

**Policy and Expenditure Proposals** – Proposals, including new policies, which have resource implications and will be subject to appraisal by Members, Management Board and consultees before inclusion in annual budget preparation.

**Project Board** – A group of senior officers, led by the Senior Responsible Owner (SRO) who are accountable for the success of a Project and represent specific business, user and supplier interests. More information on the make-up and operation of a Project Board can be found in the Project Management Handbook which is published and maintained by the Authority's Programme Management Office.

**Project Gateway process** – A series of control measures put in place to ensure that all projects are instigated, approved, managed and delivered effectively. The Project Gateway process is overseen by the Executive Monitoring Board and described in detail in the Project Management Handbook.

**Provision** – An amount set aside by the Authority for any liabilities of uncertain amount or timing that have been incurred.

The main category is estimates of liabilities or losses already incurred but whose exact amount will be determined in the future (e.g. bad debts, obsolete stock). See also Capital Provision and Provision for Doubtful Debt.

**Provision for Doubtful Debt** – An allocation of funds set aside from Service revenue budgets to cover amounts which may not be recoverable from debtors.

**Prudential Borrowing Limits** – The maximum amount of borrowing that the Council can enter into at any one point in time during the year. This limit is set by Council prior to the start of the year to which it relates and cannot be breached under any circumstances.

**Revenue Account** – The Account which sets out the Council's income and expenditure for the year for non-capital spending.

**Revenue Expenditure** – Spending on the day-to-day running expenses of the Council. It includes expenditure on employees, premises, transport and supplies and services.

**Ring Fencing** – Certain budgets agreed by the Borough Treasurer and Head of Assets are "ring-fenced". This means that under-spends on these budgets will return to balances and overspends will be met centrally. This is to reflect the fact that certain items of expenditure are either demand-led or so significantly influenced by extraneous factors that they are beyond the direct control of managers. Ring-fenced budgets include planning levies, external audit fees and election expenses.

**Schemes of Delegation** – Schemes of Delegation are the documents that set out, for each Service, all authorisations and approval limits as delegated by the Heads of Service to Authorised Officers within their Service. Heads of Service are responsible for maintaining up to date and accurate Schemes of Delegation. (See also: Financial Schemes of Delegation)

**Service Plan** – A plan which outlines measurable Service aims for the year ahead, encompassing both core purpose and specific key objectives for any given year. The Plan will consider both inputs and outputs.

**"Starts value"** – Represents the full value of the Council's contribution to a Capital Scheme irrespective of the timing of the payments.

**Supplementary Capital Estimate (SCE)** – Additional resources approved by Members with funds either provided by a third-party (e.g. developer contributions, receipts, government grant), by the use of Council reserves or from the Revenue budget.

**Supplementary Revenue Estimate (SRE)** – An approved increase to a Service revenue budget during the financial year, funded centrally from reserves, contingencies or external funding sources such as grants or partner contributions.

**Third Party Fund(s)** – Funds provided by outside bodies or individuals in support of Council activities, establishments or clients. Can sometimes be known as trust funds.

**Underspend** – An underspend results when the net costs of a budget holder are lower than the net budget for the year.

**Virement** – A Revenue virement is a transfer of amounts from one budget heading to another within, or between, Heads of Service. Capital virements cover any changes to Capital budgets funded from within the existing Capital programme.

DRAFT

## Part 5

### Contract Rules

---

#### Contents

<b>CHAPTER 3 PART 4.....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>CONTRACT PROCEDURE RULES .....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>PART 4 – CONTRACT RULES.....</b>	<b>222</b>
<b>CONTRACT PROCEDURE RULES .....</b>	<b>222</b>
Definitions .....	222
<b>PART 1: CONTRACT PROCEDURE RULES WHICH APPLY TO ALL CONTRACTS .....</b>	<b>226</b>
Basic Principles .....	226
Officer and Member Responsibilities.....	229
Collaborative arrangements .....	230
E-Procurement .....	231
Records .....	231
Expenditure approval process .....	231
Sustainable Development.....	232
<b>PART 2: CONTRACT PROCEDURE RULES CONCERNING CONTRACTS BELOW THE EU THRESHOLD.....</b>	<b>233</b>
Competition requirements .....	233
<b>PART 3: CONTRACT PROCEDURE RULES CONCERNING CONTRACTS AT OR ABOVE THE EU THRESHOLD .....</b>	<b>235</b>
Competition requirements .....	235
Forms of procurement .....	235
<b>PART 4: CONTRACT PROCEDURE RULES: PROCEDURES FOR ALL REQUESTS FOR QUOTATION AND INVITATIONS TO TENDER.....</b>	<b>237</b>
Application and documentation .....	237
Closing date for receipt of Bids .....	238
Method of opening Bids.....	238
Evaluation of Bids .....	238
Acceptance of Bids.....	240
Errors in Tender.....	241
<b>PART 5 CONTRACT PROCEDURE RULES .....</b>	<b>242</b>
Contracts and post procurement requirements .....	242
Monitoring of Contracts .....	243
<b>PART 6 CONTRACT PROCEDURE RULES: WAIVER AND BREACH .....</b>	<b>245</b>
Waiver.....	245
Breach of Contract Procedure Rules.....	246

## Section A

### Contract Procedure Rules

#### Why is this important?

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

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

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

#### Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**EU Threshold** – The financial thresholds above which the Public Procurement Legislation applies to a proposed Contract. The Thresholds are updated every two years, with the next update being in January 2018. The Thresholds can be found at the following link:

<https://www.ojeu.eu/thresholds.aspx> and are summarised below:

	<b>Supply, Services<sup>1</sup> and Design Contracts</b>	<b>Works Contracts<sup>2</sup></b>	<b>Social and other specific services<sup>3</sup></b>
Central Government <sup>4</sup>	£106,047 €135,000	£4,104,394 €5,225,000	£589,148 €750,000
Other contracting authorities	£164,176 €209,000	£4,104,394 €5,225,000	£589,148 €750,000
Small Lots	£62,842 €84,000	£785,530 €1,000,000	n/a

With the exception of the following services which have different thresholds or are exempt:

- Social and other specific services (subject to the light touch regime) Article 74
- Subsidised services contracts specified under Article 15
- Research and development services under Article 14 (specified CPV codes are exempt).

With the exception of subsidised works contracts specified under Article 13.

As per Article 74. Services are listed in Annex XIV. Applying in Scotland from March 2016.

Schedule 1 of the Public Contracts Regulations lists the Central Government Bodies subject to the WTO GPA. These thresholds will also apply to any successor bodies.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

## **Section B**

### **Contract Procedure Rules which apply to ALL Contracts**

#### **Basic Principles**

##### *Introduction*

- 1 These Contract Procedure Rules (hereafter referred to as “these / the Rules”) are intended to promote good procurement and commissioning practice, transparency, public accountability and deter corruption in relation to the awarding of Contracts and Concessions and the conclusion of Framework Agreements and Dynamic Purchasing Systems. Following these Rules will result in open and transparent procurement processes and ensure compliance with Public Procurement Legislation.
- 2 Officers responsible for the procurement or commissioning of any goods, services, works or Concessions must comply with these Rules.
- 3 These Rules should be read in conjunction with the relevant parts of the Council’s Constitution and guidance issued by the Procurement Manager (and published on Centranet) following consultation and endorsement from the Commissioning and Procurement Board
- 4 All references to Contract(s) in the Rules below also include, Framework Agreements, Dynamic Purchasing Systems and Concessions unless otherwise instructed.
- 5 All Contracts, procurement documentation, and procurement processes shall be consistent with the Council’s Procurement Guides (available on Centranet), Procurement Strategy, and these Rules.

##### *Scope*

- 6 The Rules apply to all Contracts procured on the Council's behalf.
- 7 For the avoidance of doubt, these Rules shall NOT apply to any of the following:
  - 11.9 The sale, leasing or purchase of land or immovable property, or any interest in land
  - 11.10 Any contract of employment
  - 11.11 Loans
  - 11.12 The issue, purchase or sale of securities or other financial instruments; (refer to the Section 151 Officer).

- 8 The competition and procedure elements of these Rules in Parts 2, 3 and 4 need not apply to any of the following situations, however, advice must be sought from Legal Services as to whether the arrangement meets the criteria set out below and to the most appropriate form of agreement to put in place:
- 8.1 Contracts awarded to a contracting authority (as defined in relevant legislation) on the basis of an exclusive right which they enjoy pursuant to a law, regulation or published administrative provision compatible with the Treaty on the Functioning of the European Union (TFEU);
  - 8.2 Public-public co-operation, where the arrangement establishes or implements a co-operation between the Council and one or more contracting authorities with the aim of ensuring that the public services they have to perform are provided with a view to achieving objectives they have in common, and implementation of the co-operation is governed solely by considerations relating to the public interest, and the parties concerned do not perform 20% or more of the activities concerned by the cooperation on the open market;
  - 8.3 Any contracts between the Council and any company that is controlled by the Council in a similar way to which it controls its own departments / services. Such companies must perform more than 80% of their activities for, or on behalf of, the Council (or other legal persons controlled by the Council or other contracting authorities e.g. for jointly owned companies). Such companies should also have no private capital participation in them other than where required by legislation (in which case the control must be non-controlling and non-blocking).
- 9 Commissioning additional supplies, services or works outside of the scope of any existing contractual arrangements from a company controlled by the Council should be subject to a business case and demonstrate value for money and steps must be taken to ensure the arrangement fits within the criteria detailed above. In the interest of best practice and demonstrating value for money, the Commissioning and / or Procuring Officer may wish to subject such contracts to competition.

#### *Legal Compliance*

- 10 All procurement procedures and Contracts shall comply with these Rules and all legal requirements and no Officer, or Member shall seek to avoid them.
- 11 The only exception is where a valid waiver is granted under Part 6 of these Rules.
- 12 If there is any dispute regarding these Rules, it should be taken up with the Procurement Manager who will seek appropriate advice to resolve the matter with Legal Services.

### *Public Procurement Legislation*

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

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

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

### *Applicable Principles*

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

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

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

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

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

## **Officer and Member Responsibilities**

### *Powers / Authority*

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

### *Adequate Budget Provision*

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

### *Corporate Contracts*

- 21 A Corporate Contract is a pre-existing Contract or Framework Agreement that has been set up for use by all Services (or specific Services) in the Council to address a common or specific need and that allows Commissioning Officers to quickly and efficiently source those requirements without undertaking repetitive tendering exercises and to comply with aggregation rules of Public Procurement Legislation.
- 22 Prior to any procurement activity, the Commissioning Officer shall ascertain whether any Corporate Contract exists in relation to their requirements. Where such a Corporate Contract exists, it shall be best practice to utilise Corporate Contracts.

### *Performance Bond or Parent Company Guarantee*

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

### *Conflicts of Interest*

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

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

## **Collaborative Arrangements**

### *Framework Agreements*

- 26 [Rules 2.1 and 3.1] Chapter 3 Part 4 Paras.39-48 and 49-52 will not apply where the requirements in question are to be procured by using a Framework Agreement which has itself been procured through compliance with these Rules or from a Central Purchasing Body or other Public Body.
- 27 Where a Framework Agreement is used, the Procurement Officer will undertake to check that the Framework Agreement is legally compliant and whether the Council is named in the OJEU notice for the Framework Agreement (either specifically or named within a grouping of regional local authorities) and therefore able to utilise that Framework Agreement.
- 28 The Procurement Officer must ensure that requirements are procured in accordance with the terms of the Framework Agreement (and where applicable Public Procurement Legislation).

### *Joint or Partnering Arrangements*

- 29 Joint or partnering arrangements between the Council and other bodies shall be subject to the prior approval of the relevant Executive Director and in the case of arrangements with private entities also the Chief Executive.
- 30 Advice from Legal Services must be sought as to the most appropriate form of agreement to put in place, especially where either party is undertaking work and / or tendering activity for the other, and entering into contracts on behalf of the other. Appropriate agreements may take many forms (for e.g. Memorandum of Understanding, Partnership Agreements, etc.) depending on the nature of the arrangements.
- 31 Under any such agreement, where the Council is responsible for procuring any requirements, these Rules shall apply, regardless of who shall enter into the resultant contract.
- 32 Under any such agreement, where another party is responsible for procuring any requirements, their contract procedure rules, or equivalent, shall apply, regardless of who shall enter into the resultant contract unless agreed otherwise. Where the other party has no such contract procedure rules, the procedure applied by the other body shall comply with the principles and safeguards contained in these Rules. The requirements of Public Procurement Legislation shall be adhered to where relevant.

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

## **E-Procurement**

### *Electronic Tendering*

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

## **Records**

### *Contracts Register*

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

## **Expenditure approval process**

### *Pre-Contract requirements*

- 36 All Officers requiring to commit expenditure in order to acquire goods, services or works on behalf of the Council must:
- 36.1 consider the Social Value implications
  - 36.2 make sure that the appropriate authority is in place to start the process and spend the money in accordance with the appropriate local scheme of delegation
  - 36.3 make sure that there is enough money in the budget to cover the total whole life financial commitment being made (including any consultants or other external charges or fees)
  - 36.4 make sure that the Forward Plan and publicity requirements have been followed where the purchase is a Key Decision.

## **Sustainable Development**

### *Sustainable development*

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

### *Social value*

- 38 There is a duty to comply with the Public Services (Social Value) Act 2012. The Council will endeavour to consider and apply the provisions of the Act to all procurements regardless of their nature and value (although social value considerations (including any consultation) should be proportionate to the scale and nature of the Contract). Such consideration includes but is not limited to:
- 38.1 how what is proposed to be procured might improve the economic, social and environmental well-being of the area of the Council; and
  - 38.2 how in conducting the process of procurement, the Council might act with a view to securing that improvement
- 39 Officers must have regard to the Council's Social Value Policy available at [\[Cheshire East Council social value policy \(PDF, 350KB\)\]](#).

### *Community right to challenge*

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



## **Section C**

### **Contracts below the EU Threshold**

#### **Competition requirements**

##### *Advertising and procedure*

- 1 Where the estimated costs of any requirements to be ordered on behalf of the Council is less than the applicable EU Threshold then proposals shall be invited as outlined below:
  - 1.1 Up to £10,000. 3 quotes are advisable but not mandatory (local firms being preferable where appropriate)
  - 1.2 Between £10,000 and £25,000. A minimum of three quotations shall be sought, together with advice from the CPU or Legal Services on the appropriate form of Contract
  - 1.3 Between £25,000 and the applicable EU Threshold. A minimum of three quotations shall be sought via the E-tendering Portal, and/or Contracts Finder together with advice from the CPU or Legal Services on the appropriate form of Contract
- 2 Where compliance with (c) above is not possible due to less than 3 providers responding, authority to proceed with a procurement process must be obtained from the Procurement Manager.
- 3 The requirement in (c) to use the E-tendering Portal to advertise may be waived where there is an urgent need to do so. However, the Procurement Manager's written approval must be given to any such waiver.
- 4 Officers are permitted to sign up for subscriptions for membership of industry associations without the need for competition provided they consider that the subscription offers value for money and available budget provision.

##### *Cross-border interest*

- 5 When issuing Requests for Quotations for below EU Threshold Contracts, Officers should consider whether the Contract may be of interest to organisations / individuals in other EU Member States and explain any concerns to the Procurement Manager.

##### *Award Criteria*

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

*Best and Final Offer (BAFO)*

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

## **Section D**

### **Contracts at or above the EU Threshold**

#### **Competition requirements**

##### *Advertising and procedure*

- 1 Procurement of Contracts over the EU Thresholds should be undertaken in accordance with the Public Procurement Legislation.
- 2 This includes the requirements in terms of advertisement of Contracts over the EU Threshold on Contracts Finder.

##### *Award Criteria*

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

#### **Forms of procurement**

- 5 The Public Procurement Legislation sets out the procedures which can be used to procure Contracts at or exceeding the EU Thresholds. These include:
  - 5.1 Open Procedure
  - 5.2 Restricted Procedure
  - 5.3 Competitive Procedure with Negotiation
  - 5.4 Competitive Dialogue
  - 5.5 Innovation Partnerships
  - 5.6 Call Off from a Framework Agreement
- 6 Other procedures are possible for Contracts for Light Touch Regime Services (as defined in Public Procurement Legislation) and for Concessions Contracts.
- 7 The Procurement Officer in consultation with the Commissioning Officer and Legal Services shall select the most appropriate procedure having regard to the requirements of the Public Procurement Legislation.
- 8 This process shall not remove or modify the responsibility of the relevant Executive Director to take such steps as may be reasonably necessary to safeguard the Council's best interests.

- 9 In order to determine a suitable procurement approach to a specific market, Officers, in liaison with CPU, may first choose to carry out non-committal soft market testing in order to inform the market of the Council's procurement plans and to understand the likely level of interest. Any such testing should not have the effect of distorting competition or result in a violation of the principles of non-discrimination or transparency.

DRAFT

## **Section E**

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

#### **Application and documentation**

##### *Application*

- 1 This Part 4 applies to all Contracts over £25,000 in value (including those at or above the relevant EU Threshold).
- 2 Procurement procedures for Contracts below £25,000 will follow any guidance issued by CPU and will be assessed on their risk.

##### *Documentation*

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

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

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

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

### **Method of opening Bids**

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

### **Evaluation of Bids**

#### *Evaluation and award*

- 9 Bids shall be evaluated and awarded on the basis of the value for money they offer to the Council.
- 10 For Bids over the EU Threshold this must be in line with:
  - 10.1 MEAT (Most Economically Advantageous Tender) Principles. Award Criteria must be relevant to the Contract and apportioned between cost and quality in a ratio reflecting the risk and value of the contract.
  - 10.2 Bids shall be evaluated and awarded in accordance with Award Criteria and weightings determined, and documented in an Evaluation Matrix, which must not be changed at any time during the process.

- 10.3 The relevant Public Procurement Legislation should be considered in determining what shall be included in the evaluation of cost.

#### *Evaluation Panel*

### 11 Evaluation Panels:

- 11.1 Evaluation Panels should be established prior to the issue of the RFQ/ITT, to ensure that they are engaged with the process and understand the evaluation criteria and weightings.
- 11.2 Evaluation Panels should include representation from the CPU, the commissioning department/key stakeholders, and should consist of a minimum of two Officers. However, should the risk be assessed as significant then the minimum number of people on the panel should be increased proportionately and in accordance with more detailed guidance from CPU.

#### *Evaluation Matrix*

### 12 Evaluation Matrix:

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

#### *Moderation*

### 13 Moderation:

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

## *Clarification*

### 14 Clarification:

- 14.1 Where post Bid clarification is required, it must be requested (and responses returned) via the E-tendering Portal. Importantly, post Bid clarification may only be sought in relation to an element of the Bidder's submission that has been provided, and which needs further understanding. Post Bid clarification must be used in a non-discriminatory manner and so that Bidders are not being given an opportunity to improve their Bids.
- 14.2 Evaluation scores can only be amended where specific clarification has been requested relating to the Award Criteria. Any decision to rescore must be discussed with the Procurement Manager.
- 14.3 All clarification questions and returns must be noted and any amended scores which result from clarification are to be updated in the Evaluation Matrix.
- 14.4 For above EU Threshold procurements, post Bid negotiation will not be accepted unless permitted within the procedure available within Public Procurement Legislation.
- 14.5 For Contracts below the EU Thresholds in value, a best and final offer (BAFO) stage may be used. Refer to Section C, paragraph 8.

## **Acceptance of Bids**

### *Approval process*

- 15 Bids may be accepted by the relevant Executive Director provided that all of the following apply:
  - 15.1 the Bid complies with the requirements, conditions and criteria set down in any OJEU notice (where applicable) and in the RFQ/ITT including any applicable selection criteria and Award Criteria
  - 15.2 the Bid proposed to be accepted is the most economically advantageous tender (or, where appropriate for Contracts below the EU Threshold, is the lowest priced Bid)
  - 15.3 where a Bid for a Contract above the EU Threshold appears abnormally low, the Bidder has been asked to explain the price or cost and the Council considers the explanation provided to satisfactorily account for the low price or cost, and
  - 15.4 Cabinet approval has been given where the tender is a Key Decision.



### *Debrief – intention and award*

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

### **Errors in Tender**

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

## **Section F**

### **Contracts and post procurement requirements**

#### *Conditions of Contract*

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

#### *Signed Contracts*

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

#### *Contract Sealing*

- 3 A Contract must be executed under seal by Legal Services where any of the following apply to the Contract:
  - 3.1 It exceeds £1 million in value
  - 3.2 Where the Contract is such that Legal Services consider that the extended limitation period of 12 years would be of value
  - 3.3 Where it is required by statute or an external funding body that it is executed under seal
  - 3.4 Where the price paid or received under the Contract is a nominal price and does not reflect the value of the goods, services or works
  - 3.5 Where it is a construction-related or works Contract and it is required to be sealed in accordance with guidance issued by CPU.

#### *Contract payments / settlements*

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

#### *Authorisation of payments*

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

### *Modification to Contracts*

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

### *Payments before completion of formal Contract*

- 7 No payment shall be made by the Council to the provider without a formal purchase order or an appropriate Contract in place. Payments should normally be made following the receipt of the requirements / achievement of desired outcomes.
- 8 Staged payments are permitted. Any such payments should only be made upon receipt of the desired requirements for that stage / milestone. Should the desired requirements / outcomes not be achieved when the provider submits an invoice, a dispute should be raised to prevent payment until such time as the desired requirements / outcomes have been achieved.
- 9 Advance payments are generally not permitted and the only exceptions without further approvals being required, shall be for:
  - 9.1 Software Licences
  - 9.2 Hardware and / or Software Support and / or Maintenance
  - 9.3 Warranties
  - 9.4 Deposits
  - 9.5 Leases / Hires.
- 10 If any other reason arises for an advance payment to be made, approval must be sought from the relevant Executive Director and the Director of Legal Services.

### **Monitoring of Contracts**

- 11 All Contracts should be monitored throughout the period of the Contract, and the performance of providers should be reviewed regularly, including:
  - 11.1 How savings might be achieved within the contract period
  - 11.2 Compliance with the specification and contract
  - 11.3 Performance
  - 11.4 Any best value requirements
  - 11.5 Levels of insurance

11.6 User satisfaction, and

11.7 Risk Management.

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

#### *Contract extensions*

- 13 Commissioning Officers and Contract Managers must consider a provider's performance throughout the period of a Contract when considering a contract extension. Officers should question whether the quality of goods or services being provided to the Council would continue to offer best value should an extension be agreed. When reviewing performance for the purpose of Contract extension, Officers should seek the views of the provider as to whether they have any suggestions or proposals which might improve value or delivery of service which might benefit the Council. These Officers should be aware of the market, the providers within the market, and the level of competition within the market.
- 14 Commissioning Officers should consider alongside the award of any optional extension period provided for in the Contract, what other alternatives may be available to the Council, and should offer reasoning as to why such alternatives are not proposed.
- 15 These Officers must ensure that prior to seeking approval of any proposed Contract extension; consultation is undertaken with the Procurement Manager and a Contract Extension Form is completed and signed by the Executive Director.
- 16 Contracts may be extended beyond the stated core Contract period, where provision for such extension was included in the RFQ/ITT, and in respect of above EU threshold Contracts, the relevant OJEU Notices.
- 16.1 It is not possible to extend a Contract, after expiry. Any such requests will be viewed as new Contracts and the relevant provisions with these Rules must be followed.
- 16.2 Any requests to extend a Contract where there is no provision to extend for the period requested constitutes a modification to the contract and the appropriate provisions at Rule 5.1.6 must be followed.

## Section F

### Waiver and Breach

#### Waiver

##### *Waiver process*

- 1 It is strongly expected that these Rules will be followed in all cases with very limited exceptions, however, in the event a Commissioning Officer believes a waiver to these Rules is essential to the efficient running of the Service they must seek a waiver by producing a report that must be approved:
  - 1.1 In the case of contracts with a value up to £25,000 by the Head of Procurement, and
  - 1.2 In the case of contracts with a value in excess of £25,000 by the Chief Finance Officer and the Director of Legal Services.
- 2 The report must be in accordance with the prescribed format available from the CPU. The format of the report shall be determined by the Procurement Manager, and must be used in line with any associated guidance published:
  - 2.1 Advice and guidance must be sought from the Procurement Manager prior to submission of the waiver form to the S.151 Officer and Director of Legal Services. If approval is granted, it is still required that an appropriate contract be entered into prior to any requirements being provided by the provider
  - 2.2 The waiver of these Rules and the reason(s) for waiver shall be clearly recorded and reported to the Commissioning and Procurement Board
  - 2.3 All notices of waiver reported to the Procurement shall be published retrospectively for information on the next appropriate Audit and Governance Committee agenda.
- 3 The only exception to the above is for instances of extreme urgency, where there is an immediate risk to life, property or an individual's safety and wellbeing, and any inaction by the Council (related to risks to safety and wellbeing) would be a breach of our statutory duty and obligations. The agreement of the Procurement Manager must be sought prior to any action being taken except where the nature of the urgency and risk renders this impractical. Such instances must be reported at the earliest opportunity, retrospectively, to the S.151 Officer and Director of Legal Services and the relevant Executive Director following the incident.

## **Breach of Contract Procedure Rules**

### *Breach*

- 4 No Officer or Member, may seek to actively avoid the application of these Rules without following the necessary waiver process outlined within these Rules.
- 5 Officers and Members must be aware that any non-adherence with these Rules is a breach of the Officer Code of Conduct / Member Code of Conduct and could result in disciplinary action being taken against them.
- 6 Service Directors are responsible for ensuring that their Commissioning Officers are made aware of the consequences of non-adherence and that they comply with these Rules.

### *Reporting and investigating breaches*

- 7 Any breach of, or non-adherence to these Rules, must, on discovery, be reported immediately to the Section 151 Officer. The Executive Director or his/her designated representative shall complete the waiver process (detailed at 6.1 above) outlining the reasons for the non-adherence and the steps taken to prevent a re-occurrence.
- 8 The Executive Director or his/her designated representative will be required to submit the form for sign off by the Section 151 Officer and the Director of Legal Services.
- 9 Any such breaches will be reported to the Commissioning and Procurement Board setting out the number of non-adherence instances in the previous period and broken down by service and exceptional instance, following which all such notices reported to the Commissioning and Procurement Board shall be published retrospectively for information on the appropriate Audit and Governance Committee agenda.
- 10 The S.151 Officer and Director of Legal Services shall consider whether each reported breach or non-adherence presents a significant risk of harm to the Council's interests and if satisfied that such risk exists, shall undertake any necessary investigation and report the findings to the relevant Executive Director and the Chief Executive.

## Part 6

### Employment Rules

---

#### General

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

#### Recruitment and Appointment of Staff

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

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

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

- 12 In addition to these rules, the responsibilities of the Staffing Committee are set out in the Staffing Committee's Terms of Reference under the "Responsibilities for Functions" Section of this Constitution.
- 13 Subject to the provisions of these Rules, the Committee is responsible for hearing and determining appeals as set out in the Staffing Committee terms of reference under the Council's employment-related policies. In determining these matters the Committee will have regard to the appropriate provisions of this procedure. The Committee may agree to discharge some of these functions through a Sub-Committee.
- 14 The Cabinet Member with responsibilities for individual Departments or Services and the associated resources is required to ensure that corporate personnel policies and procedures are applied by the Council, including training, matters relating to discipline, workforce performance management, and grievance.

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

- 15 The appointment of Head of the Paid Service is subject to specific requirements as set out below.
- 16 Where the Council proposes to appoint to the Head of the Paid Service, the Staffing Committee will oversee the arrangements for filling the vacancy. For this purpose the Committee shall include at least one Member of the Cabinet in its membership.
- 17 The Staffing Committee shall:
  - 17.1 draw up a statement specifying the duties of the officer concerned and any qualifications or guidelines to be sought in the person to be appointed
  - 17.2 where it is not proposed to appoint from existing employees, make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it



- 17.3 make arrangements for a copy of the statement mentioned above to be sent to any person on request
- 17.4 where a post has been advertised as required above, the Committee will select from the applications a short list of qualified candidates and will then interview those included in the short list.
- 18 Following the interview of candidates, the Committee will come to a view as to the most suitable person to recommend for the position.
- 19 The Committee must advise the Head of Strategic HR of:
  - 19.1 the name of the person in question
  - 19.2 any other particulars which the Committee consider are relevant to the appointment.
- 20 Within two clear working days of receiving the notification in paragraph 19 above, the Head of Strategic HR will notify each Member of the Cabinet of:
  - 6.6 the information notified under paragraph 19 above
  - 6.7 the period within which any objection to the making of the offer is to be made by the Leader on behalf of the Cabinet to the Head of Strategic HR; such period shall not exceed five clear working days.
- 21 An offer of appointment must wait until:
  - 21.1 the Leader has, within the period of the notice under paragraph 19 above, notified the Committee through the Head of Strategic HR that neither he/she nor any Member of the Cabinet has any objection to the making of the offer, or
  - 21.2 the Head of Strategic HR has notified the Committee that no objections have been received by her within the period of the notice under paragraph 20 above, or
  - 21.3 the Committee is satisfied that any objection received from the Leader within the notice period is not material or is not well founded. In this regard, where necessary, the advice of the Director of Legal Services shall be sought.
- 22 Where following the above procedure there are no objections to the proposed appointment or any objections are not up-held, the Committee will recommend that person for appointment to the next meeting of the full Council or at a specially convened meeting of the Council. If the Council approve the recommendation, then a formal offer of appointment can be made.
- 23 Where following the interviews the Committee is of the view that there is no suitable candidate, it will re-advertise the post.
- 24 Where the Council does not approve the recommendation of the Committee, it shall indicate how it wishes to proceed.

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

- 25 The provisions of Clause 1.5 shall not apply to any proposal to dismiss the Head of Paid Service, Statutory Chief Officers or the Executive Director of Place. This shall be the responsibility of the Staffing Committee, save that any dismissal of Head of Paid Service, the Section 151 Officer or Monitoring Officer must be approved by full Council, following a decision of the Investigation and Disciplinary Committee and consideration by the Independent Persons Panel. Any disciplinary action short of dismissal against the Head of Paid Service, Section 151 Officer, or Monitoring Officer shall be the responsibility of the Investigation and Disciplinary Committee.
- 26 For the avoidance of doubt, action short of dismissal against the Head of Paid Service, Section 151 Officer, or Monitoring Officer shall include a decision to suspend the same. Such a decision shall be the responsibility of the Investigation and Disciplinary Committee.
- 27 The Investigation and Disciplinary Committee is designated as the Committee discharging, on behalf of the Council, the function of discipline and dismissal of the Head of the Paid Service, Section 151 Officer, or Monitoring Officer. The full Council must however approve that dismissal before notice of dismissal is given to him/her.
- 28 Notice of dismissal of the Head of the Paid Service, Section 151 Officer, or Monitoring Officer must not be given until:
  - 28.1 the Investigation and Disciplinary Committee has notified the Head of Strategic HR that it wishes to dismiss the officer and any other particulars which the Investigation and Disciplinary Committee considers are relevant to the dismissal;
  - 28.2 the Head of Strategic HR has notified every member of the Cabinet of:
    - (i) the fact that the Investigation and Disciplinary Committee wishes to dismiss the officer
    - (ii) any other particulars relevant to the dismissal which the Investigation and Disciplinary Committee has notified to the Head of Strategic HR
    - (iii) the period within which any objection to the dismissal is to be made by the Leader on behalf of the Cabinet to the Head of Strategic HR, and

either:

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

- 29 Where following the above procedure there are no objections to the proposed dismissal or the objections are not upheld, the Investigation and Disciplinary Committee will:
- 29.1 follow the procedure set out in paragraphs 30-35, and
  - 29.2 recommend the dismissal to a meeting of the full Council.
- 30 This procedure applies if the Investigation and Disciplinary Committee proposes disciplinary action involving the dismissal of the Head of Paid Service, Section 151 Officer or Monitoring Officer.
- 31 Where this procedure applies, the Investigation and Disciplinary Committee will provide the Independent Persons Panel with the information and any other matters provided to members of the Cabinet and any other particulars relevant to the dismissal that the Investigation and Disciplinary Committee considers appropriate or that the Panel may reasonably require. The Investigation and Disciplinary Committee may invite the Independent Persons Panel to attend any disciplinary or capability hearing.
- 32 The Independent Persons Panel will meet to consider what, if any, advice, views or recommendations to give to the full Council.
- 33 The Council may pay such remuneration, allowances or fees to an Independent Person appointed to the Panel as it thinks appropriate but the payment must not exceed the level of remuneration, allowances or fees payable to that Independent Person in respect of his or her role as an independent person under the Localism Act 2011.
- 34 Full Council will not meet to consider whether or not to approve the proposal of the Investigation and Disciplinary Committee to dismiss the officer until a period of at least 20 working days has elapsed from the appointment of the Independent Persons Panel.

- 35 Before full Council takes a vote at a meeting on whether or not to approve such a dismissal, they must take into account, in particular:
- 35.1 any advice, views or recommendations of the Independent Persons Panel
  - 35.2 the conclusions of any investigation into the proposed dismissal; and
  - 35.3 any representations from the officer.
- 36 If the full Council approve the recommendation of the Investigation and Disciplinary Committee, then notice of dismissal can be issued. Where the full Council do not approve the recommendation, they shall indicate how they wish to proceed.
- 37 The requirements of the Local Authorities (Standing Orders)(England) Regulations 2001 as amended will be followed.

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

- 38 The offer of appointment for:
- 38.1 a statutory chief officer within the meaning of section 2(6) of the 1989 Act
  - 38.2 a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act or
  - 38.3 a deputy chief officer within the meaning of section 2(8) of the 1989 Act
- must not be made by the appointor until:
- 38.4 the appointor has notified the Head of Strategic HR of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment
  - 38.5 the Head of Strategic HR has notified every member of the executive of the authority of:
    - (i) the name of the person to whom the appointor wishes to make the offer
    - (ii) any other particulars relevant to the appointment which the appointor has notified to the Head of Strategic HR and
    - (iii) the period within which any objection to the making of the offer is to be made by the executive leader on behalf of the executive to the Head of Strategic HR and

either:

- the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the appointor that neither s/he nor any other member of the executive has any objection to the making of the offer
- the Head of Strategic HR has notified the appointor that no objection was received by him/her within that period from the executive leader, or
- the appointor is satisfied that any objection received from the executive leader within that period is not material or is not well-founded.

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

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

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

39.3 a deputy chief officer within the meaning of section 2(8) of the 1989 Act must not be given by the dismissor until:

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

39.5 the Head of Strategic HR has notified every member of the executive of the authority of:

- (i) the name of the person who the dismissor wishes to dismiss
- (ii) any other particulars relevant to the dismissal which the dismissor has notified to the Head of Strategic HR and
- (iii) the period within which any objection to the dismissal is to be made by the executive leader on behalf of the executive to the Head of Strategic HR and

either:

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

- the Head of Strategic HR has notified the dismisser that no objection was received by him/her within that period from the executive leader, or
- the dismisser is satisfied that any objection received from the executive leader within that period is not material or is not well-founded.

DRAFT

## Chapter 4

### Codes and Protocols

---

This part of the Constitution covers the following areas:

Part	Title	Contents
1	Member Code of Conduct	<p>This sets out the ways in which elected Members of the Council must conduct themselves. It covers such things as:</p> <ul style="list-style-type: none"><li>• General obligations</li><li>• Registering and declaring interests</li><li>• Pre-determination and bias</li></ul>
2	Officer Code of Conduct	<p>This sets the ways in which all employees of the Council must conduct themselves. It covers such things as:</p> <ul style="list-style-type: none"><li>• The Values of the Council</li><li>• The Council's Core Principles</li><li>• The Council's Core Standards</li><li>• Additional standards relevant to particular groups of employees</li><li>• Guidance on compliance with the Code</li><li>• Associated forms and referral points</li></ul>
3	Member / Officer Relations Protocol	<p>This Protocol is to guide Members and Officers of the Council in their relations with one another in such a way as to ensure the smooth running of the Council.</p>
4	Whistleblowing Policy	<p>Although not a formal part of the Council's Constitution, it is considered useful to provide a link to the Whistleblowing Policy in this document.</p>

## Part 1

### Member Code of Conduct

---

- 1 Cheshire East Council has adopted this Code of Conduct to promote and maintain high standards of conduct and underpin public confidence in the authority and its members and co-opted members (referred to collectively in this Code as “Members”).
- 2 The Code has been adopted under the Localism Act 2011 and is based on the following core principles of public life:
  - 2.1 Selflessness
  - 2.2 Integrity
  - 2.3 Objectivity
  - 2.4 Accountability
  - 2.5 Openness
  - 2.6 Honesty
  - 2.7 Leadership
- 3 The Code sets out general obligations about the standards of conduct expected of members and co-opted members of the authority, together with provisions about registering and declaring interests.

#### General obligations

- 4 Whenever you are acting as a member or co-opted member of this authority you must act in accordance with the following obligations:
  - Selflessness*
    - 4.1 You must act solely in the public interest and must never use or attempt to use your position improperly to confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, friends or close associates.
  - Integrity*
    - 4.2 You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.



### *Objectivity*

- 4.3 When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.
- 4.4 You should remain objective, listen to the interests of all parties appropriately and impartially and take all relevant information, including advice from the authority's officers, into consideration.
- 4.5 You should exercise independent judgement. Although you may take account of the views of others (including a political group), you should reach your own conclusions on the issues before you and act in accordance with those conclusions.

### *Accountability*

- 4.6 You are accountable to the public for your decisions and you must co-operate fully with whatever scrutiny is appropriate to your office, including appropriate scrutiny by local residents.

### *Openness*

- 4.7 You must be open and transparent where possible about your decisions and actions and the decisions and actions of your authority. You should be prepared to give reasons for those decisions and actions.

### *Honesty*

- 4.8 You must declare any personal, pecuniary and non-pecuniary interests that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests as set out in Part 2 below.
- 4.9 You must only use or authorise the use of the authority's resources in accordance with the authority's requirements. You must, when using or authorising the use of such resources, ensure that they are used for proper purposes only. Resources must not be used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity in force from time to time.

### *Leadership*

- 4.10 You must promote and support high standards of conduct when serving as member of the authority, by leadership and example, championing the interests of the community.
- 4.11 You should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in you.

## *Respect for others*

4.12 You must treat others with courtesy. You should engage with colleagues and staff in a manner that underpins mutual respect and courtesy, essential to good local government.

4.13 You must not:

- (i) do anything which may cause your authority to breach any equality laws
- (ii) compromise or attempt to compromise the impartiality of anyone who works for, or on behalf of, the authority
- (iii) bully<sup>15</sup> any person, including other councillors, officers of the authority or members of the public
- (iv) intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct.

## *Information*

4.14 You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except<sup>16</sup> where:

- (i) you have the written consent of a person authorised to give it
- (ii) you are required by law to do so
- (iii) the disclosure is made to a professional third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person, or
- (iv) the disclosure is reasonable, in the public interest; and made in good faith and in compliance with the reasonable requirements of the authority.

4.15 You must not prevent another person from gaining access to information to which that person is entitled by law.

---

<sup>15</sup> "Bullying" may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour and includes "cyber bullying". It may happen once or be part of a pattern of behaviour. It can be contrasted with the legitimate challenges a member may make in challenging policy or scrutinising performance. You may challenge others as to why they hold their views but must take care to raise issues in the appropriate forum and in an appropriate way. Ideas and policies may be robustly criticised but individuals should not be subject to unreasonable or excessive personal attack.

<sup>16</sup> It is your responsibility to ensure that any judgement you make in relying on any exception will stand up to rigorous objective scrutiny. In the case of any doubt advice should be sought from the Monitoring Officer or an independent qualified legal advisor.

### *Gifts and Hospitality*

- 4.16 You must within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £100 which you have accepted as a member from any person or body other than the authority. The Monitoring Officer will place your notification on a public register of gifts and hospitality.

## **Registering and Declaring Interests**

### *Registering and Declaring Interests – General Requirements*

- 5 You must, within 28 days of:
- 57.1 the adoption of this Code
  - 57.2 taking office as a member
  - 57.3 becoming aware of any new interest not already registered
  - 57.4 becoming aware of any change to any interest already registered
- notify the monitoring officer in writing of any disclosable pecuniary interest, or other type of interest as defined by this Code.
- 6 If you become aware of any such interest not already registered (or the subject of pending notification) during the course of any meeting of the authority at which you are in attendance then you must disclose the interest to meeting, take the action required by the Code depending on the nature of the interest and notify the monitoring officer of the interest in accordance with the provisions of this Code.

### *Sensitive Interests*

- 7 A 'sensitive interest' is described in the Localism Act 2011 as an interest the nature of which is such that the member and the authority's monitoring officer consider that disclosure of the details of the interest could lead to the member or a person connected with the member being subject to violence or intimidation.
- 8 Where you consider that you have a sensitive interest, and the monitoring officer agrees, that part of the register recording that interest will be will not be published or made available for public inspection. A declaration of interests must still be made at meetings where relevant, but the sensitive information need not be disclosed.

### *Disclosable Pecuniary Interests*

- 9 A disclosable pecuniary interest is defined by statute and is subject to change from time to time. The current statutory definition is [here](#).
- 10 Unless dispensation has been granted, if you are present at any meeting of the authority and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting, you must leave the meeting while any discussion or voting on that matter takes place. You may not participate in any discussion of the matter at the meeting and you may not participate in any vote taken on the matter at the meeting.
- 11 You must not discharge or participate in the discharge of any function related to any matter in which you have a disclosable pecuniary interest.
- 12 Failure to comply with these requirements of the Code may amount to a criminal offence.

### *Other Interests – Personal Interests*

- 13 In addition to disclosable pecuniary interests referred to above, you must also declare personal interests.
- 14 You have a personal interest in any business of the authority where the business of the authority relates to or is likely to affect any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority.
- 15 You will also have a personal interest in any business of the authority where the business of the authority relates to or is likely to affect any body exercising functions of a public nature, which is directed to charitable purposes or whose principle purposes includes influencing public opinion or policy where you are a member of that body or in a position of general control or management.
- 16 The Audit and Governance Committee may, from time to time, prescribe certain bodies the membership of which amounts to a personal interest.
- 17 You will also have a personal interest in any business of the authority where a decision in relation to that business might reasonably be regarded as affecting your wellbeing or financial position or the wellbeing or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers, or inhabitants of the electoral division or ward, as the case may be, affected by the decision.
- 18 For the purposes of this Code, a relevant person is:
  - 11.8 a member of your family or any person with whom you have a close association, or
  - 11.9 any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors, or

- 11.10 any person or body in whom such persons have a beneficial interest and a class of securities exceeding the nominal value of £25,000 or one hundredth of the total issued share capital of that body.
- 19 Unless your personal interest also amounts to a prejudicial interest, a disclosable pecuniary interest or pre-determination, you may remain in the meeting and take part in the debate and vote.

#### *Other Interests – Prejudicial Interests*

- 20 You will have a prejudicial interest if you have a personal interest in any business of the authority and where that personal interest is one which a member of the public with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and where that business:
- 20.1 affects your financial position or the financial position of a relevant person or body described in paragraph 14 or 15 above, or
- 20.2 relates to the determination of any approval, consent, licence, permission or registration in relation to you or any relevant person or body described in paragraph 14 or 15 above.
- 21 Where you have a prejudicial interest, you may not participate in any discussion of the matter at the meeting or in any vote taken on the matter at the meeting. You are also required to leave the room where the meeting is taking place during the discussion and vote. However you may attend the meeting and make representations, answer questions or give evidence provided that the public are also allowed to attend the meeting for the same purpose and you leave the meeting immediately after having done so.

#### **Pre-Determination and Bias**

- 22 Separately from considerations as to personal, prejudicial or disclosable pecuniary interests, members must be mindful of falling foul of the general obligations of this code by taking part in decisions where they are biased or have pre-determined the matter in question.
- 23 Simply put, a member will be biased or will have pre-determined a matter if they have approach a matter with a closed mind. That is to say if they have made up their mind which way they will decide a matter before all of the relevant considerations are presented and debated in the appropriate decision making forum.
- 24 Previous actions or statements of a member will not be taken by themselves as proof of predetermination. A member may be predisposed to a certain point of view, however notwithstanding any predisposition, members need to be careful to ensure they approach and, insofar as is possible, are seen to approach decisions with an open mind.

- 25 Particular scenarios to be mindful of are where a member, in some other role, is seen to be a promoter or advocate for a proposal which later comes before them for decision. A risk arises when there has been significant personal involvement in preparing or advocating the proposal such that a member may become or may be perceived by the public as being no longer able to approach the decision with an open mind.
- 26 If you feel that you have pre-determined a matter you should say so. You should not speak or vote on the proposal. You may, however, make representations on the proposal if a member of the public also has the right to do so. You are not legally obliged to withdraw from the meeting for the remainder of the debate and vote but in most circumstances doing so will counter any suggestion that you influenced the remaining members by your continued presence. If you do not withdraw, as a minimum you must withdraw to the public area of the meeting room for the whole of the consideration of the matter, whether or not you are also exercising your right to speak.
- 27 If in any doubt you should seek advice from the Monitoring Officer.

### **Further Information**

- 28 The Monitoring Officer, in consultation with the Chairman of the Audit and Governance Committee, will publicise from time to time arrangements for dealing with complaints made against members that their conduct has breached the requirements of this code. The arrangements currently in force are [here](#).
- 29 The Monitoring Officer will publicise from time to time a Monitoring Officer Protocol reflecting current trends in Member Conduct matters in order to provide guidance on how emerging or common issues will be approached.

### **Dispensations**

- 30 The Audit & Governance Committee may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a prejudicial or disclosable pecuniary interest.
- 31 A list of matters to which a dispensation has been granted to all members is available [here](#).

FOR INFO IN THE DRAFTING PROCESS AND TO ULTIMATELY BE  
HYPERLINKED:-

Extract from the Relevant Authorities (Disclosable Pecuniary Interests)  
Regulations 2012

- The following categories are Disclosable Pecuniary Interests
- “M” denotes the relevant Elected Member
- The regulations apply if the disclosable pecuniary interest is yours,  
your spouse’s or civil partner’s or is the pecuniary interest of  
somebody with whom you are living as a husband or wife or as if  
you were civil partners

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(1).
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.

- (a) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
- (b) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (d) an allowance, payment or indemnity given to members;
- (e) any ceremonial honour given to members;
- (f) setting Council Tax or precept under the Local Government Finance Act 1992 (or any subsequent legislation);
- (g) setting a Local Council Tax Reduction Scheme or Local scheme for the payment of business rates (including eligibility for rebates and reductions) for the purposes of the Local Government Finance Act 2012 (or any subsequent legislation);
- (h) an interest arising from your membership of another local authority; and
- (i) To the extent that it may amount to a prejudicial or disclosable pecuniary interest, any allowance or other remuneration received from the Council in respect of council duties or directorships of council owned ASDVs.

Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
----------	--

Page 264



## Securities

Any beneficial interest in securities of a body where—

(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and  
(b) either—

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

DRAFT

## **Part 2**

### **Officer Code of Conduct**

---

- 1. Code of Conduct – Core Principles**
- 2. Code of Conduct – Core Standards**
- 3. Code of Conduct – Core Standards – Guidance**
- 4. Code of Conduct – Associated Forms & Referral Points**
- 5. Other Standards relevant to different groups of employees throughout the Council**
- 6. Cheshire East Core Values**

## 1. Core Principles

- 1.1 The following core principles underpin the concept of public service and apply to all employees of the Council regardless of the nature of the job they do:

### **SELFLESSNESS**

Employees should take decisions solely in the terms of the public interest. They should not do so nor use their position in order to gain financial or other material benefits for themselves, their family or their friends.

### **INTEGRITY**

Employees should not place themselves under any financial or other obligations to outside individuals or organisations that might influence them in the performance of their official duties.

### **OBJECTIVITY**

In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, employees should make decisions on merit.

### **ACCOUNTABILITY**

Employees are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### **OPENNESS**

Employees should be as open as possible about all decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands it.

### **HONESTY**

Employees have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### **RESPECT FOR OTHERS**

Employees must treat other people with respect and not discriminate unlawfully or unfairly against any person. They must treat Councillors and other co-opted members of the authority professionally.

### **TRUST**

Employees must, at all times, act in accordance with the trust that the public is entitled to place on them. Employees must use any public money or service users' money entrusted to or handled by them, in a responsible and lawful manner and not make personal use of the Council resources unless properly authorised to do so.

### **LEADERSHIP**

Employees should promote and support these principles by leadership and example.

- 1.2 The Code of Conduct principles operate within the overall framework of the Core Values Our Values for Cheshire East are depicted by the acronym FIRST (explained further in Section 6 of this document).

## **2 Core Standards**

- 2.1 Our customers, the general public, are entitled to expect the highest Standards of Conduct from us. The aim of this code is to tell you about the standards which are expected and to help you avoid any misunderstanding or criticism.

- **Gifts and Hospitality**
- **Sponsorship**
- **Use of Financial Resources**
- **Use of Council Facilities**
- **Intellectual Property**
- **Political Neutrality**
- **Other Employment and External Activities**
- **Financial and Non-Financial Interests**
- **Relationships**
- **Appointments and Other Employment Matters**
- **Tendering and Contracts**
- **Private Use of Firms Dealing With The Council**
- **Disclosure of Information**
- **Compliance with the Code and Confidential Reporting**

- 2.2 You should also be aware of and abide by Service specific Standards or Regulations, especially when working with vulnerable adults and children or working in a school. The rules within the Standards of Conduct, for staff in Community Services, for example, if you are offered a gift, are much stricter than those included in this standard Code of Conduct.
- 2.3 Please liaise with your Manager who should refer you to the appropriate Standards. At the end of the Code of Conduct Guidance notes, you will also find a matrix to help sign post you to other relevant Standards.

### 3 Code of Conduct Standards – Guidance

#### Gifts and Hospitality

- 3.1 If we accept gifts from people who are or may be dealing with the Council, the Council and its employees could be open to criticism. If you are declining hospitality please do so courteously and explain that the Council's rules do not allow you to accept.
  - 3.2 You must refuse offers of hospitality where suggestions of improper influence is possible. Employees must be sensitive to the timing of any decisions being made between the Council and third party.
  - 3.3 You should only accept hospitality where it is on a scale appropriate to the circumstances, and where it is apparent that no cause could reasonably arise for adverse criticism about the acceptance of the hospitality. Hospitality is usually acceptable when the invitation is corporate not personal.
  - 3.4 Whatever gift/hospitality is provided to you, other than hospitality of nominal value only such as drink or small items of stationery, you should report the circumstances and the type of hospitality to your Head of Service. Small insignificant gifts of a value of less than £5, such as pens, diaries, calendars, mouse mats or mugs, may be accepted. However, in the case of those working in social care, no gift, however little the value, should be accepted in any circumstances.
  - 3.5 It is a serious criminal offence to corruptly receive or give any gift, loan, fee, reward or advantage for doing or not doing anything or showing favour or disfavour to any person in their official capacity. If an allegation is made it is for the employee to demonstrate that any such rewards have not been corruptly obtained.
- ! If you are presented with a gift or offer of hospitality you must seek authorisation in advance, where possible, from your Head of Service, who will record every request on the relevant form. (Consider the decision checklist in section 4 of the Guidance Notes)**
- 3.6 All employees are required to complete an annual declaration of interest return, even if this is to confirm that they have nothing to declare, and then to report issues as and when they occur.

## **Sponsorship – Giving and Receiving**

- 3.7 If an organisation wants to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily, the basic rules about accepting gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
- 3.8 If the Council sponsors an event or service, you or anyone connected with you may not benefit from the sponsorship. Similarly, if the Council, gives financial support in the community, please ensure that impartial advice is given and that you have no conflict of interest.

**! You must inform your Head of Service of any personal interest you may have and complete a declaration of interest form.**

## **Use of Financial Resources**

- 3.9 You must ensure that you use public funds entrusted to you in a responsible and lawful manner. Please try to ensure value for money to the local community and to avoid the risk of legal challenge to the Council.

**! Employees must follow Standing Orders, Financial Regulations and operating procedures and advise management where they consider changes can be made to increase value for money.**

## **Use of Council Facilities**

- 3.10 At work you have access to facilities which include office equipment, computers, stores, transport etc. These facilities are provided purely for work and you must not use them for your own purposes.
- 3.11 There are certain minor exceptions to these rules - the use of telephones, fax machines and photocopiers.

## **Telephones**

- 3.12 Ideally, private telephone calls should not be made or received. In practice, you may need to make or receive essential calls but these should be kept to a minimum and costs reimbursed to the Council, unless it is an emergency.

## **Fax machines and photocopiers**

- 3.13 If necessary, personal fax messages may be despatched to locations within Great Britain. Photocopies of personal documents (up to a maximum of 10 copies at any one time) may be taken and costs reimbursed to the Council.

**! Costs must be reimbursed to the relevant person using the Council's reimbursement process.**

## Intellectual Property

- 3.14 Intellectual property mean products of the mind, for example inventions, designs, trade marks, creative writings, programs and drawings (referred to in short as 'inventions'). It will normally be the case that the ownership of all 'inventions' and the copyright of all written material created during work for the Council, belong to the Council.

**! This is a complex area, further guidance must always be sought from Legal Services in any particular case.**

## Political Neutrality

- 3.15 Employees work for the Council as a whole. You must therefore work for all the councillors and not just those of any controlling group or particular political party.
- 3.16 You must follow every lawful policy of the authority and must not allow your own personal or political opinions to interfere with your work.
- 3.17 Certain employees hold politically restricted posts (PoRPs). If your job is politically restricted, you will be notified. You are disqualified from membership of any local authority, other than a parish or community council or from being an MP or MEP.

**! Employees who are politically restricted must observe the restrictions imposed. A register of PoRPs is maintained by HR.**

## Other Employment and External Activities

- 3.18 As a general rule you must not undertake any type of private work which conflicts with the Council's interests or prevents you from fulfilling the terms of your employment contract.
- 3.19 If you are above NJC Grade 7 or equivalent, you must obtain the consent of your Head of Service before you do private work.
- 3.20 Whether or not you need to obtain consent before doing private work, you must not:
- 3.20.1 Do private work during working hours nor on the Council premises nor use Council equipment
  - 3.20.2 Undertake any private work which prevents you from carrying out your duties with the Council or including any requirements to do contractual overtime
  - 3.20.3 Undertake private work for any person, firm or company if it will involve the Council
  - 3.20.4 Prepare or assist with any applications, for example, planning or building, in any private capacity if you deal with these normally
  - 3.20.5 Access Council Services, for example, if you want to make a planning application personally, unless you declare your employment in writing, in a covering letter with your application and submit this via your line manager

- 3.20.6 Undertake private work that needs approval or consent from the Council
- 3.20.7 Undertake private work for any person, firm or company who have a contractual relationship with or who are commissioned by the Council for any type of work
- 3.20.8 Undertake private work for another employee responsible for supervising you or whom you supervise, or for an elected member of the Council.
- 3.21 Employees must ensure they understand and can comply with both Working Time and Health and Safety regulations before considering other employment.

**! Employees must seek consent from their line manager before undertaking other work. All employees must declare an interest where a conflict may arise.**

- 3.22 All employees are required to complete an annual declaration of interest return, even if this is to confirm that they have nothing to declare, and then to report issues as and when they occur.

### **Financial and Non-Financial Interests**

- 3.23 The Local Government Act 1972, section 117, requires you to disclose any direct or indirect financial interest in any contract involving the Council. Failure to declare the interest may be a criminal offence.
- 3.24 If you have any direct or indirect interest in an organisation or company that is doing business with the Council, which you think conflicts with your job role, then you should inform your Head of Service.
- 3.25 You may have a conflict of interest even if you have no financial interest. For instance, relationships might be seen to influence judgements and give the impression of a personal motive e.g. a Council employee who is an Honorary Officer of an Association and who is involved in dealing with an application for a grant by the Association. In such a case, again you should inform your Head of Service.
- 3.26 Employees are able to act as a member of another local authority, a school governor, or member of a community organisation but may still be required to declare their interest if any potential conflict arises.
- 3.27 If, in connection with his/her employment with the Council, an employee uses his/her relationship with an organisation for his/her own or someone else's personal or financial gain, he/she will be regarded as being in breach of this Code of Conduct.
- 3.28 Employees who are members of other associations or bodies that have dealings with the Council should declare their interest, if there is any potential conflict.
- 3.29 Employees who during the course of attending a meeting believe they that may have a conflict with an item on the agenda should advise the Chairman and leave the meeting for all or part of the meeting as appropriate.



**! Declare an interest on the Declaration form if there is a potential conflict.**

- 3.30 All employees are required to complete an annual declaration of interest return, even if this is to confirm that they have nothing to declare, and then to report issues as and when they occur.

### **Relationships**

#### **3.31 Councillors**

- 3.31.1 Mutual respect between employees and councillors is essential. Close personal familiarity between employees and individual councillors can damage this relationship. You must be professional at all times and not allow your work and private interests to conflict.

#### **3.32 The Local Community and Service Users**

- 3.32.1 You should always remember your responsibilities to the Community and give efficient and impartial service to all groups and individuals within that community as defined by the policies of the Council.

#### **3.33 Contractors**

- 3.33.1 If you have a business or private relationship with external contractors or potential contractors you should tell your manager. Orders and contracts must be awarded on merit, by fair competition against other tenders and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against.
- 3.33.2 9.4 If you engage or supervise contractors or work with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, you should declare that relationship to the appropriate manager.

**! Declare an interest on the Declaration form if there is a potential conflict and do not take part in any related tendering or contract award processes.**

## **Appointments and Other Employment Matters**

- 3.34 If you are involved in the recruitment and selection of employees, appointments should be made on the basis of merit and in accordance with our Recruitment and Selection Policy and Procedures obtainable from HR. To avoid any possible accusation of bias, you should not be involved in an appointment where you are related to an applicant, or have a close personal relationship outside work with him or her.
- 3.35 Similarly, you should not be involved in decisions about discipline, promotion or pay adjustments for any employee who is a relative, partner etc.

**! Declare an interest on the Declaration form if there is a potential conflict.**

## **Tendering and Contracts**

- 3.36 During the Tendering process, if you are involved in the 'in-house' bid (except Executive Directors and, apart from when their own service is tendered, legal, financial and professional advisers) you must not at the same time be involved in certain client tasks e.g. selecting tenderers. You should seek guidance from your Head of Service as to how the tendering process is to be conducted and how the 'in-house contractor' and client responsibilities are to be discharged.
- 3.37 Employees working for 'in-house' contractors or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.
- 3.38 If you are privy to confidential information on tenders or costs for either internal or external contractors you should not disclose that information to any unauthorised party or organisation.
- 3.39 If you are responsible for selecting contractors to tender or supply quotations, you should ensure that you are not also responsible for the receipt and opening of the tender or quotation except where the sums involved are minor.

**! Refer to the appropriate Corporate Procurement rules and guidance.**

## **Private Use of Services of Firms Dealing with the Council**

- 3.40 You should be cautious when using the services of firms you know have dealings with the Council. You should ensure that the goods or services bought from such firms are at a price readily available to the general public. This is a difficult and sensitive area. Please try to avoid offending anyone and if necessary, explain the Council's policy.
- 3.41 If you think that any offer of preferential terms is designed to promote a firm's interest, you should not deal with the firm.
- 3.42 You should not use your position with the Council to obtain a discount. However, you may purchase goods at discount terms under a scheme or arrangement which applies to e.g. your trade union.

**! If you require further guidance please refer to the Corporate Procurement Team.**

### **Disclosure of Information**

3.43 You must not:

- 3.43.1 Use information about work which is confidential, for personal gain or benefit or pass it on to others who might use it in this way.
- 3.43.2 Give information to the media unless you are authorised to do so.
- 3.43.3 Disclose confidential information to someone else, unless it is a request from an approved source, e.g. HMRC, Department of Social Security and, where authorised, from bank managers or building societies. It is normal practice to ask the person requiring the information to put their request in writing use advance knowledge of a Council decision, particularly about investment decisions or proposed developments to benefit yourself or someone else.

### **Data Protection Act (Disclosing Information)**

3.44 You must use personal data in accordance with the Data Protection Act. For example, the data must be held only for specified and lawful purposes and must not be used or disclosed for any other purposes.

**! If you are unsure please seek guidance from the Data Protection Officer or Communications Team, depending on the nature of the request.**

### **Compliance with the Code**

- 3.45 It is important that local government employees are exemplary in their conduct at work. Non-compliance with this Code will be dealt with in accordance with our Disciplinary Code.
- 3.46 Employees who consider other employees to be guilty of misconduct must report this to their line manager or raise it through one of the other available procedures e.g. grievance.
- 3.47 Employees must not treat employees who report (or who intend to report or are suspected of reporting) potential misconduct any less favourably than other employees.
- 3.48 If, in some instances, the employee cannot make use of the existing procedures for any reason then they should raise complaints or genuine matters of concern with the relevant person through the Whistle Blowing Policy.

**! This code is reviewed annually. Employees should therefore ensure they regularly familiarise themselves with the Code and its Guidance Notes.**

## 4 Associated Forms and Referral Points

4.1 The forms can be found on the HR website under the Code of Conduct.

Name	Action taken by	Refer to
Declaration of interest form	Employee to Head of Service	
Ext. Gifts/Hosp/Spons form	Employee to Head of Service	
Reimbursement of Costs	Employee to Business Support	
Register of PoRP	N/A	HR
Whistle Blowing Policy	N/A	HR intranet

### Checklist for Assessing Potential Conflict – Gifts and Hospitality

4.2 Employees should consider the following Checklist:

- 4.2.1 Have you obtained the prior approval of your Chief Officer?
- 4.2.2 Is the donor, or the event, significant in the community or in the Council's area?
- 4.2.3 Are you expected to attend because of your position in the Authority?
- 4.2.4 Will the event be attended by others in the Authority or in other Authorities?
- 4.2.5 Have you considered the motivation behind the invitation?
- 4.2.6 Would the acceptance of the invitation be, in any way, inappropriate or place you under pressure in relation to any current or future matter involving this Council?
- 4.2.7 Could you justify the decision to the Council, press and public?
- 4.2.8 Is the extent of the hospitality or the nature of the gift reasonable and appropriate?
- 4.2.9 How will you respond to the hospitality?

## 5 Code Of Conduct – Matrix Of Regulations and Standards Relevant to Specific Directorates

- 5.1 In determining acceptable standards, employees are asked to familiarise themselves not only with those included in the Code of Conduct but also those included in Service specific Codes, corporate policies or operational procedures used by their own Services.

**! You will find an up-to-date list of those documents on the Human Resources section of the centranet.**

## 6 Cheshire East Core Values “FIRST Framework”

- 6.1 Values are the things in life that we consider to be important. In relation to work, values are what give purpose to our jobs; guiding our behaviours and the decisions we take. Values underpin the culture of our authority and the way we conduct ourselves at work.
- 6.2 Putting Residents First is about really listening and understanding what residents and businesses need and responding appropriately to provide the best possible Service.
- 6.3 This requires **Flexibility**, which means us all adapting quickly to changing circumstances and learning together from our experiences.
- 6.4 **Innovation** is about us being creative in our thinking and the way we approach our work and challenging convention where this no longer seems appropriate.
- 6.5 Taking personal **Responsibility** is at the heart of our values in delivering what we promise, and ensuring efficient use of resources, whether this is our people, funding, processes, information or technology.
- 6.6 **Service** ensures that we listen and respond appropriately enabling others to be empowered, independent and self-reliant.
- 6.7 Bringing this together is **Teamwork**, respecting and working well with others to collectively achieve the best outcomes for residents and communities.

This page is left intentionally blank

## Part 3

# Member / Officer Protocol

---

### Introduction and Principles

- 1 The purpose of this Protocol is to guide Members and Officers of the Council in their relations with one another in such a way as to ensure the smooth running of the Council.
- 2 Given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or comprehensive. It simply offers guidance on some of the issues which most commonly arise. It is hoped, however, that the approach which it adopts to these issues will serve as a guide to dealing with other circumstances.
- 3 This Protocol seeks to promote greater clarity and certainty. If the Protocol is followed it should ensure that Members receive fair treatment, objective and impartial advice and that Officers are protected from accusations of bias and any undue influence from Members.
- 4 It also seeks to reflect the principles underlying the respective Codes of Conduct which apply to Members and Officers. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and the Codes, therefore, demand very high standards of personal conduct.
- 5 This Protocol is a local extension of the Members' and Employees' Codes of Conduct. Consequently, a breach of the provisions of this Protocol may also constitute a breach of those Codes.
- 6 This Protocol should be read in conjunction with the Members' and Employees' Codes of Conduct, the Council's Constitution and any guidance issued by the Audit & Governance Committee and/or Monitoring Officer.

### **Allegations of Member or Officer Misconduct: Responses by Members or Officers as appropriate**

- 7 In a situation where a Member identifies that an Officer may have committed a breach of the Council's disciplinary rules and procedures, s/he shall draw the issue to the attention of the Chief Executive (Head of Paid Service) who will ensure that the appropriate action is taken. Thereafter the Member should not discuss or disclose the matter with any other person.
- 8 In respect of an Officer who believes a Member has breached the Members' Code of Conduct, they should:
  - 8.1 not offer any opinion or judgement upon that conduct to the Member
  - 8.2 they must advise the Monitoring Officer immediately of the circumstances, facts, their belief and the rationale behind it, including supplying all and any documentation, and

8.3 they should not comment further on the issue to any other Officer or Member without the prior consent of the Monitoring Officer.

- 9 These provisions are to protect both the Member and Officer, avoid Officers and Members from becoming unduly involved in allegations of misconduct at an inappropriate level or in inappropriate fora, and to ensure that any investigation that may need to be carried out by the Monitoring Officer or other agency, is not in any way fettered or damaged.

### **The Relationship: General Points**

- 10 Both Councillors and Officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to Councillors and the Council, and to carry out the Council's work under the direction and control of the Council, the Executive, their committees and subcommittees.
- 11 At the heart of the Code, and this Protocol, is the importance of mutual respect.
- 12 Member / Officer relationships are to be conducted in a positive and constructive way. Therefore, it is important that any dealings between Members and Officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party.
- 13 Inappropriate relationships can be inferred from language / style. To protect both Members and Officers, Officers should address Members as "Councillor XX / Mr or Madam Mayor/Chairman" save where circumstances clearly indicate that a level of informality is appropriate, e.g. a one to one between a Head of Service and their respective Cabinet Member.
- 14 A Member should not raise matters relating to the conduct or capability of an Officer in a manner that is incompatible with the objectives of this Protocol. This is a long-standing tradition in public service. An Officer has no means of responding to such criticisms in public. If a Member feels s/he has not been treated with proper respect, courtesy or has any concern about the conduct or capability of an Officer, and fails to resolve it through direct discussion with the Officer, s/he should raise the matter with the respective Head of Service. The Head of Service will then look into the facts and report back to the Member. If the Member continues to feel concern, then s/he should report the facts to the Director who heads the Directorate concerned, or if, after doing so, is still dissatisfied, should raise the issue with the Chief Executive who will look into the matter afresh. Any action taken against an Officer in respect of a complaint, will be in accordance with the provisions of the Council's Disciplinary Rules and Procedures.
- 15 An Officer should not raise with a Member matters relating to the conduct or capability of another Officer or department. Such concerns should be raised through appropriate officer reporting lines.
- 16 Where an Officer feels that s/he has not been properly treated with respect and courtesy by a Member, s/he should raise the matter with his/her Head of Service, Director or the Chief Executive as appropriate, especially if they do not feel able to



discuss it directly with the Member concerned. In these circumstances the Head of Service, Director or Chief Executive will take appropriate action either by approaching the individual Member and/or group leader or by referring the matter to the Monitoring Officer.

### **The Relationship: Officer Support to Members: General Points**

- 17 Officers are responsible for day-to-day managerial and operational decisions within the authority and will provide support to both the Executive and all Councillors in their service areas.
- 18 Certain statutory officers – the Chief Executive, the Monitoring Officer and the Chief Financial Officer – have specific roles. These are addressed in the Constitution. Their roles need to be understood and respected by all Members.
- 19 The following key principles reflect the way in which the officer core generally relates to Members:
  - 19.1 all officers are employed by, and accountable to the authority as a whole
  - 19.2 support from officers is needed for all the authority's functions including Full Council, Overview and Scrutiny, the Executive, individual Members representing their communities, etc.
  - 19.3 day-to-day managerial and operational decisions should remain the responsibility of the Chief Executive and other officers
  - 19.4 the authority will seek to avoid potential conflicts of interest for officers arising from the separation of the Executive and Overview and Scrutiny role, and
  - 19.5 all officers will be provided with training and development to help them support the various Member roles effectively and to understand the new structures.
- 20 On occasion, a decision may be reached which authorises named Officers to take action between meetings following consultation with a Member or Members. It must be recognised that it is the Officer, rather than the Member or Members, who takes the action and it is the Officer who is accountable for it.
- 21 It is important that all Members, in exercising their functions as a Councillor, take appropriate legal, financial and professional officer advice, particularly about contractual matters. In order to ensure the highest standards of conduct are maintained at all times in relation to this important area of the Council's functions, additional guidance on Best Practice for Member Conduct during a Procurement Exercise is laid out in Appendix.

- 22 Generally, all Members – whether Executive or otherwise – should consider, when invited to / attending a meeting, whether or not minutes should be taken and/or an officer should be present. It is a matter for Members' judgement whether this is necessary / appropriate, but factors such as whether any commitment is likely to be given on behalf of the Council and/or whether any complex financial, legal or procurement issues may be discussed will be relevant in deciding that. In such situations, Members are generally recommended to have an officer present and to ensure that contemporaneous minutes are taken and, where appropriate, shared with the other parties present to ensure that an accurate record is maintained. It will, however, be a case of judgement on each and every occasion as to how and when this principle is applied.
- 23 Finally, it must be remembered that Officers within a Service are accountable to their Head of Service and Director and that whilst Officers should always seek to assist a Member, they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Head of Service or Director.

### **The Relationship: Officer Support: Members and Party Groups**

- 24 It must be recognised by all Officers and Members that in discharging their duties and responsibilities, Officers serve the Council as a whole and not any political group, combination of groups or any individual Member of the Council.
- 25 There is now statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to support and contribute to such deliberations by party groups but must at all times maintain political neutrality. All Officers must, in their dealings with political groups and individual Members, treat them in a fair and even-handed manner.
- 26 The support provided by Officers can take many forms. Whilst in practice such Officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups
- 27 Certain points must, however, be clearly understood by all those participating in this type of process, Members and Officers alike. In particular:
- 27.1 officer support must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if Officers are not present at meetings or parts of meetings, when matters of party business are to be discussed
- 27.2 party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such, and

- 27.3 similarly, where Officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant Committee or Sub-Committee when the matter in question is considered.
- 28 Special care needs to be exercised whenever Officers are involved in providing information and advice to a party group meeting which includes persons who are not Members of the Council. Such persons are not bound by Codes of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons, Officers may not attend and/or give advice to such meetings.
- 29 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group.
- 30 Whilst any Member may ask a relevant Head of Service, Director or the Chief Executive for written factual information about a Directorate or service, such requests must be reasonable and not seek information relating, for instance, to case work of a similar nature, e.g. Social Services, employment, etc. Requests will be met subject to any overriding legal considerations (which will be determined by the Director of Legal Services), or if the recipient of any request considers the cost of providing the information requested or the nature of the request to be unreasonable. If a Member requesting such information is dissatisfied by such a response, s/he should raise the matter in the first place with the relevant Director, and if still dissatisfied should raise the matter with the Chief Executive who will discuss the issue with the relevant Group Leader(s).
- 31 Requests for information about generic group employee matters such as Service structures, the overall cost of service provision for a group of employees etc. should be considered in the normal way as set out above. Heads of Service, Directors or the Chief Executive should ensure that any information supplied does not contain any personal information (within the meaning of the data Protection Act 1998) relating to individual employees such as salary, grade, Trade Union affiliation etc.
- 32 Requests for personal information about specific employees or where the group of employees is so small that individual employees personal details are likely to be revealed should only be considered where a Member has a demonstrable need for such detailed personal information in order to carry out the business of the Council and they could not carry out that business without the information being supplied in a redacted form. Any such request must be accompanied by the Members reasons for requiring the information and must be forwarded to the Head of HR for determination (following consultation with the Council's Data Protection Officer and / or Monitoring Officer as appropriate).

- 33 All information held by the Council, in whatever form, is confidential to the Council unless and until such confidentiality is waived by the Proper Officer and subject to the requirements of the Data Protection Act 1998. Officers and elected Members are responsible for ensuring that personal information and data is only handled and processed in accordance with the provisions of the Act and to familiarise themselves with their obligations under the Act accordingly. Officers or Members who require advice or assistance in relation to their duties under the Data Protection Act 1998 should take advice from the Director of Legal Services.
- 34 In relation to budget proposals:
- 34.1 the Administration shall be entitled to confidential information / discussions with Officers regarding options and proposals. These will remain confidential until determined by the Administration or until published in advance of Committee / Council meetings, whichever is the earlier; and
  - 34.2 the opposition groups shall also be entitled to confidential information / discussions with Officers to enable them to formulate alternative budget proposals. These will remain confidential until determined by the respective opposition groups or until published in advance of Committee / Council meetings, whichever is the earlier.
- 35 As part of the Budget process, Officers may be called upon to give advice on budgetary proposals, wherever they may emanate from (once political confidentiality has been lifted). This is in addition to the "normal" rights that any member has to seek advice "in confidence" from Officers. In addition, Officers may feel it appropriate to offer advice to individuals, groups or all Members. In doing so, they should be aware of the need to remain impartial. It is appropriate and indeed, in certain circumstances, necessary that as a matter of professional judgement, if a proposed course of action is imprudent, that Officers should advise the Members of the Authority that this is so. It would, however, be for the Officer to decide how and when to do so, subject to the general rules outlined in paragraph 33 below. This is without prejudice to issues of legality and financial administration which are covered by specific duties placed on the Chief Financial Officer and Monitoring Officer.
- 36 In view of the need to ensure that the professional integrity of Officers is not impugned, deliberately or inadvertently, the following principles will be applied (although they may be departed from by the Chief Executive, Monitoring Officer or Chief Financial Officer as and when appropriate given their specific statutory duties):
- 36.1 any advice or information provided to any Member(s) in writing will be marked 'strictly confidential, signed and dated by the responsible Officer
  - 36.2 generally, such advice / information will be provided to the Group Leaders, unless there are over-riding considerations associated with the statutory responsibilities of the Head of Paid Service / Chief Financial Officer / Monitoring Officer which would warrant the advice being shared with all Members

- 36.3 Group Leaders and Members who received such advice will treat such advice as strictly confidential to the Council and will ensure that, if such advice is further shared or disseminated within their groups, their groups understand that the advice is confidential to the Council and not to be disclosed further under any circumstances
- 36.4 Officers will also provide, as appropriate, briefings for either Group Leaders and/or all Members as requested by the Group Leaders and/or determined by the Chief Executive, Chief Financial Officer and/or Monitoring Officer prior to the Budget on any particular issues or matters which those Officers, as a matter of professional judgement, consider should properly be drawn to Members' attention.
- 37 The over-riding obligation will be to ensure that the integrity of the administration of public affairs is maintained. The prime responsibility of Officers in the matter of any challengeable decision arises in advising Members of the Council before decisions are reached. It is incumbent, in these circumstances, for Councillors to be fully advised on the legal and financial consequences of any proposed course of action.
- 38 It must not be assumed by any party group or Member that any Officer is supportive of any policy or strategy developed because of that Officer's assistance in the formulation of that policy or strategy.
- 39 Any particular cases of difficulty or uncertainty in this area of Officer advice to party groups should be raised with the Chief Executive who will discuss them with the relevant group leader(s).

#### **The Relationship: Officer Support: The Executive**

- 40 It is clearly important that there should be a close working relationship between Executive Members and the Officers who support and/or interact with them. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officer's ability to deal impartially with other Members and other party groups.
- 41 Whilst Executive Members will routinely be consulted as part of the process of drawing up proposals for consideration or the agenda for a forthcoming meeting, it must be recognised that in some situations an Officer will be under a professional duty to submit a report. Similarly, a Head of Service or other senior Officer will always be fully responsible for the contents of any report submitted in his/her name. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report. This is to be distinguished from a situation where there is a value judgement to be made. Any issues arising between an Executive Member and a Head of Service in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.
- 42 The Executive and its members have wide ranging leadership roles. They will:
- 42.1 lead the policy formation process with input and advice from Overview and Scrutiny Committees and any other persons as appropriate
- 42.2 lead the preparation of the local authority's budget

- 42.3 take in-year decisions on resources and priorities, together with other stakeholders and partners in the local community, to deliver and implement the budget and policies decided by the Full Council; and
- 42.4 be the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.
- 43 Where functions which are the responsibility of the Executive are delegated to Officers or other structures outside the Executive, the Executive will nevertheless remain accountable to the Council, through Overview and Scrutiny Committees, for the discharge of those functions. That is to say, the Executive will be held to account for both its decision to delegate a function and the way that the function is being carried out.
- 44 Under Executive Arrangements individual Members of the Executive are allowed to formally take decisions. The Executive and Cabinet members must satisfy themselves that they are clear what exactly they can and cannot do.
- 45 The Council has put in place mechanisms / protocols which ensure that (as with the Council, its Committees and Sub-Committees, and the Executive and its Committees) an individual Executive Member seeks advice from relevant Officers before taking a decision within her or his delegated authority. This includes taking legal advice, financial advice and professional officer advice (particularly about contractual matters) as well as consulting the Monitoring Officer where there is doubt about vires.
- 46 As a result of the particular issues arising during contractual discussions, particular guidance has been provided for all Members at Appendix to this Officer / Member Protocol. Whilst this guidance is predominantly aimed at Executive Members, who may largely be the Members directly involved in discussions with potential tenderers / contractors / sub-contractors during the course of a procurement exercise, it is not exclusively aimed at Executive Members – it is specifically aimed at all Members, and for that reason, all Members should be aware that their conduct during a procurement exercise should follow the guidance in Appendix.
- 47 Decisions taking by individual Members of the Executive give rise to legal and financial obligations in the same way as decisions taken collectively. Therefore, Members of the Executive should always be aware of legal and financial liabilities (consulting the Monitoring Officer and Chief Financial Officer as appropriate) which will arise from their decisions. To ensure effective leadership for the local authority and the communities it serves, there are arrangements to ensure co-ordination of and sharing responsibility for Executive decisions including those made by individuals.
- 48 Officers will continue to work for and serve the local authority as a whole.
- 49 Nevertheless, as the majority of functions will be the responsibility of the Executive, it is likely that in practice many Officers will be working to the Executive for most of their time. The Executive must respect the political neutrality of the Officers. Officers must ensure that, even when they are predominantly supporting the Executive, that their political neutrality is not compromised.

- 50 In organising support for the Executive, there is a potential for tension between Chief Officers and Cabinet Members with portfolios. All Members and Officers need to be constantly aware of the possibility of such tensions arising and both Officers and Members need to work together to avoid such tensions and conflicts existing or being perceived.

### **The Relationship: Officer Support: Overview and Scrutiny**

- 51 Overview and Scrutiny is an important constituent part of effective democracy and the Council's constitutional arrangements. Officers have significant roles in making it effective. However, it is not Overview and Scrutiny's role to act as a disciplinary tribunal in relation to the actions of Members or Officers. Neither is it the role of Officers to become involved in what would amount to disciplinary investigations on a Panel's behalf. This is the Chief Executive's function alone in relation to staff, the Monitoring Officer's and Audit and Governance Committee as regards the conduct of Members. This means:
- 51.1 Overview and Scrutiny's questioning should not be directed to the conduct of individuals, not in the sense of establishing the facts about what occurred in the making of decisions or implementing of Council policies, but with the implication of allocating criticism or blame
- 51.2 in these circumstances, it is for the Chief Executive to institute a formal enquiry, and Overview and Scrutiny may ask (but not require) him or her to do so.
- 52 Overview and Scrutiny should not act as a "court of appeal" against decisions or to pursue complaints by individuals (Councillors, Officers or members of the public) as other procedures exist for this. These are internal, e.g. the Corporate Complaints Procedure, and external / statutory, e.g. Local Government Ombudsman or appeal to the Courts. That said:
- 51.3 Overview and Scrutiny may investigate the manner in which decisions are made but should not pass judgements on the merits of a decision in individual cases
- 51.4 they can comment, however, on the merits of a particular policy affecting individuals.
- 53 It would be unfair to invite someone to appear before a Panel without telling them in general terms what they will be asked, or not giving them adequate time to prepare. Overview and Scrutiny ought to provide written questions (or indicative topics) beforehand, so that the answers can form the basis of the questioning and discussion. In addition, speakers ought to be told the general line that further questioning is likely to take. Questioning should not stray outside the subject area that the Panel had previously indicated.
- 54 Consideration should be given to any Overview and Scrutiny guidelines as to the procedure at Evidence Meetings, and guidance for Members and Officers.

- 55 Overview and Scrutiny are, however, entitled to the following:
- 55.1 the level and extent of questioning, and the depth to which Overview and Scrutiny Members may probe Officers is dependent upon the seniority of the Officers present – accordingly when calling Officers to give evidence, Members may wish to consider the level and nature of the Officer they wish to have before them in the light of the line of questioning they wish to follow
  - 55.2 Officers may be asked to give a professional opinion, and Officers may be asked to give alternative options. Officers may not confine themselves solely to justifying either the position of or the advice that they gave to the Executive, although in giving options, it is to be expected that they will explain the rationale for the advice that they gave and if the advice given to the Executive reflects, in their professional opinion, the best option, to justify that
  - 55.3 it is appropriate for Members of Overview and Scrutiny to ask Officers to explain and justify advice given to Members, whether on the Executive or otherwise, prior to decisions being taken, and to justify decisions Officers have taken under delegated powers.
- 56 Officers are expected:
- 56.1 to maintain political impartiality at all times when commenting on the Cabinet's / Council's policies and actions
  - 56.2 to be prepared to explain and justify advice given to Members, including members of the Executive and the Council prior to decisions being taken and to justify decisions they themselves have taken under the Scheme of Delegation
  - 56.3 to ensure that an Officer of sufficient seniority appears before the relevant meeting in the light of the indicative topics supplied by Overview and Scrutiny in advance
  - 56.4 where requested to provide information to Scrutiny, e.g. on alternative options. to provide that information in as a comprehensive and timely fashion as if the request had come from the Executive
  - 56.5 to respond to questions from Members in an open, constructive and helpful manner
  - 56.6 not to mislead or be economical with the truth.

### **Support services to Members and Party Groups**

- 57 The only basis on which the Council can lawfully provide support services (e.g. stationery, typing, printing, photo-copying, transport etc.) to Members is to assist them in discharging their role as Members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.



## **Members' Access to Information and to Council Documents**

- 58 Members have the ability to ask for information pursuant to their legal rights to information. This right extends to such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as a Member of the Council. This can range from a request for general information about some aspect of the Council's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Head of Service or another senior Officer of the Service concerned. Requests for employee related information (whether group of employees or individual employees) must be treated in accordance with paragraphs 5.8 – 5.10 above. In cases of doubt, Members should approach the Director of Legal Services for assistance.
- 59 As regards the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law.
- 60 Members will find set out in [Appendix](#) guidance on their rights to obtain information. The law in this area is complex, legislation including the Access to Information provisions of the Local Government Act 1972, the Data Protection Act 1998 as well as the Local Government Act 2000 have all had an impact. However, the Freedom of Information Act 2000 will have an even greater impact, and could potentially provide Members with a single route through which to obtain information in support of their work, whatever their role within the authority. The guidance note set out in [Appendix](#) maps the hierarchy of rights of Members to information, but should be read in combination with the contents of the Constitution, most particularly the Access to Information Procedure Rules which cover the statutory obligations of the authority in terms of information and its relationship with the decision-making process.
- 61 Finally, any Council information provided to a Member is deemed to be information provided in confidence, is subject to the protections afforded by the Data Protection Act 1998 and must only be used by the Member for the purpose for which it was provided, i.e. in connection with the proper performance of the Member's duties as a Member of the Council. Therefore, for example, early drafts of Committee reports / briefing papers are not suitable for public disclosure and should not be used other than for the purpose for which they were supplied. This point is emphasised in Members' Code of Conduct.
- 62 Failure to observe this obligation or disclosure of confidential information may amount to a breach of the Code of Conduct. Failure to safeguard and protect the confidentiality of personal information within the meaning of the Data Protection Act 1998 may result in prosecution of the Authority and / or any individual Officer or Member by the Information Commissioner and the imposition of significant monetary penalties.

## **Correspondence and Advice**

- 63 Members seeking advice from officers shall be entitled to assume that such advice is given under "Chatham House rules" in terms of disclosure to other Members, unless otherwise agreed with the officer(s) concerned. i.e. it is not for further disclosure.

- 64 Correspondence between an individual Member and an Officer should not normally be copied (by the Officer) to any other Member. In other words, a system of “silent or blind copies” should not be employed.
- 65 Official letters on behalf of the Council should normally be sent in the name of the appropriate Officer, rather than in the name of a Member. It may be appropriate in certain limited circumstances (e.g., representations to a Government Minister) for a letter to appear in the name of a Cabinet Member or the Leader or the Leaders of all political groups represented on the Council by agreement, but this should be the exception rather than the norm. Letters which, for example, create legal obligations or give instructions on behalf of the Council should never be sent out in the name of a Member, Executive or otherwise.
- 66 Correspondence received by Democratic Services from the public with a request that it is either copied to Members and/or forwarded to Members will, subject to any over-riding legal considerations, be forwarded / copied.
- 67 Officers responding to members queries should do so in a timely manner, and in accordance with the agreed standards for replying to letters and E mails from Members.

### **Publicity and Press Releases**

- 68 Local authorities are accountable to their electorate. Accountability requires local understanding. This will be promoted by the Authority, explaining its objectives and policies to the electors and rate-payers. In recent years, all local authorities have increasingly used publicity to keep the public informed and to encourage public participation. Every Council needs to tell the public about the services it provides. Increasingly, local authorities see this task as an essential part of providing services. Good, effective publicity aimed to improve public awareness of a Council’s activities is to be welcomed.
- 69 Publicity is, however, a sensitive matter in any political environment because of the impact it can have. Expenditure on publicity can be significant. It is essential, therefore, to ensure that local authority decisions on publicity are properly made in accordance with clear principles of good practice. The Government has issued a [Code of Recommended Practice on Local Authority Publicity](#). The purpose of the Code is to set out such principles. The Code affects the conventions that should apply to all publicity at public expense and which traditionally have applied in both central and local government.
- 70 Officers and Members of the Council will, therefore, in making decisions on publicity, take account of the provisions of this Code. If in doubt, Officers and/or Members should initially seek advice from the Head of Communications who will refer the matter to the Monitoring Officer if necessary / appropriate. Particular care should be paid to any publicity used by the Council around the time of an election. Particular advice will be given on this by the Monitoring Officer.

## **Involvement of Ward Councillors**

- 72 Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Ward or Wards affected should as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be notified at the outset of the exercise. More generally, Officers should consider whether other policy or briefing papers, or other topics being discussed with an Executive Member, should be discussed with relevant Ward Members. Officers should seek the views of the appropriate Executive Member(s) as to with whom and when this might be done.

## **Conclusion**

- 73 Mutual understanding, openness on these sorts of sensitive issues and basic respect are the greatest safeguard of the integrity of the Council, its Members and Officers.

APPENDICES TO FOLLOW – TO BE APPROVED BY AUDIT AND GOVERNANCE COMMITTEE

## Part 4

# Whistleblowing Policy

---

The Council has a [Whistleblowing Policy](#) in place.

DRAFT